

Texas Historical Statutes Project

1911
REVISED CIVIL STATUTES
OF THE
STATE OF TEXAS



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Revised Civil Statutes

of the

State of Texas

A BILL to be entitled "An Act to Adopt and Establish the 'REVISED CIVIL STATUTES of the State of Texas, and declaring an emergency."

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

The Revised Civil Statutes *of the* State of Texas

TITLE 1.

ADOPTION.

[See "Descent and Distribution," Article 2463.]

	Article.		Article.
How heir adopted.....	1	Right of adopted child to support, etc....	5
Rights of adopted heir.....	2	Adopter may not transfer authority, etc..	6
Parents may transfer authority, etc., how.....	3	Authority of court.....	7
Parents thereafter barred, etc.....	4	No white child to be adopted by negro, and vice versa.....	8

Article 1. [1] **How heir adopted.**—Any person wishing to adopt another as his legal heir may do so by filing in the office of the clerk of the county court of the county in which he may reside a statement in writing, by him signed and duly authenticated or acknowledged, as deeds are required to be, which statement shall recite, in substance, that he adopts the person named therein as his legal heir, and the same shall be admitted to record in said office. [Act Jan. 16, 1850, pp. 36, 81; P. D. 30.]

Art. 2. [2] **Rights of adopted heir.**—Such statement in writing, signed and authenticated or acknowledged, and recorded as aforesaid, shall entitle the party so adopted to all the rights and privileges, both in law and equity, of a legal heir of the party so adopting him; provided, however, that if the party adopting such heir have, at the time of such adoption, or shall thereafter have, a child begotten in lawful wedlock, such adopted heir shall in no case inherit more than one-fourth of the estate of the party adopting him. [P. D. 31.]

Art. 3. **Parents may transfer authority, etc., how.**—The parent or parents of any child, who is to be adopted as provided in Articles 1 and 2 of this title, may, by an instrument in writing, duly signed and authenticated or acknowledged as deeds are required to be, transfer their parental authority and custody over said child so adopted to the party so adopting such child. [Acts 1907, p. 103.]

Art. 4. **Parents thereafter barred, etc.**—After the execution of such an instrument of writing, duly acknowledged or authenticated as aforesaid, the parents shall thereafter be barred from exercising any authority, control or custody over such child as against the party so adopting him. [Id.]

Art. 5. **Right of adopted child to support, etc.**—The child or children so adopted shall have the same rights as against the person or persons adopting said child or children for support and maintenance, and for proper and humane treatment, as a child has, by law, against lawful parents. [Id.]

Art. 6. **Adopter may not transfer authority, etc.**—It shall be unlawful for any person adopting any child under this title to transfer his authority and custody to any other person. [Id.]

Art. 7. **Authority of court.**—Nothing in this article shall prevent a court of competent jurisdiction from taking away from such adoptive parent the custody of the adopted child and awarding the same to its natural parents, or either of them, or to any other person, upon proof of the bad moral character of such adoptive parent, or upon proof of abuse, neglect, or ill treatment of such adopted child by the adoptive parent. [Id.]

Art. 8. **No white child to be adopted by negro, and vice versa.**—No white child can be adopted by a negro person, nor can a negro child be adopted by a white person. [Id.]

TITLE 2.

AFFIDAVITS, OATHS AND AFFIRMATIONS.

	Article.		Article.
Form of oath, etc.....	9	All affidavits must be in writing and	12
Oaths, etc., generally, who to administer.	10	signed	13
Affidavit may be by agent or attorney....	11	Officers authorized to take affidavits....	13
		Other oaths, etc.....	14

Art. 9. [3] [3] **Form of oath, etc.**—All oaths and affirmations shall be administered in the mode most binding upon the conscience of the individual taking the same, and shall be taken subject to the pains and penalties of perjury. [Const. Bill of Rights, Art. 1.]

Art. 10. [4] [4] **Oaths, etc., generally by whom administered.**—All oaths, affidavits or affirmations necessary or required by law may be administered, and a certificate of the fact given, by any judge or clerk of a court of record, justice of the peace, or by any notary public, within this state. [Act Feb. 5, 1887, p. 5.]

Art. 11. [5] [5] **Affidavit may be made by agent or attorney.**—Whenever, at the commencement or during the progress of any civil suit or judicial proceeding, it may be necessary or proper for any party thereto to make an affidavit, such affidavit may be made by either the party or his agent or attorney. [Act Jan. 11, 1856, p. 13; P. D. 35.]

Art. 12. [6] [6] **All affidavits must be in writing, and signed.**—All affidavits provided for in this title shall be in writing and signed by the party making the same.

Art. 13. [7] [7] **Officers authorized to take affidavits.**—Affidavits may be made before either of the following officers, who are authorized to take such affidavits and give a certificate thereof:

1. If taken within this state, before the officers named in article 10 of this title.

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

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

Art. 14. [8] [8] **Other oaths, etc.**—Oaths and affirmations may also be administered, and affidavits taken, and certificates thereof given in such other cases, and by such other officers, as are or may be prescribed by law.

TITLE 3.

ALIENS.

[For the mode of taking property by devise or descent, see title "Descent and Distribution." For qualification of electors, see "Elections."]

	Article.		Article.
Alien ownership of land inhibited.....	15	May convey before escheat proceedings, good faith, etc.....	19
Under certain circumstances and conditions permitted.....	16	Proceedings to escheat, by whom instituted and when; notice required.....	20
Interest in liens and acquisitions of land under foreclosures and to collect debts permitted.....	17	Judgment and proceedings after judgment of escheat.....	21
May hold for ten years, provided, etc..	18		

Article 15. [9] **Alien ownership of lands inhibited.**—No alien or person who is not a citizen of the United States shall acquire title to or own any lands in the State of Texas, except as hereinafter provided; but he shall have and enjoy in the state of Texas such rights as to personal property as are or shall be accorded to citizens of the United States by the laws of the nation to which such alien shall belong, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of this title and the general laws of the state. [Acts of 1892, S. S. p. 6, and Acts 1854. p. 98.]

Art. 16. [10] **Under certain circumstances and conditions permitted.**—This title shall not apply to land now owned in this state by aliens so long as it is held by the present owners, nor to any alien who is or shall become a bona fide inhabitant of the state of Texas; and any alien who is or shall become a bona fide inhabitant of the state of Texas shall have the right to acquire and hold lands in this state upon the same terms as citizens of the state of Texas during the continuance of the bona fide residence of such alien in this state; provided, that if any such resident alien shall cease to be a bona fide inhabitant of this state, then such alien shall have ten years from the time he ceases to be such bona fide inhabitant in which to alienate such lands. The provisions of this title shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village in this state; provided, further, that any alien who shall become an actual resident of this state, and shall in conformity with the naturalization laws of the United States have declared his intention to become a citizen of the United States, shall have the right to acquire and hold real estate in this state in the same manner as if he was a citizen of the United States. [Acts 1892, p. 6.]

Art. 17. [11] **Interest in liens and acquisitions of land under foreclosures, and to collect debts, permitted.**—The provisions of this title shall not prevent aliens from acquiring lands, or any interest therein, in the ordinary course of justice in the collection of debts; nor from acquiring liens upon real estate, or any interest therein; nor from lending money and securing the same upon real estate, or any interest therein; nor from enforcing any such lien; nor from acquiring and holding title to such real estate, or any interest therein, upon which a lien may have heretofore or may hereafter be fixed, or upon which a loan of money may have been heretofore or hereafter may be made and secured. [Id.]

Art. 18. [12] **May hold for ten years, provided, etc.**—All non-resident aliens who may hereafter acquire real estate in Texas by devise, descent, or by purchase under the provisions of this title may hold the same for ten years; provided, that if any such non-resident alien is a minor he may hold such real estate for ten years from the time of reaching his or her majority,

or if of unsound mind for ten years after the appointment of a legal guardian. [Id.]

Art. 19. [13] **May Convey before escheat proceedings, good faith required.**—Any alien who shall hereafter hold lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided; provided, however, that if any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title; such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the state absolutely. [Id.]

Art. 20. [14] **Proceedings to escheat; by whom instituted and when; notice required.**—It shall be the duty of the attorney general, or the district or county attorney, when he shall be informed, or have reason to believe, that lands in the state are being held contrary to the provisions of this title, to institute suit in behalf of the state of Texas in the district court of the county where such lands are situated, praying for the escheat of the same on behalf of the state, as in cases of estates of persons dying without the devise thereof and having no heirs; provided, before any such suit is instituted, the attorney general, district or county attorney, as the case may be, shall give ninety days notice by registered letter of his intention to sue, directed to the owner of said land, or the person who last rendered same for taxes, or his agents, and to all of the persons having an interest in such land, of which the plaintiff has actual or constructive notice. [Id.]

Art. 21. [15] **Judgment and proceedings after judgment of escheat.**—If it shall be determined upon the trial of any such escheat proceedings that lands are held contrary to the provisions of this title, the court trying said cause shall render judgment condemning such lands, and shall order the same to be sold under execution; and the proceeds of such sale, after deducting the cost of such suit, shall be paid to the clerk of such court so rendering judgment; and said funds shall remain in the hands of such clerk for one year from the date of such payment, subject to the order of the alien owner of such lands or his heirs or legal representatives, and if not claimed within the period of one year, such clerk shall pay the same into the treasury of the state for the benefit of the available school fund of the state of Texas; provided, that when any money shall have been paid to the treasurer, as hereinbefore provided, an alien, his heirs or assigns, may recover the same from the state in the same manner prescribed in articles 3583, 3584, 3585, 3586, 3587 and 3591 of chapter 28, title 52, of the Revised Civil Statutes of the state of Texas, relating to the recovery of funds of estates of decedents by the heirs, etc., where the same has been paid into the treasury by the administrator or executor; provided, that the defendant at any time before final judgment may suggest that he has conformed with the law, which being admitted or proved, said suit shall be dismissed on payment of costs and reasonable attorney's fee to be fixed by the court. [Id.]

TITLE 4.

AMUSEMENTS—PUBLIC.

	Article.		Article.
Defining places of public amusement....	22	Leases	22

Article 22. Defining places of public amusement.—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, playhouses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas and other shows of whatever nature, to which admission fees are charged, are hereby declared to be public houses of amusement, and the same shall be subject to regulation by the public will as expressed by ordinance, statute, or other law; provided, that owners and lessees shall have the right to assign seats to patrons thereof, and to refuse admission to objectionable characters. [Acts 1907, p. 21, sec. 1.]

Art. 23. Leases.—All leases and renewals of leases taken and made for a term upon such houses of public amusement, as defined in the preceding article, shall contain a provision therein to the effect that the lessee or his assigns, shall, in good faith, comply with the provisions of the law governing such places of public amusement; and upon the failure or refusal of any such lessee, or his assigns, to comply with the law governing such places of public amusement, or upon conviction of the violation of any of the provisions of the Penal Code relating to discrimination in the booking of plays, opera shows, or other productions, by whatever name known, which are and shall hereafter be used for public performances, shall forfeit his lease and all rights and privileges thereunder. [Id. sec. 4.]

TITLE 5.

APPORTIONMENT.

Senatorial districts.....	24	Article.	Supreme judicial districts.....	29	Article.
Returning officers.....	25		Judicial districts.....	30	
Representative districts.....	26		Where apportionment law amended, rule		
Returning officers.....	27		as to return of writs, etc., jurors, ap-		
Congressional districts.....	28		pearance bonds, etc., and witnesses...	31	

Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Anderson	13	28	7	3	1	Fayette	18	57, 58	9	22	1
Andrews	28	101	16	70	2	Fisher	28	101	16	39	2
Angelina	13	19	2	2	1	Floyd	29	106	13	64	2
Aransas	22	94	9	36	1	Foard	29	105	13	46	2
Archer	29	104	13	30	2	Fort Bend	16	25	8	23	1
Armstrong	29	106	13	47	2	Franklin	2	5	1	5	6
Atascosa	22	98	15	36	4	Freestone	12	41	6	13	5
Austin	18	49	8	22	1	Frio	22	97	15	49	4
Bailey	29	106	13	64	2	Gaines	28	101	16	70	2
Bandera	24	98	15	38	4	Galveston	17	23	7	10, 56	1
Bastrop	19	58, 59	10	21	3	Garza	28	101	16	32	2
Baylor	29	104	13	50	2	Gillespie	24	89	14	33	4
Bee	22	54	15	36	4	Glasscock	28	101	16	70	2
Bell	27	70	11	27	3	Goliad	22	109	9	24	1
Bexar	24	92	14	37, 45, 57	4	Gonzales	21	56, 58	9	25	4
Blanco	21	89	14	33	3	Gray	29	106	13	31	2
Borden	28	101	16	32	2	Grayson	4	35	4	15, 59	5
Bosque	27	74	5	18	2	Gregg	8	13	3	4	6
Bowie	1	1	1	5	6	Grimes	15	44	8	12	1
Brazoria	17	53	9	23	1	Gaudalupe	21	91	15	25	4
Brazos	12	45	6	20	1	Hale	29	106	13	64	2
Brewster	25	99	16	63	4	Hall	29	105	13	46	2
Briscoe	29	106	13	64	2	Hamilton	27	87	11	52	2
Brown	26	107	14	35	3	Hansford	29	106	13	31	2
Burleson	19	48	10	21	1	Hardeman	29	105	13	46	2
Burnet	20	63	14	33	3	Hardin	14	21	2	9	1
Caldwell	21	60	10	22	3	Harris	16	24	8	11, 55, 61	1
Calhoun	22	54	9	24	1	Harrison	8	8, 9	4	6	2
Callahan	28	103	16	42	2	Hartley	29	106	13	69	2
Cameron	23	95	15	28	1	Haskell	28	104	16	39	2
Camp	7	10	1	7	6	Hays	21	80	10	22	2
Carson	29	106	13	31	2	Hemphill	29	106	13	31	2
Cass	1	7	1	5	6	Henderson	9	29	3	3	5
Castro	29	106	13	64	2	Hidalgo	23	95	15	28	1
Chambers	17	21	7	9	1	Hill	10	72	5	66	5
Cherokee	13	16	2	2	6	Hockley	29	101	16	64	2
Childress	29	105	13	46	2	Hood	30	76	12	29	2
Clay	29	83	13	30	2	Hopkins	2	5, 6	1	8	6
Cochran	29	101	16	64	2	Houston	13	27	7	3	1
Coke	25	102	16	51	3	Howard	28	101	16	32	2
Coleman	26	107	14	35	3	Hunt	5	33	4	862	5
Collin	5	36	4	59	5	Hutchinson	29	106	13	31	2
Collingsworth	29	106	13	46	2	Irion	25	102	16	51	3
Colorado	18	50	9	25	1	Jack	29	83	13	43	2
Comal	21	90	14	22	3	Jackson	22	54	9	24	1
Comanche	26	86	12	52	2	Jasper	14	20	2	1	1
Concho	26	102	16	35	3	Jefferson	14	22	2	58, 80	1
Cooke	4	81, 108	13	16	2	Jeff Davis	25	99	16	63	4
Coryell	27	71	11	52	3	Johnson	10	73, 74	12	18	5
Cottle	29	105	13	50	2	Jones	28	103	16	39	2
Crane	28	101	16	70	2	Karnes	22	109	9	24	4
Crockett	25	102	16	51	4	Kaufman	9	31, 32	3	40	5
Crosby	29	101	16	50	2	Kendall	24	95	14	38	4
Dallas	29	106	13	69	2	Kent	28	101	16	39	2
Dallas	6	37, 38	5	14, 44, 68	5	Kerr	24	98	14	38	4
Dawson	28	101	16	32	2	Kimble	25	98	16	33	4
Deaf Smith	29	106	13	69	2	King	29	105	16	50	2
Delta	2	5	1	8, 62	5	Kinney	25	99	15	63	4
Denton	31	79, 108	13	16	2	Knox	29	104	13	50	2
DeWitt	22	55	9	24	1	Lamar	3	4	1	6, 62	6
Dickens	29	105	13	50	2	Lamb	29	106	13	64	2
Dimmit	23	97	15	49	4	Lampasas	20	88	14	27	3
Donley	29	106	13	47	2	La Salle	23	97	15	49	4
Duval	23	94	15	28	4	Lavaca	18	51, 52	9	25	1
Eastland	28	85	16	42	2	Lee	19	47	10	21	1
Ector	28	101	16	70	2	Leon	15	43	8	12	1
Edwards	25	98	16	38	4	Liberty	14	21	7	9	1
Ellis	10	89	5	40	5	Linestone	12	42, 69	6	13	5
El Paso	25	100	16	34, 41	4	Lipscomb	29	106	13	31	2
Erath	26	75, 76	12	29	2	Live Oak	22	109	15	36	3
Falls	11	87, 89	11	54	3	Llano	26	89	14	38	3
Fannin	3	34	4	6	6	Loving	28	101	16	70	2

Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Lubbock	29	101	16	64	2	San Jacinto	15	19	7	9	1
Lynn	28	101	16	64	2	San Patricio	23	94	15	36	1
Madison	15	43	8	12	1	San Saba	26	88	14	33	2
Marion	1	8	1	5	0	Schleicher	25	102	16	51	4
Martin	28	101	16	32	2	Seurry	28	101	16	39	2
Mason	25	88	14	33	4	Shackelford	28	84	16	42	2
Matagorda	17	53	9	23	1	Shelby	8	18	2	2	1
Maverick	25	99	15	63	4	Sherman	29	106	13	69	2
McCulloch	26	88	14	35	3	Smith	7	12, 13	3	7	6
McLennan	11	68, 69	11	19, 54	3	Somervell	30	76	12	29	2
McMullen	23	97	15	36	4	Starr	23	95	15	28	1
Medina	25	97	15	38	4	Stephens	28	84	16	42	2
Menard	25	102	16	33	4	Stonewall	28	104	16	39	2
Midland	28	101	16	70	2	Sterling	25	102	16	51	3
Milam	11	64, 66	6	20	3	Sutton	25	102	16	51	4
Mills	26	87	14	35	3	Swisher	29	106	13	64	2
Mitchell	28	101	16	32	2	Tarrant	30	78, 108	12	17, 48, 67	2
Montague	30	82	13	16	2	Taylor	28	103	16	42	2
Montgomery	15	26	8	9	1	Terrell	25	99	15	63	4
Moore	29	106	13	69	2	Terry	28	101	16	64	2
Morris	1	3	1	5	6	Throckmorton	29	104	13	39	2
Motley	29	105	13	50	2	Titus	2	3	1	5	6
Nacogdoches	14	17	2	2	1	Tom Green	25	102	16	51	3
Navarro	9	40	6	13	5	Travis	20	61	10	26, 53	2
Newton	14	20	2	1	1	Trinity	13	26	7	12	1
Nolan	28	101	16	32	2	Tyler	14	21	2	1	1
Nueces	23	94	15	28	1	Upshur	7	10	3	7	6
Ochiltree	29	103	13	31	2	Upton	28	101	16	70	2
Oldham	29	106	13	69	2	Uvalde	25	97	15	38	4
Orange	14	22	2	1	1	Val Verde	25	99	15	63	4
Palo Pinto	28	84	16	29	2	Van Zandt	7	30, 32	3	7	5
Panola	8	14	2	4	6	Victoria	22	54	9	24	1
Parker	30	77	12	43	2	Walker	15	26	8	12	1
Parmer	29	106	13	69	2	Waller	16	25	8	23	1
Pecos	25	99	16	63	4	Ward	28	101	16	70	2
Polk	15	19	7	9	1	Washington	19	46, 47	10	21	1
Potter	29	106	13	47	2	Webb	23	96	15	49	4
Presidio	25	99	16	63	4	Wharton	17	52	9	23	1
Rains	5	32	4	8	5	Wheeler	29	106	13	31	2
Randall	29	106	13	47	2	Wichita	29	105	13	30	2
Reagan	25	102	16	51	3	Wilbarger	29	105	13	46	2
Red River	2	2, 3	1	6	6	Williamson	20	62, 63	10	26	3
Reeves	25	99	16	70	2	Wilson	22	93	15	36	4
Refugio	22	54	9	24	1	Winkler	28	101	16	70	2
Roberts	29	106	13	31	2	Wise	31	80, 108	13	43	2
Robertson	12	65, 66	6	20	3	Wood	7	11	3	7	6
Rockwall	6	38	5	40	5	Yoakum	28	101	16	64	2
Runnels	26	102	16	35	3	Young	29	104	13	30	2
Rusk	8	15	3	4	6	Zapata	23	95	15	49	4
Sabine	14	20	2	1	1	Zavala	25	97	15	38	4
San Augustine	14	19	2	1	1						

SENATORIAL DISTRICTS.

Article 24. [16] [11] The senatorial districts of the state of Texas shall hereafter be composed of the following named counties, each of which districts shall be entitled to elect one senator, said districts numbered from one to thirty-one, inclusive, to wit:

- No. 1. Bowie, Cass, Marion and Morris.
- No. 2. Red River, Titus, Franklin, Hopkins and Delta.
- No. 3. Lamar and Fannin.
- No. 4. Grayson and Cooke.
- No. 5. Collin, Hunt and Rains.
- No. 6. Dallas and Rockwall.
- No. 7. Van Zandt, Wood, Smith, Upshur and Camp.
- No. 8. Harrison, Rusk, Panola, Shelby and Gregg.
- No. 9. Navarro, Henderson and Kaufman.
- No. 10. Ellis, Johnson and Hill.
- No. 11. McLennan, Falls and Milam.
- No. 12. Limestone, Freestone, Robertson and Brazos.
- No. 13. Anderson, Cherokee, Houston, Angelina and Trinity.
- No. 14. Nacogdoches, San Augustine, Sabine, Newton, Jasper, Tyler, Liberty, Hardin, Orange and Jefferson.

No. 15. Leon, Madison, Grimes, Montgomery, Walker, San Jacinto and Polk.

No. 16. Harris, Fort Bend and Waller.

No. 17. Chambers, Galveston, Brazoria, Matagorda and Wharton.

No. 18. Colorado, Lavaca, Fayette and Austin.

No. 19. Washington, Burleson, Lee and Bastrop.

No. 20. Williamson, Travis, Burnet and Lampasas.

No. 21. Gonzales, Caldwell, Guadalupe, Comal, Hays and Blanco.

No. 22. Jackson, Callhoun, Victoria, DeWitt, Goliad, Refugio, Bee, Live Oak, Karnes, Wilson, Frio, Aransas and Atascosa.

No. 23. Cameron, Hidalgo, Starr, Zapata, Webb, Duval, Nueces, San Patricio, La Salle, McMullen and Dimmit.

No. 24. Bexar, Bandera, Kendall, Kerr and Gillespie.

No. 25. Kimble, Mcnard, Schleicher, Sutton, Crockett, Tom Green, Coke, Sterling, Irion, Pecos, Brewster, Presidio, Jeff Davis, El Paso, Val Verde, Edwards, Kinney, Uvalde, Medina, Zavala, Reeves, Maverick, Mason, Reagan and Terrell.

No. 26. Erath, Comanche, Mills, San Saba, McCulloch, Concho, Runnels, Coleman, Brown and Llano.

No. 27. Bell, Coryell, Hamilton and Bosque.

No. 28. Palo Pinto, Stephens, Eastland, Callahan, Taylor, Nolan, Mitchell, Howard, Martin, Andrews, Glasscock, Midland, Ector, Winkler, Loving, Ward, Crane, Upton, Gaines, Yoakum, Terry, Lynn, Dawson, Borden, Garza, Kent, Scurry, Fisher, Stonewall, Haskell, Jones and Shackelford.

No. 29. Jack, Young, Throckmorton, Clay, Archer, Wichita, Wilbarger, Baylor, Knox, Foard, Hardeman, King, Dickens, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Lubbock, Hockley, Cochran, Crosby, Childress, Hall, Briscoe, Swisher, Castro, Parmer, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Wheeler, Gray, Carson, Potter, Oldham, Hartley, Moore, Hutchinson, Roberts, Hemphill, Lipscomb, Ochiltree, Hansford, Sherman and Dallam.

No. 30. Tarrant, Parker, Hood and Somervell.

No. 31. Denton, Wise and Montague. [Acts 1901, S. S., p. 9.]

Art. 25. [17] [12] **Returns made to whom.**—The county judges of the following counties shall receive returns and count the votes, and issue certificates of election to persons receiving the highest number of votes for senator at any election in their respective districts, to wit:

First district. Bowie county.

Second district. Hopkins county.

Third district. Lamar county.

Fourth district. Grayson county.

Fifth district. Collin county.

Sixth district. Dallas county.

Seventh district. Smith county.

Eighth district. Rusk county.

Ninth district. Navarro county.

Tenth district. Ellis county.

Eleventh district. McLennan county.

Twelfth district. Limestone county.

Thirteenth district. Cherokee county.

Fourteenth district. Tyler county.

Fifteenth district. Walker county.

Sixteenth district. Harris county.

Seventeenth district. Galveston county.

Eighteenth district. Colorado county.

Nineteenth district. Lee county.

Twentieth district. Williamson county.

Twenty-first district. Hays county.
 Twenty-second district. Bee county.
 Twenty-third district. Nueces county.
 Twenty-fourth district. Bexar county.
 Twenty-fifth district. Tom Green county.
 Twenty-sixth district. Brown county.
 Twenty-seventh district. Bell county.
 Twenty-eighth district. Eastland county.
 Twenty-ninth district. Clay county.
 Thirtieth district. Tarrant county.
 Thirty-first district. Wise county. [Acts 1901, S. S., p. 10.]

REPRESENTATIVE DISTRICTS.

Article 26. [18] [13] The state of Texas is hereby apportioned and divided into representative districts, and said districts and the number of representatives in each district shall be as follows:

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

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

No. 3. The third district, composed of the counties of Red River, Titus and Morris, and shall elect one representative.

No. 4. The fourth district, composed of the county of Lamar, and shall elect two representatives.

No. 5. The fifth district, composed of the counties of Delta, Franklin and Hopkins, and shall elect one representative.

No. 6. The sixth district, composed of the county of Hopkins, and shall elect one representative.

No. 7. The seventh district, composed of the county of Cass, and shall elect one representative.

No. 8. The eighth district, composed of the counties of Marion and Harrison, and shall elect one representative.

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

No. 10. The tenth district, composed of the counties of Camp and Upshur, and shall elect one representative.

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

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

No. 13. The thirteenth district, composed of the counties of Smith and Gregg, and shall elect one representative.

No. 14. The fourteenth district, composed of the county of Panola, and shall elect one representative.

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

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

No. 17. The seventeenth district, composed of the county of Nacogdoches, and shall elect one representative.

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

No. 19. The nineteenth district, composed of the counties of Polk, Angelina, San Jacinto and San Augustine, and shall elect two representatives.

No. 20. The twentieth district, composed of the counties of Sabine, Newton and Jasper, and shall elect one representative.

No. 21. The twenty-first district, composed of the counties of Tyler, Hardin, Liberty and Chambers, and shall elect one representative.

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

No. 23. The twenty-third district, composed of the county of Galveston, and shall elect two representatives.

No. 24. The twenty-fourth district, composed of the county of Harris, and shall elect three representatives.

No. 25. The twenty-fifth district, composed of the counties of Fort Bend and Waller, and shall elect one representative.

No. 26. The twenty-sixth district, composed of the counties of Montgomery, Trinity and Walker, and shall elect two representatives.

No. 27. The twenty-seventh district, composed of the county of Houston, and shall elect one representative.

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

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

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

No. 31. The thirty-first district, composed of the county of Kaufman, and shall elect one representative.

No. 32. The thirty-second district, composed of the counties of Kaufman, Van Zandt and Rains, and shall elect one representative.

No. 33. The thirty-third district, composed of the county of Hunt, and shall elect two representatives.

No. 34. The thirty-fourth district, composed of the county of Fannin, and shall elect two representatives.

No. 35. The thirty-fifth district, composed of the county of Grayson, and shall elect three representatives.

No. 36. The thirty-sixth district, composed of the county of Collin, and shall elect two representatives.

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

No. 38. The thirty-eighth district, composed of the counties of Dallas and Rockwall, and shall elect one representative.

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

No. 40. The fortieth district, composed of the county of Navarro, and shall elect two representatives.

No. 41. The forty-first district, composed of the county of Freestone, and shall elect one representative.

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

No. 43. The forty-third district, composed of the counties of Leon and Madison, and shall elect one representative.

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

No. 45. The forty-fifth district, composed of the county of Brazos, and shall elect one representative.

No. 46. The forty-sixth district, composed of the county of Washington, and shall elect one representative.

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

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

No. 49. The forty-ninth district, composed of the county of Austin, and shall elect one representative.

No. 50. The fiftieth district, composed of the county of Colorado, and shall elect one representative.

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

No. 52. The fifty-second district, composed of the counties of Lavaca and Wharton, and shall elect one representative.

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

No. 54. The fifty-fourth district, composed of the counties of Bee, Jackson, Victoria, Calhoun and Refugio, and shall elect one representative.

No. 55. The fifty-fifth district, composed of the county of DeWitt, and shall elect one representative.

No. 56. The fifty-sixth district, composed of the county of Gonzales, and shall elect one representative.

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

No. 58. The fifty-eighth district, composed of the counties of Gonzales, Fayette and Bastrop, and shall elect one representative.

No. 59. The fifty-ninth district, composed of the county of Bastrop, and shall elect one representative.

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

No. 61. The sixty-first district, composed of the county of Travis, and shall elect two representatives.

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

No. 63. The sixty-third district, composed of the counties of Williamson and Burnet, and shall elect one representative.

No. 64. The sixty-fourth district, composed of the county of Milam, and shall elect one representative.

No. 65. The sixty-fifth district, composed of the county of Robertson, and shall elect one representative.

No. 66. The sixty-sixth district, composed of the counties of Milam and Robertson, and shall elect one representative.

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

No. 68. The sixty-eighth district, composed of the county of McLennan, and shall elect two representatives.

No. 69. The sixty-ninth district, composed of the counties of McLennan, Falls and Limestone, and shall elect two representatives.

No. 70. The seventieth district, composed of the county of Bell, and shall elect two representatives.

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

No. 72. The seventy-second district, composed of the county of Hill, and shall elect two representatives.

No. 73. The seventy-third district, composed of the county of Johnson, and shall elect one representative.

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

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

No. 76. The seventy-sixth district, composed of the counties of Erath, Somervell and Hood, and shall elect one representative.

No. 77. The seventy-seventh district, composed of the county of Parker, and shall elect one representative.

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

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

No. 80. The eightieth district, composed of the county of Wise, and shall elect one representative.

No. 81. The eighty-first district, composed of the county of Cooke, and shall elect one representative.

No. 82. The eighty-second district, composed of the county of Montague, and shall elect one representative.

No. 83. The eighty-third district, composed of the counties of Clay and Jack, and shall elect one representative.

No. 84. The eighty-fourth district, composed of the counties of Palo Pinto, Stephens and Shackelford, and shall elect one representative.

No. 85. The eighty-fifth district, composed of the county of Eastland, and shall elect one representative.

No. 86. The eighty-sixth district, composed of the county of Comanche, and shall elect one representative.

No. 87. The eighty-seventh district, composed of the counties of Hamilton and Mills, and shall elect one representative.

No. 88. The eighty-eighth district, composed of the counties of Lampasas, San Saba, McCulloch and Mason, and shall elect one representative.

No. 89. The eighty-ninth district, composed of the counties of Llano, Blanco and Gillespie, and shall elect one representative.

No. 90. The ninetieth district, composed of the counties of Hays and Comal, and shall elect one representative.

No. 91. The ninety-first district, composed of the county of Guadalupe, and shall elect one representative.

No. 92. The ninety-second district, composed of the county of Bexar, and shall elect three representatives.

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

No. 94. The ninety-fourth district, composed of the counties of Aransas, San Patricio, Duval and Nueces, and shall elect one representative.

No. 95. The ninety-fifth district, composed of the counties of Cameron, Hidalgo, Starr and Zapata, and shall elect two representatives.

No. 96. The ninety-sixth district, composed of the county of Webb, and shall elect one representative.

No. 97. The ninety-seventh district, composed of the counties of McMullen, LaSalle, Dimmit, Zavalla, Frio, Medina and Uvalde, and shall elect one representative.

No. 98. The ninety-eighth district, composed of the counties of Bandera, Kendall, Kerr, Kimball and Edwards, and shall elect one representative.

No. 99. The ninety-ninth district, composed of the counties of Kinney, Val Verde, Maverick, Pecos, Brewster, Presidio, Jeff Davis, Reeves and Terrell, and shall elect one representative.

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

No. 101. The one hundred and first district, composed of the counties of Loving, Winkler, Ward, Crane, Upton, Ector, Midland, Glasscock, Andrews, Martin, Howard, Mitchell, Nolan, Fisher, Scurry, Borden, Dawson, Gaines, Yoakum, Terry, Lynn, Garza, Kent, Crosby, Lubbock, Hockley, Cochran, and shall elect one representative.

No. 102. The one hundred and second district, composed of the counties

of Tom Green, Irion, Coke, Runnels, Concho, Menard, Sutton, Schleicher, Sterling, Crockett and Reagan, and shall elect one representative.

No. 103. The one hundred and third district, composed of the counties of Jones, Taylor and Calláhan, and shall elect one representative.

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

No. 105. The one hundred and fifth district, composed of the counties of Wichita, Wilbarger, Hardeman, Foard, King, Dickens, Motley, Cottle, Childress and Hall, and shall elect one representative.

No. 106. The one hundred and sixth district, composed of the counties of Floyd, Hale, Lamb, Bailey, Parmer, Castro, Swisher, Briscoe, Collingsworth, Donley, Armstrong, Randall, Deaf Smith, Oldham, Potter, Carson, Gray, Wheeler, Hemphill, Roberts, Hutchinson, Moore, Hartley, Dallam, Sherman, Hansford, Ochiltree and Lipscomb, and shall elect one representative.

No. 107. The one hundred and seventh district, composed of the counties of Brown and Coleman, and shall elect one representative.

No. 108. The one hundred and eighth district, composed of the counties of Tarrant, Denton, Wise and Cooke, and shall elect one representative.

No. 109. The one hundred and ninth district, composed of the counties of Karnes, Goliad and Live Oak, and shall elect one representative. [Act 1901, S. S., p. 12.]

Art. 27 [19] [14] **Returns made to whom.**—In all districts, composed of only one county, the county judge of such county shall receive the returns and issue the certificates of election to the representatives elected as shown by the highest number of votes cast for any one person; but, in the several districts composed of more than one county, the county judges of the following named counties shall receive the returns and issue the certificates of election to the representatives elected in their respective districts, to wit:

In the third district, Titus county.

In the fifth district, Hopkins county.

In the eighth district, Marion county.

In the tenth district, Camp county.

In the thirteenth district, Smith county.

In the nineteenth district, Angelina county.

In the twentieth district, Sabine county.

In the twenty-first district, Tyler county.

In the twenty-second district, Jefferson county.

In the twenty-fifth district, Waller county.

In the twenty-sixth district, Walker county.

In the thirty-second district, Kaufman county.

In the thirty-eighth district, Dallas county.

In the forty-third district, Leon county.

In the forty-seventh district, Lee county.

In the fifty-second district, Wharton county.

In the fifty-third district, Brazoria county.

In the fifty-fourth district, Victoria county.

In the fifty-eighth district, Fayette county.

In the sixty-third district, Williamson county.

In the sixty-sixth district, Milam county.

In the sixty-ninth district, McLennan county.

In the seventy-fourth district, Bosque county.

In the seventy-sixth district, Hood county.

In the eighty-third district, Clay county.

In the eighty-fourth district, Palo Pinto county.

In the eighty-seventh district, Mills county.

In the eighty-eighth district, Lampasas county.
 In the eighty-ninth district, Llano county.
 In the ninetieth district, Hays county.
 In the ninety-third district, Wilson county.
 In the ninety-fourth district, Nueces county.
 In the ninety-fifth district, Cameron county.
 In the ninety-seventh district, Uvalde county.
 In the ninety-eighth district, Kerr county.
 In the ninety-ninth district, Val Verde county.
 In the one hundred and first district, Midland county.
 In the one hundred and second district, Runnels county.
 In the one hundred and third district, Taylor county.
 In the one hundred and fourth district, Baylor county.
 In the one hundred and fifth district, Wichita county.
 In the one hundred and sixth district, Potter county.
 In the one hundred and seventh district, Brown county.
 In the one hundred and eighth district, Tarrant county.
 In the one hundred and ninth district, Goliad county. [Acts 1901, S. S.,
 p. 16.]

CONGRESSIONAL DISTRICTS.

Article 28. [20] [15] The state of Texas shall be apportioned into the following congressional districts, each of which shall be entitled to elect one member to the congress of the United States:

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

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

Third. The following counties shall compose the third district, to-wit: Wood, Upshur, Gregg, Rusk, Smith, Henderson, Van Zandt and Kaufman.

Fourth. The following counties shall compose the fourth district, to-wit: Grayson, Collin, Fannin, Hunt and Rains.

Fifth. The following counties shall compose the fifth district, to-wit: Dallas, Rockwall, Ellis, Hill and Bosque.

Sixth. The following counties shall compose the sixth district, to-wit: Navarro, Freestone, Limestone, Robertson, Brazos and Milam.

Seventh. The following counties shall compose the seventh district, to-wit: Anderson, Houston, Trinity, Polk, San Jacinto, Liberty, Chambers and Galveston.

Eighth. The following counties shall compose the eighth district, to-wit: Harris, Fort Bend, Austin, Waller, Montgomery, Grimes, Walker, Madison and Leon.

Ninth. The following counties shall compose the ninth district, to-wit: Gonzales, Fayette, Colorado, Wharton, Matagorda, Brazoria, Jackson, Lavaca, DeWitt, Victoria, Calhoun, Aransas, Refugio, Goliad and Karnes.

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

Eleventh. The following counties shall compose the eleventh district, to-wit: McLennan, Falls, Bell, Coryell and Hamilton.

Twelfth. The following counties shall compose the twelfth district, to-wit: Tarrant, Parker, Johnson, Hood, Somervell, Erath and Comanche.

Thirteenth. The following counties shall compose the thirteenth district, to-wit: Cooke, Denton, Wise, Montague, Clay, Jack, Young, Wichita, Archer, Wilbarger, Baylor, Throckmorton, Knox, Foard, Hardeman, Cottle, Motley, Dickens, Floyd, Hale, Lamb, Bailey, Childress, Hall, Briscoe, Swisher, Castro,

Parmer, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Wheeler, Gray, Carson, Potter, Oldham, Hartley, Moore, Hutchinson, Roberts, Hemphill, Lipscomb, Ochiltree, Hansford, Sherman and Dallam.

Fourteenth. The following counties shall compose the fourteenth district, to-wit: Bexar, Comal, Kendall, Kerr, Gillespie, Blanco, Burnet, Llano, Mason, McCulloch, San Saba, Lampasas, Mills, Brown and Coleman.

Fifteenth. The following counties shall compose the fifteenth district, to-wit: Cameron, Hidalgo, Starr, Zapata, Webb, Duval, Nueces, San Patricio, Live Oak, Atascosa, Wilson, Guadalupe, McMullen, La Salle, Dimmit, Maverick, Zavala, Frio, Medina, Uvalde, Kinney, Val Verde, Terrell, Bandera and Bee. [Acts 1909, p. 156.]

Sixteenth. The following counties shall compose the sixteenth district, to-wit: El Paso, Jeff Davis, Presidio, Brewster, Pecos, Crockett, Schleicher, Sutton, Edwards, Kimble, Menard, Concho, Tom Green, Irion, Upton, Crane, Ward, Reeves, Loving, Winkler, Ector, Midland, Glascock, Sterling, Coke, Runnels, Eastland, Callahan, Taylor, Nolan, Mitchell, Howard, Martin, Andrews, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Shackelford, Stephens, Palo Pinto, Haskell, Stonewall, King, Kent, Garza, Crosby, Lubbock, Lynn, Terry, Yoakum, Cochran, Hockley and Reagan. [Acts 1903, p. 44; acts 1905, p. 96.]

SUPREME JUDICIAL DISTRICTS.

Article 29. [21] [16] The state of Texas shall be divided into six supreme judicial districts for the purpose of constituting and organizing courts of civil appeals therein, respectively:

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

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

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

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

Fifth. The following counties shall compose the fifth supreme judicial district: Grayson, Collin, Dallas, Rockwall, Ellis, Navarro, Kaufman, Henderson, Van Zandt, Rains, Hunt, Johnson, Hill, Limestone, Freestone, Wood and Delta.

Sixth. The following counties shall compose the sixth supreme judicial district: Lamar, Red River, Bowie, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Fannin, Cherokee, Rusk, Gregg, Harrison, Panola, Smith and Upshur. [Acts 1907, p. 324.]

JUDICIAL DISTRICTS.

Art. 30. [22] [17] The judicial districts of the state shall be constituted as follows:

1. The first judicial district shall be composed of the counties of San Augustine, Sabine, Jasper, Newton, Orange and Tyler. The terms of court shall be held in the first judicial district as follows: In the county of San Augustine, on the first Mondays in January and July, and may continue in session three weeks. In the county of Tyler, on the third Monday after the first Monday in January and July, and may continue in session five weeks. In the county of Newton, on the eighth Monday after the first Monday in January and July, and may continue in session three weeks. In the county of Sabine, on the eleventh Monday after the first Monday in January and July, and may continue in session six weeks. In the county of Orange, on the seventeenth Monday after the first Mondays in January and July, and may continue in session five weeks. In the county of Jasper, on the twenty-second Monday after the first Mondays in January and July, and may continue in session until the business is disposed of. [Acts 1907, p. 100.]

2. The second judicial district shall be composed of the counties of Shelby, Nacogdoches, Angelina and Cherokee. The courts of the second judicial district shall be held as follows: In the county of Shelby, on the first Monday in February and August, and may continue in session for six weeks. In the county of Nacogdoches, on the sixth Monday after the first Monday in February and August, and may continue in session for six weeks. In the county of Angelina, on the twelfth Monday after the first Monday in February and August, and may continue in session for five weeks. In the county of Cherokee, on the seventeenth Monday after the first Monday in February and August, and may continue in session, at the spring term, for six weeks, and at the fall or winter term, until the Saturday night before the first Monday in February following. [Id.]

3. The third judicial district shall be composed of the counties of Houston, Henderson and Anderson, as now constituted, and the district courts shall be held therein as follows: In the county of Henderson, on the first Monday in February and September, and may continue in session five weeks. In the county of Houston, on the fifth Monday after the first Monday in February and September, and may continue in session seven weeks. In Anderson county, on the twelfth Monday after the first Monday in February, and may continue in session eight weeks; on the twentieth Monday after the first Monday in February and may continue in session until the business is disposed of; on the twelfth Monday after the first Monday in September, and may continue in session until the business is disposed of. [Acts 1905, p. 141.]

4. The fourth judicial district shall be composed of the counties of Rusk, Harrison, Panola and Gregg. The terms of the district court shall hereafter be held in said district as follows: In the county of Rusk, on the first Monday in January and July, and may continue in session five weeks. In the county of Harrison, on the fifth Monday after the first Monday in January, and may continue in session six weeks; on the twenty-first

Monday after the first Monday in January, and may continue in session four weeks, and on the fourteenth Monday after the first Monday in July, and may continue in session six weeks. In the county of Panola, on the eleventh Monday after the first Monday in January, and on the ninth Monday after the first Monday in July, and may continue in session five weeks. In the county of Gregg, on the sixteenth Monday after the first Monday in January, and may continue in session five weeks, and on the twentieth Monday after the first Monday in July, and may continue in session until the business is disposed of. [Acts 1907, p. 146.]

5. The fifth judicial district shall be composed of the counties of Bowie, Cass, Marion, Morris, Titus, and Franklin, and the district courts therein shall be held as follows: In the county of Cass, on the first Monday in February and fourth Monday in August of each year, and may continue in session four weeks. In the county of Morris, on the fourth Monday after the first Monday in February and the fourth Monday in August of each year, and may continue in session two weeks. In the county of Titus, on the sixth Monday after the first Monday in February and the fourth Monday in August of each year, and may continue in session two weeks. In the county of Franklin, on the eighth Monday after the first Monday in February and the fourth Monday in August of each year, and may continue in session two weeks. In the county of Marion, on the tenth Monday after the first Monday in February and the fourth Monday in August of each year, and may continue in session four weeks. In the county of Bowie, on the fourteenth Monday after the first Monday in February and the fourth Monday in August of each year, and may continue in session until the business is disposed of; provided, adjournment shall be had prior to the first Monday in February and the fourth Monday in August of each year. [Acts 1907, p. 198.]

6. The sixth judicial district shall be composed of the counties of Fannin, Lamar and Red River, and the district court shall be begun and held in said counties as follows: [Acts 1903, p. 89.] In the county of Fannin, on the first Monday in February of each year, and may continue in session nine weeks; also on the third Monday in August of each year, and may continue in session seven weeks. [Acts 1909, p. 55.] In the county of Lamar, on the ninth Monday after the first Monday in February and August, and may continue in session seven weeks. In the county of Red River, on the sixteenth Monday after the first Monday in February and August, and may continue in session six weeks. [Acts 1903, p. 89.] The clerk of the district court of Lamar county as heretofore constituted, and his successors in office, shall be the clerk of both the sixth and sixty-second judicial district courts in said Lamar county, and shall perform all the duties pertaining to the clerkship of both of said courts. The district court of the sixth judicial district, and the district court of the sixty-second judicial district, in the county of Lamar, shall have concurrent jurisdiction with each other throughout the limits of Lamar county, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state of Texas. [Acts 1905, p. 75.]

7. The seventh judicial district shall be composed of the counties of Upshur, Smith, Van Zandt, Wood and Camp, and the district courts therein shall be held as follows: In the county of Smith, on the first Mondays in February and September in each year, and may continue in session six weeks. In the county of Van Zandt, on the sixth Monday after the first Monday in February and September of each year, and may continue in session four weeks. In the county of Wood, on the tenth Monday after the first Monday in February and September of each year, and may continue in session for four weeks. In the county of Camp, on the fourteenth Monday

after the first Monday in February, and may continue in session three weeks, and on the fourteenth Monday after the first Monday in September of each year, and may continue in session for two weeks. In the county of Upshur, on the first Monday in January and on the seventeenth Monday after the first Monday in February of each year, and may continue in session for four weeks. In the county of Smith, on the twenty-first Monday after the first Monday in February of each year, and may continue in session until the business is disposed of; provided, the term is not to extend beyond August 31. [Acts 1909, p. 120.]

8. The eighth judicial district shall be composed of the counties of Hunt, Hopkins, Delta and Rains, and the district court shall be held therein as follows: In the county of Delta, on the first Monday in January of each year, and may continue in session three weeks, and on the first Monday in June of each year, and may continue in session until the business is disposed of. In the county of Hopkins, on the fourth Mondays in January and August of each year, and may continue in session six weeks. In the county of Hunt, on the sixth Monday after the fourth Monday in January of each year, and may continue in session nine weeks, and on the sixth Monday after the fourth Monday in August of each year, and may continue in session eight weeks. In the county of Rains, on the fifteenth Monday after the fourth Monday in January of each year, and may continue in session two weeks, and on the fourteenth Monday after the fourth Monday in August of each year, and may continue in session until the business is disposed of. [Acts 1897, p. 111.]

The district court of the eighth judicial district, and the district court of the sixty-second judicial district, in the county of Hunt, shall have concurrent jurisdiction with each other in said county, throughout the limits of the county of Hunt, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state of Texas; and the district court of the eighth judicial district, and the district court of the sixty-second judicial district, in the county of Delta, shall have concurrent jurisdiction with each other in said county, throughout the limits of the county of Delta, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state of Texas; provided, that the judge of the sixty-second judicial district shall never impanel the grand jury in said court in the counties of Lamar, Hunt and Delta, unless in his judgment he thinks it necessary. Either of the judges of the district court of the county of Hunt may, in their discretion, either in term time or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his court, to the other district court in said county of Hunt, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally filed in said court. Either of the judges of the district courts of the county of Delta may, in their discretion, either in term time or vacation, transfer any case or cases of a civil or criminal nature, that may, at any time, be pending in his court, to the other district court in said Delta county, by order or orders entered upon the minutes of the court, making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said court. The clerks of the district courts of Delta and Hunt counties, respectively, as heretofore constituted, and their successors in office, shall be the clerks of

both the eighth and sixty-second district courts in said counties, respectively, and shall perform all the duties pertaining to the clerkship of both of said counties. [Acts 1905, p. 75.]

9. The ninth judicial district shall be composed of the counties of Montgomery, Liberty, Chambers, Hardin, San Jacinto and Polk, and the district courts therein shall be held as follows: In the county of Montgomery, on the second Monday in January and July, and may continue in session four weeks. In the county of Liberty, on the fourth Monday after the second Monday in January and July, and may continue in session five weeks. In the county of Chambers, on the ninth Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Hardin, on the eleventh Monday after the second Monday in January and July, and may continue in session five weeks. In the county of San Jacinto, on the sixteenth Monday after the second Monday in January and July, and may continue in session four weeks. In the county of Polk, on the twentieth Monday after the second Monday in January and July, and may continue in session until the business is disposed of. [Acts 1909, p. 128.]

10. Galveston county shall constitute the tenth judicial district, as well as the fifty-sixth judicial district. The district courts of Galveston county shall not have nor exercise any criminal jurisdiction, such criminal jurisdiction having been by law exclusively vested in a criminal district court. Said district courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Galveston county, in all civil cases, proceedings and matters of which district courts are given jurisdiction by the constitution and laws of the state. The terms of the district courts of the tenth judicial district shall be held therein as follows: On the first Mondays in February, April, June, October and December, and may continue in session until the business is disposed of. The judges of said tenth and fifty-sixth judicial districts shall be elected at the time and in the manner provided by law, by the qualified voters of Galveston county. In all suits, actions or proceedings, it shall be sufficient in every instance for the address or designation to be merely the "District Court of Galveston County;" and the clerk of said courts shall file and docket the even numbers thereof in the court of the tenth judicial district, and the odd numbers thereof in the court of fifty-sixth judicial district; but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so from time to time; and in case of the disqualification of the judge of either of said courts in any case, such case, on his suggestion of disqualification, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. The clerk of the court of the tenth judicial district shall perform the duties of clerk of the court of the fifty-sixth judicial district; in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the tenth judicial district. [Acts 1909, p. 116.]

[For provisions as to criminal district courts of Galveston and Harris counties, see Chapters 1 to 4 of Title 39.]

11. Harris county shall constitute the eleventh judicial district, as well as the fifty-fifth and the sixty-first judicial districts. The said district courts of Harris county shall not have nor exercise any criminal jurisdiction, such criminal jurisdiction having been by law vested exclusively in a criminal district court. Said district courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Harris county, in all civil cases, proceedings and matters of which district courts are given jurisdiction by the constitution and laws of the state. The terms of the district court of said eleventh judicial district shall be begun and holden in said Harris county on the first Monday in February, April, June, October and December of each

and every year, and may continue in session until the business of the court is disposed of. The judges of each and all of said courts shall be elected at the times and in the manner provided by law, by the qualified voters of Harris county; and the judges of the eleventh and fifty-fifth judicial districts shall continue as judges thereof, holding their offices as provided by law. In all suits, action or proceedings, it shall be sufficient in every instance for the address or designation to be merely "the District Court of Harris County;" and the clerk of said court shall docket alternately on the dockets of the eleventh judicial district, of the fifty-fifth judicial district, and the sixty-first judicial district, all cases filed, and all cases shall in this manner be docketed in and divided between said courts; but any cases pending in said courts may, in the discretion of the respective judges thereof, be transferred from one of said courts to the other, and so from time to time; in case of the disqualification of the judge of either of said courts in any case, such case, on his suggestion of disqualification, shall stand transferred to one or the other of said courts, and be docketed by the clerk accordingly. The clerk of the district court of Harris county shall perform the duties of the clerk of the district court of the sixty-first judicial district in like manner as he fills the duties of the clerk of the eleventh and fifty-fifth judicial districts; and, in case of vacancy in said office, the same shall be filled by such appointee as may be selected by all or a majority of the judges of the three courts herein named. [Acts 1903, p. 22.]

12. The twelfth judicial district shall be composed of the counties of Trinity, Leon, Walker, Madison and Grimes, as now constituted, and the district courts shall be held therein as follows: In the county of Trinity, on the last Monday in January and July, and may continue in session four weeks, instead of three, as now provided by law. In the county of Leon, on the fourth Monday after the last Monday in January and July, and may continue in session four weeks. In the county of Walker, on the eighth Monday after the last Monday in January and July, and may continue in session four weeks. In the county of Madison, on the thirteenth Monday after the last Monday in January and July, and may continue in session three weeks. In the county of Grimes, on the seventeenth Monday after the last Monday in January and July, and may continue in session until the business is disposed of. [Acts 1905, p. 55.]

13. The thirteenth judicial district shall be composed of the counties of Limestone, Freestone and Navarro, and the district courts shall be begun and holden therein as follows: In the county of Limestone, on the first Monday in January and on the third Monday in June, and each term may continue in session six weeks. In the county of Freestone, on the sixth Monday after the first Monday in January, and on the first Monday in September, and each term may continue in session four weeks. In the county of Navarro, on the tenth Monday after the first Monday in January, and on the fourth Monday after the first Monday in September, and each term may continue in session twelve weeks. [Acts 1899, p. 38.]

14. Dallas county shall constitute the fourteenth judicial district, as well as the forty-fourth judicial district and the sixty-eighth judicial district. [Acts 1907, p. 131.] The said district courts of Dallas county shall not have nor exercise any criminal jurisdiction, such criminal jurisdiction having been by law exclusively vested in a criminal district court. Said courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Dallas county, in all civil cases, proceedings and matters of which district courts are given jurisdiction by the constitution and laws of the state. The district courts of the fourteenth judicial district shall be held therein on the second Mondays in March, May, September and December, and may continue in session until the business is disposed of. The judges of the four-

teenth, forty-fourth and sixty-eighth judicial districts shall be elected as provided by the constitution and laws of the state for the election of district judges. The clerk of the district court of Dallas county, as heretofore existing, shall be and remain the clerk for each of said district courts, as well as the criminal district court of said county, and shall hold his office until his successor is elected and qualified; provided, however, in case of vacancy by death, resignation or removal, his successor shall be appointed by a majority of the judges of said three district courts, and the judge of the criminal district court, acting together; and, in case they fail to make an appointment within twenty days after such vacancy is created, then such appointment shall be made by the commissioners' court of Dallas county. The clerk shall place upon the docket and the court papers, opposite the number of each case on the docket of the district court for the fourteenth judicial district the letter A; and shall place upon the docket and the court papers, opposite the number of each case on the docket of the forty-fourth judicial district court, the letter B; and shall place upon the docket and the court papers, opposite the number of each case on the docket of the sixty-eighth district court, the letter C. And this requirement shall be observed as to all cases filed in either of said courts, so that the letter A opposite the file number shall indicate that the case pends in the fourteenth judicial district court, the letter B opposite the file number shall indicate that the case pends in the forty-fourth judicial district court, and the letter C opposite the file number shall indicate that the case pends in the sixty-eighth judicial district court. All cases, prosecutions and proceedings filed with said clerk shall by him be entered upon the dockets of said courts alternately, beginning with the fourteenth district court, next the forty-fourth district court, and third the sixty-eighth district court, and so continuing in this order, that the business may be equally distributed among said courts, and numbering said cases consecutively, beginning with the last file number on said dockets. Either of said judges may, at his discretion, transfer any case or cases pending in his court to either of the other courts herein provided for, by order or orders entered upon the minutes of his court; and where such transfer is made the clerk shall enter such case or cases upon the docket of the court to which the transfer is made. And in such case, unless the parties are present in court and take notice of such transfer, reasonable notice of such order or orders shall be given to the parties or their attorneys of record; provided, that, in cases wherein ancillary writs be granted by either of the judges, the transfer may be made to the court of the judge granting such writ, without such notice. [Acts 1909, p. 5.]

[Note.—For provisions as to Dallas criminal district court, see Chapter 5, Title 39.]

15. The fifteenth judicial district of the state of Texas shall be composed of the county of Grayson, and the district court shall be held therein as follows: Beginning on the first Monday in October, and continuing until and including the last Saturday before the first Monday in January. Beginning on the first Monday in January, and continuing until and including the last Saturday before the first Monday in April. Beginning on the first Monday in April, and continuing until the first Monday in October, or until the business is disposed of. [Acts 1903, p. 2.] The district court of the fifteenth judicial district, and the district court of the fifty-ninth judicial district, in the county of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson county, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state; provided, that the judge of the fifteenth judicial district shall never impanel the grand jury in Grayson county, except that, when, in the discretion of said court, it is deemed by him proper so to

do, he may draw and impanel such grand jury for any terms of his court as provided by law for other district courts for impaneling grand juries. [Acts 1909, 2 S. S., p. 393.] Either of the judges of the district court of Grayson county may, in their discretion, either in term time or in vacation, transfer any case or cases, civil or criminal, that may, at any time, be pending in his court to the other district court in Grayson county, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the courts to which such transfer or transfers are made, and when so entered upon the docket the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally in said court. [Acts 1903, p. 3] The clerk of the district court of Grayson county, as heretofore constituted, and his successor in office, shall be the clerk of both the fifteenth and fifty-ninth district courts in said Grayson county, and shall perform all the duties pertaining to the clerkship of both of said courts.

16. The sixteenth judicial district shall be composed of the counties of Denton, Montague and Cooke, and the district courts shall be held therein as follows: In the county of Montague, on the second Monday in January and July, and may continue in session six weeks. In the county of Denton, on the sixth Monday after the second Monday in January and July, and may continue in session eight weeks. In the county of Cooke, on the sixteenth Monday after the first Monday in January and second Monday in July, and may continue in session until the business is disposed of.

17. Tarrant county shall constitute the seventeenth, forty-eighth and sixty-seventh judicial districts. [Acts 1907, p. 338.] The district courts of the seventeenth, forty-eighth and sixty-seventh judicial districts shall have concurrent jurisdiction throughout the limits of Tarrant county of all matters, civil and criminal, of which jurisdiction is given to the district court by the constitution and laws of the state; and grand and petit juries for said courts, respectively, shall be selected and drawn from the body of the county.

The judges for the seventeenth, forty-eighth and sixty-seventh judicial districts shall be elected by the qualified voters of Tarrant county. [Acts 1907, p. 339.] The district court of the seventeenth judicial district shall be held on the first Mondays in January, April, July and October of each year, and may continue in session until the business is disposed of. [Acts 1907, S. S., p. 442.] The judges of said courts may, in their discretion, transfer any suit or case, civil or criminal, from one of said courts to any other of said courts. [Acts 1907, p. 339.] The clerk of the district court of Tarrant county shall make up a civil docket and a criminal docket for each of said courts. All cases, prosecutions and proceedings filed with the clerk shall by him be entered upon the dockets of said courts, alternately, so that the business may be equally distributed between said courts; provided, that the reference above to a civil docket in the singular number shall be taken to embrace the various civil dockets required by law to be used and kept by the clerk of the district court of Tarrant county, so as to make it incumbent upon said clerk, in dividing the civil business between said courts, as herein before required, to open for each court the number and kind of dockets heretofore kept by him and to enter upon each the cases belonging to the same; provided, that all garnishment cases shall follow the cases in which they are sued out, and that such garnishment cases shall not be estimated by the clerk in dividing business. In all injunctions granted by either of said judges, the suits wherein granted shall be docketed in the court of the judge who granted such injunctions; and in all cases wherein receivers may be appointed by either of said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such

receivers. In causes filed in said county cognizable by the district court, it shall be sufficient for the petition to state the court in which suit is filed as "The district court of Tarrant county," and it shall be sufficient to address the petition to "The district court of Tarrant county." [Acts of 1891, p. 2.] In case of a vacancy by death, resignation or removal of the clerk of the district court of Tarrant county, his successor shall be appointed by the said three district judges of said three districts. [Acts 1907, p. 339.]

18. The counties of Johnson and Bosque be and the same are hereby constituted the eighteenth judicial district. The district courts in the counties comprising the said eighteenth judicial district shall be holden as follows: In the county of Johnson, on the first Monday in January, and may continue in session until and including Saturday before the third Monday in March; on the first Monday in May, and may continue in session until and including Saturday before the first Monday in July; on the first Monday in October, and may continue in session until and including Saturday before the first Monday in December. In the county of Bosque, on the third Monday in March, and may continue in session until and including Saturday before the first Monday in May; on the first Monday in September, and may continue in session until and including Saturday before the first Monday in October; on the first Monday in December, and may continue in session until and including Saturday before the first Monday in January. [Acts 1905, p. 37.]

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

20. The twentieth judicial district shall be composed of the counties of Milam, Robertson and Brazos, and the district courts shall be held therein as follows: In the county of Robertson, on the first Monday in January and second Monday in June, and may continue in session eight weeks. In the county of Brazos, on the first Monday in March and September, and may continue in session six weeks. In the county of Milam, on the third Monday in April and October, and may continue in session seven weeks. [Id.]

21. The counties of Washington, Burleson, Lee and Bastrop shall constitute the twenty-first judicial district, and the district courts therein shall be held as follows: In the county of Washington, on the first Monday in March and September, and may continue in session six weeks. In the county of Lee, on the seventh Monday after the first Monday in March and September, and may continue in session three weeks. In the county of Burleson, on the tenth Monday after the first Monday in March and September, and may continue in session five weeks. In the county of Bastrop, on the fifteenth Monday after the first Monday in March and September, and may continue in session six weeks.

22. The twenty-second judicial district shall be composed of the counties of Austin, Fayette, Caldwell, Hays and Comal, and the district court shall be held therein annually as follows: In the county of Comal, on the first Monday in February and September of each year, and may continue in session three weeks. In the county of Hays, on the third Monday after the first Monday in February and September of each year, and may continue in session for four weeks. In the county of Caldwell, on the seventh Monday after the first Monday in February and September of each year, and may continue in session four weeks. In the county of Fayette, on the eleventh Monday after the first Monday in February and September of each year, and may continue in session six weeks. In the county of Austin, on the sev-

enteenth Monday after the first Monday in February and September of each year, and may continue in session four weeks. [Acts 1901, p. 27.]

23. The twenty-third judicial district of Texas shall hereafter be composed of the counties of Brazoria, Fort Bend, Matagorda, Waller and Wharton, and the district courts shall be held therein as follows: In the county of Brazoria, on the second Monday in February and first Monday in September, and may continue in session four weeks. In the county of Waller, on the fourth Monday after the second Monday in February, and on the fourth Monday after the first Monday in September, and may continue in session four weeks. In the county of Fort Bend, on the eighth Monday after the second Monday in February, and the eighth Monday after the first Monday in September, and may continue in session four weeks. In the county of Wharton, on the twelfth Monday after the second Monday in February, and on the twelfth Monday after the first Monday in September, and may continue in session four weeks. In the county of Matagorda, on the sixteenth Monday after the second Monday in February, and may continue in session ten weeks, or until the business is disposed of; and on the seventeenth Monday after the first Monday in September, and may continue in session five weeks. [Acts 1905, p. 80.]

24. The twenty-fourth judicial district of Texas shall hereafter be composed of the counties of Goliad, Jackson, Karnes, Refugio, Calhoun, Victoria and DeWitt, and the district court shall be held therein as follows: In the county of Goliad, on the second Monday in February and the first Monday in September, and may continue in session three weeks. In the county of Jackson, on the third Monday after the second Monday in February, and the third Monday after the first Monday in September, and may continue in session three weeks. In the county of Karnes, on the sixth Monday after the second Monday in February, and the sixth Monday after the first Monday in September, and may continue in session three weeks. In the county of Refugio, on the ninth Monday after the second Monday in February, and the ninth Monday after the first Monday in September, and may continue in session one week. In the county of Calhoun, on the tenth Monday after the second Monday in February, and the tenth Monday after the first Monday in September, and may continue in session one week. In the county of Victoria, on the eleventh Monday after the second Monday in February, and the eleventh Monday after the first Monday in September, and may continue in session five weeks. In the county of DeWitt, on the first Monday in January, such term to continue for five weeks, and on the sixteenth Monday after the first Monday in September, and may continue in session five weeks. [Acts 1909, 2 S. S., p. 434.]

25. The twenty-fifth judicial district of Texas shall hereafter be composed of the counties of Colorado, Gonzales, Guadalupe and Lavaca, and the district court shall be held therein as follows: In the county of Colorado, on the second Monday in September and the fifth Monday after the first Monday in January, and may continue in session five weeks. In the county of Lavaca, on the fifth Monday after the second Monday in September and on the tenth Monday after the first Monday in January, and may continue in session five weeks. In the county of Guadalupe, on the tenth Monday after the second Monday in September, and on the fifteenth Monday after the first Monday in January, and may continue in session five weeks. In the county of Gonzales, on the first Monday in January and July, and may continue in session five weeks. [Acts 1907, p. 37.]

26. The twenty-sixth judicial district shall be composed of the counties of Williamson and Travis, and the terms of the district court of said district shall be held therein hereafter as follows: In the county of Williamson, on the first Monday in February and June, and may continue in session five

weeks, and on the first Monday in November, and may continue in session four weeks. In the county of Travis, on the third Monday in March, and may continue in session to and including the last Saturday in May, on the first Monday in September and may continue in session to and including the last Saturday in October, and on the first Monday in December and may continue in session to and including the last Saturday in January; provided, that a grand jury for said court in Travis county shall not be drawn except for the December term of said court, unless the district judge should deem it necessary to call a grand jury at the other term, and should so order. The two district courts in Travis county shall have concurrent jurisdiction with each other throughout the limits of Travis county of all matters, civil and criminal, of which jurisdiction is given to district courts by the constitution and the laws of the state of Texas; provided, that the district judge of the fifty-third judicial district shall order drawn or selected a grand jury for the September and April terms of said court, and for the other terms if in his judgment he thinks it necessary, and should so order. The clerk of the district court of Travis county, as heretofore constituted, and his successors in office, shall be the clerk of both the district courts of Travis county, and shall perform all the duties pertaining to both of said courts. Either of the judges of said district courts in and for Travis county may, in their discretion, transfer any cause, or causes, civil or criminal, that may be at any time pending in his court to the other district court in Travis county by an order or orders entered upon the minutes of his court; and, where such transfer or transfers are made, the clerk of the district court of Travis county shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. [Acts 1909, p. 62.]

27. The twenty-seventh judicial district of this state shall be composed of the following counties, to-wit: Lampasas and Bell, and the terms of court shall be holden therein each year as follows: In the county of Lampasas, on the first Monday in April and October, and may continue in session four weeks. In the county of Bell, on the first Monday in January, June and November, and may continue in session until the business is disposed of. [Acts 1905, p. 47.]

28. The twenty-eighth judicial district of the state of Texas shall be composed of the counties of Cameron, Hidalgo, Starr, Duval and Nueces, and the district court shall be begun and held in said counties as follows: In the county of Cameron, on the first Monday in March and October of each year, and may continue in session six weeks. In the county of Hidalgo, on the sixth Monday after the first Monday in March and October of each year, and may continue in session three weeks. In the county of Starr, on the ninth Monday after the first Monday in March and October of each year, and may continue in session three weeks. In the county of Duval, on the twelfth Monday after the first Monday in March and October of each year, and may continue in session two weeks. And in the county of Nueces, on the fourteenth Monday after the first Monday in October, and may continue in session four weeks, and on the fourteenth Monday after the first Monday in March, and may continue in session until the business is disposed of. [Acts 1909, p. 3.]

29. The twenty-ninth judicial district of Texas shall be composed of the counties of Palo Pinto, Hood, Somervell and Erath, and the district courts shall be held as follows: In the county of Palo Pinto, on the first Monday in March and September, and may continue in session six weeks. In the county of Hood, on the sixth Monday after the first Monday in March and

September, and may continue in session five weeks. In the county of Somervell, on the eleventh Monday after the first Monday in March and September, and may continue in session two weeks. In the county of Erath, on the thirteenth Monday after the first Monday in March and September, and may continue in session until all the business is disposed of. [Acts 1909, 2 S. S., p. 390.]

30. The thirtieth judicial district shall be composed of the counties of Young, Archer, Clay and Wichita, and terms of the district court shall be held therein each year as follows: In the county of Young, on the first Monday in March and September, and may continue in session four weeks. In the county of Archer, on the fourth Monday after the first Monday in March and September, and may continue in session three weeks. In the county of Clay, on the seventh Monday after the first Monday in March and September, and may continue in session six weeks. In the county of Wichita, on the thirteenth Monday after the first Monday in March and September, and may continue in session until the business of the term is disposed of. [Acts 1903, p. 96.]

31. The thirty-first judicial district shall be composed of the counties of Hemphill, Roberts, Carson, Hutchinson, Wheeler, Gray, Ochiltree, Hansford, and Lipscomb, and the terms of district court shall be held therein each year as follows: Beginning in Hemphill county, on the first Monday in January and July in each year, and may continue in session four weeks. Beginning in Roberts county, on the fourth Monday after the first Monday in January and July in each year, and may continue in session three weeks. Beginning in Carson county, on the seventh Monday after the first Monday in January and July in each year, and may continue in session two weeks. Beginning in Hutchinson county, on the ninth Monday after the first Monday in January and July in each year, and may continue in session one week. Beginning in Wheeler county, on the tenth Monday after the first Monday in January and July in each year, and may continue in session two weeks. Beginning in Gray county, on the twelfth Monday after the first Monday in January and July in each year, and may continue in session two weeks. Beginning in Ochiltree county, on the fourteenth Monday after the first Monday in January and July in each year, and may continue in session one week. Beginning in Hansford county, on the fifteenth Monday after the first Monday in January and July in each year, and may continue in session one week. Beginning in Lipscomb county, on the sixteenth Monday after the first Monday in January and July in each year, and shall continue in session until the business is disposed of. [Acts 1905, p. 32.]

32. The thirty-second judicial district shall be composed of the counties of Borden, Howard, Nolan, Martin, Dawson, Mitchell and Garza, and the terms of court shall be held therein, in each year, as follows: In the county of Borden, on the first Monday in February and September, and may continue in session two weeks. In the county of Howard, on the second Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Nolan, on the sixth Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Martin, on the tenth Monday after the first Monday in February and September, and may continue in session three weeks. In the county of Dawson, on the thirteenth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Mitchell, on the fifteenth Monday after the first Monday in February and September, and may continue in session five weeks. In the county of Garza, on the twentieth Monday after the first Monday in February and September, and may continue in session one week. [Acts 1909, p. 10.]

33. The thirty-third judicial district of this state shall be composed of the counties of Blanco, Gillespie, Mason, Kimble, Menard, San Saba, Llano and Burnet, and the district courts shall be holden therein as follows: In the county of Blanco, on the first Monday in February and September, and may continue in session two weeks. In the county of Gillespie, on the third Monday in February and September, and may continue in session two weeks. In the county of Mason, on the fourth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Kimble, on the sixth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Menard, on the eighth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of San Saba, on the tenth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Llano, on the twelfth Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Burnet, said district court shall be held therein as follows: On the first Monday in January, and may continue in session three weeks, and on the sixteenth Monday after the first Monday in February, and may continue in session until the business is disposed of. [Acts 1909, p. 57.]

34. The thirty-fourth judicial district of Texas shall be composed of the county of El Paso, and the terms of court shall be held therein each year as follows: On the first Monday in January, and may continue in session until the first Monday in March. On the first Monday in March, and may continue in session until the first Monday in May. On the first Monday in May, and may continue in session until the first Monday in July. On the first Monday in September, and may continue in session until the first Monday in November. On the first Monday in November, and may continue in session until the first Monday in January. The district courts of the thirty-fourth and forty-first judicial districts aforesaid in El Paso county shall have concurrent jurisdiction with each other throughout the limits of said county of El Paso of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state; provided, that no grand jury shall be impaneled in the district court of the forty-first judicial district under the general laws requiring grand juries to be impaneled in all district courts, unless in the judgment of the judge of said court the public interest may require the impaneling of a grand jury therein, in which event he may order the impaneling of a grand jury and may appoint jury commissioners and have a grand jury selected in accordance with the laws governing the selection, organization and impaneling of grand juries. The district attorney of the thirty-fourth judicial district shall also represent the state in all criminal cases in the forty-first judicial district. The clerk of the district court of El Paso county, as heretofore constituted, and his successor in office, shall be the clerk of both said district courts, in said El Paso county, and shall perform all the duties pertaining to the office of both district courts. Either of the judges in said district courts in said El Paso county may, in his discretion, upon reasonable notice to parties or their attorneys, either in term time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in his court to the other district court in said El Paso county, by order or orders entered upon the minutes of said court; and, when such transfers are made, the clerk of said courts shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said cause in the same manner as if said cause was originally filed in said court. [Acts 1909, pp. 10, 11.]

35. The thirty-fifth judicial district of this state shall be composed of the following counties: Concho, McCulloch, Runnels, Coleman, Mills and Brown, and the district courts shall be holden therein each year as follows: In the county of Concho, on the first Monday in February and September, and may continue in session two weeks. In the county of McCulloch, on the second Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Runnels, on the fourth Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Coleman, on the eighth Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Mills, on the twelfth Monday after the first Monday in February and September, and may continue in session three weeks. In the county of Brown, on the fifteenth Monday after the first Monday in February and September, and may continue in session until the business is disposed of. [Acts 1909, 2 S. S., p. 388.]

36. The thirty-sixth judicial district of Texas shall hereafter be composed of the counties of Aransas, Atascosa, Bee, Live Oak, McMullen, San Patricio, and Wilson, and the district courts shall be held therein as follows: In the county of Aransas, on the first Monday in September and February, and may continue in session two weeks. In the county of Bee, on the third Monday in September and February, and may continue in session four weeks. In the county of San Patricio, on the sixth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Live Oak, on the eighth Monday after the first Monday in September and February, and may continue in session one week. In the county of McMullen, on the ninth Monday after the first Monday in September and February, and may continue in session one week. In the county of Atascosa, on the tenth Monday after the first Monday in September and February, and may continue in session four weeks. In the county of Wilson, on the fourteenth Monday after the first Monday in September and February, and may continue in session until all business is disposed of. [Acts 1909, 2 S. S., p. 434.]

37. Bexar county shall constitute the thirty-seventh judicial district, the forty-fifth judicial district and the fifty-seventh judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of Bexar county. The district court of the thirty-seventh judicial district shall hold five terms. One term beginning on the first Monday in October, and may continue in session until the last Saturday before the first Monday in November. One term beginning on the first Monday in November, and may continue in session until the last Saturday before the first Monday in January. One term beginning on the first Monday in January, and may continue in session until the last Saturday before the first Monday in March. One term beginning on the first Monday in March, and may continue in session until the last Saturday before the first Monday in May. One term beginning on the first Monday in May, and may continue in session until the last Saturday before the first Monday in July. The judge of each of said courts shall be elected by the qualified voters of said Bexar county. The judges of said district courts may, in their discretion, transfer any suit or cause of action, civil or criminal, from one district court to another. The district attorney of the thirty-seventh judicial district shall be and remain the district attorney of the thirty-seventh judicial district, and shall also represent the state in all cases, criminal and civil, in the forty-fifth and fifty-seventh judicial districts. He shall be elected by the qualified voters of Bexar county. [Acts 1899, p. 112.]

38. The following counties shall compose the thirty-eighth judicial district of Texas, to-wit: Kendall, Uvalde, Zavalla, Medina, Bandera, Edwards and Kerr, and the times of holding the district court therein shall be as follows:

In the county of Kendall, on the first Monday in March and September, and may continue in session two weeks. In the county of Zavalla, on the second Monday after the first Monday in March and September, and may continue in session two weeks. In the county of Uvalde, on the fourth Monday after the first Monday in March and September, and may continue in session three weeks. In the county of Medina, on the seventh Monday after the first Monday in March and September, and may continue in session four weeks. In the county of Bandera, on the eleventh Monday after the first Monday in March and September, and may continue in session three weeks. In the county of Edwards, on the fourteenth Monday after the first Monday in March and September, and may continue in session two weeks. In the county of Kerr, on the sixteenth Monday after the first Monday in March and on the first Monday in January, and may continue in session until the business is disposed of. [Acts 1907, p. 202.]

39. The thirty-ninth judicial district of the state of Texas shall be composed of the counties of Jones, Fisher, Scurry, Kent, Stonewall, Haskell and Throckmorton, and the terms of the district courts therein shall be held as follows: In the county of Jones, on the first Monday in January and July of each year, and may continue in session six weeks. [Acts 1903, p. 26.] In the county of Fisher, on the third Monday after the first Monday in February and August, and may continue in session for three weeks. In the county of Scurry, on the sixth Monday after the first Monday in February and August, and may continue in session three weeks. In the county of Kent, on the ninth Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Stonewall, on the eleventh Monday after the first Monday in February and August, and may continue in session three weeks. In the county of Throckmorton, on the fourteenth Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Haskell, on the sixteenth Monday after the first Monday in February and August, and may continue in session four weeks. [Acts 1899, p. 171.]

40. The fortieth judicial district shall be composed of the counties of Ellis, Kaufman and Rockwall, as now constituted, the terms of the district courts in and for said counties shall be as follows: In the county of Rockwall, beginning on the first Monday in September, and continuing in session three weeks. In the county of Ellis, beginning on the fourth Monday in September, and continuing in session ten weeks. In the county of Kaufman, beginning on the tenth Monday after the fourth Monday in September, and continuing in session eight weeks. In the county of Rockwall, beginning on the first Monday in February, and continuing in session three weeks. In the county of Ellis, beginning on the fourth Monday in February, and continuing in session twelve weeks. In the county of Kaufman, beginning on the twelfth Monday after the fourth Monday in February, and continuing until the business is disposed of. [Acts 1909, p. 139.]

41. The forty-first judicial district of the state of Texas shall be composed of the county of El Paso, and the terms of the district court shall be held in said county as follows: Beginning on the first Monday in January in each year, and may continue in session until the first Monday in March; on the first Monday in March of each year, and may continue in session until the first Monday in May; on the first Monday in May each year, and may continue in session until the first Monday in July; on the first Monday in September of each year, and may continue in session until the first Monday in November; on the first Monday in November of each year, and may continue in session until the first Monday in January. The district courts of the thirty-fourth and forty-first judicial districts aforesaid in El Paso county shall have concurrent jurisdiction with each other through the limits of said county of

El Paso of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state; provided, that the judge of the forty-first judicial district shall never impanel a grand jury in said courts, but may at any time reconvene the grand jury impaneled by the judge of the thirty-fourth judicial district when, in his judgment, a necessity therefor exists. The district attorney of the thirty-fourth judicial district shall also represent the state in all criminal cases in the forty-first judicial district. The clerk of the district court of El Paso county, as heretofore constituted, and his successors in office, shall be the clerk of both said district courts in said El Paso county, and shall perform all the duties pertaining to the office of both district courts. Either of the judges in said district courts in said El Paso county may, in their discretion, either in term time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in his court to the other district court in said El Paso county, by order or orders entered upon the minutes of said court; and, when such transfers are made, the clerk of said courts shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said cause in the same manner as if said cause was originally filed in said court. [Acts 1903, p. 78.]

42. The forty-second judicial district of Texas shall be composed of the counties of Taylor, Callahan, Shackelford, Stephens and Eastland, and the terms of district courts shall be held annually therein as follows: One term of said court in the forty-second judicial district shall begin in the county of Eastland on the first Monday in January and first Monday in July, and may continue in session eight weeks. One term shall begin in the county of Taylor on the eighth Monday after the first Monday in January and the eighth Monday after the first Monday in July, and may continue in session seven weeks. One term shall begin in the county of Shackelford on the fifteenth Monday after the first Monday in January and the fifteenth Monday after the first Monday in July, and may remain in session three weeks. One term shall begin in the county of Callahan on the eighteenth Monday after the first Monday in January and the eighteenth Monday after the first Monday in July, and may continue in session four weeks. One term shall be held in the county of Stephens on the twenty-second Monday after the first Monday in January, and on the twenty-second Monday after the first Monday in July, and may continue in session four weeks. [Acts 1903, p. 25.]

43. The forty-third judicial district shall be composed of the counties of Jack, Parker and Wise, and the terms of the district courts shall be held therein each year as follows: In the county of Jack, on the first Mondays in March and September, and may continue in session four weeks. In the county of Parker, on the fourth Mondays after the first Mondays in March and September, and may continue in session eight weeks. In the county of Wise, on the twelfth Mondays after the first Mondays in March and September, and may continue in session until the business is disposed of. [Acts 1887, p. 68.]

44. Dallas county shall constitute the forty-fourth judicial district, as well as the fourteenth judicial district and the sixty-eighth judicial district; and the jurisdiction of the district courts, in and for said judicial districts, shall be concurrent and co-extensive with the limits of said county, but shall extend to civil cases only. The district court of the forty-fourth judicial district shall be held on the first Mondays in January, April, June and October, and may continue in session until the business is disposed of. [Acts 1907, p. 131.]

[For special provisions relating to the fourteenth, forty-fourth and sixty-eighth judicial district, see subdivision 14 of this article.]

45. Bexar county shall constitute the forty-fifth judicial district, as well as the thirty-seventh judicial district and the fifty-seventh judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county. The district court of the forty-fifth judicial district shall hold five terms: One term beginning on the first Monday in October, which may continue in session until the last Saturday before the first Monday in December; one term beginning on the first Monday in December, which may continue in session until the last Saturday before the first Monday in February; one term beginning on the first Monday in February, which may continue in session until the last Saturday before the first Monday in April; one term beginning on the first Monday in April, which may continue in session until the last Saturday before the first Monday in June; one term beginning on the first Monday in June, which may continue in session until the last Saturday before the first Monday in July. [Acts 1899, p. 112.]

[For special provisions relating to the thirty-seventh, forty-fifth and fifty-seventh judicial districts, see subdivision 37 of this article.]

46. The forty-sixth judicial district shall be composed of the counties of Wilbarger, Hardeman, Childress, Foard, Collingsworth and Hall, and the terms of the district courts shall be held therein as follows: In the county of Wilbarger, on the first Mondays in February and September, and may continue in session four weeks. In the county of Hardeman, on the fourth Mondays after the first Mondays in February and September, and may continue in session four weeks. In the county of Childress, on the eighth Mondays after the first Mondays in February and September, and may continue in session four weeks. In the county of Foard, on the twelfth Mondays after the first Monday in February and September, and may continue in session two weeks. In the county of Collingsworth, on the fourteenth Mondays after the first Mondays in February and September, and may continue in session two weeks. In the county of Hall, on the sixteenth Mondays after the first Mondays in February and September, and may continue in session until all the business is disposed of. [Acts 1909, p. 74.]

47. The forty-seventh judicial district shall be composed of the counties of Donley, Randall, Armstrong and Potter, and the terms of the district courts shall be held therein each year as follows: In the county of Potter, on the second Monday in January and July, and may continue in session twelve weeks. In the county of Armstrong, on the twelfth Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Donley on the fourteenth Monday after the second Monday in January and July, and may continue in session three weeks. In the county of Randall, on the seventeenth Monday after the second Monday in January and July, and may continue in session four weeks. [Acts 1909, p. 68.]

48. Tarrant county shall constitute the forty-eighth judicial district, as well as the seventeenth judicial district and the sixty-seventh judicial district; and the jurisdiction of said district courts shall be concurrent and co-extensive with the limits of said county. [Acts 1907, p. 338.] The district court of the forty-eighth judicial district shall be held on the first Mondays in February, May, August and November of each year, and may continue in session until the business is disposed of. [Acts 1907, S. S., p. 442.]

[For special provisions relating to the seventeenth, forty-eighth and sixty-seventh judicial districts, see subdivision 17 of this article.]

49. The forty-ninth judicial district of Texas shall hereafter be composed of the counties of Dimmitt, LaSalle, Frio, Zapata and Webb, and the district courts shall be held therein as follows: In the county of Dimmitt, on the first Monday in September and February, and may continue in session two weeks. In the county of Frio, on the third Monday in September and February, and

may remain in session three weeks. In the county of LaSalle, on the fifth Monday after the first Monday in September and February, and may remain in session two weeks. In the county of Zapata, on the eighth Monday after the first Monday in September and February, and may remain in session one week. In the county of Webb, on the ninth Monday after the first Monday in September and February, and may remain in session until the business is disposed of. [Acts 1905, p. 81.]

50. The fiftieth judicial district shall be composed of the counties of Baylor, Knox, Cottle, Motley, Crosby, Dickens and King, and the terms of the district courts shall be held therein in each year as follows: In the county of Baylor, on the first Mondays in February and August, and may continue in session six weeks. In the county of Knox, on the sixth Mondays after the first Mondays in February and August, and may continue in session six weeks. In the county of King, on the twelfth Mondays after the first Mondays in February and August, and may continue in session two weeks. In the county of Cottle, on the fourteenth Mondays after the first Mondays in February and August, and may continue in session two weeks. In the county of Motley, on the sixteenth Mondays after the first Mondays in February and August, and may continue in session three weeks. In the county of Crosby, on the nineteenth Mondays after the first Mondays in February and August, and may continue in session two weeks. In the county of Dickens, on the twenty-first Mondays after the first Mondays in February and August, and may continue in session two weeks. [Acts 1905, p. 10.]

51. The fifty-first judicial district of this state shall be composed of the following counties: Irion, Coke, Sterling, Crockett, Sutton, Schleicher, Reagan and Tom Green, and the terms of the district courts shall be holden therein each year as follows: In the county of Irion, on the first Monday in September and February, and may continue in session two weeks. In the county of Coke, on the third Monday in September and February, and may continue in session two weeks. In the county of Sterling, on the fourth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Crockett, on the sixth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Sutton, on the eighth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Schleicher, on the tenth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Reagan, on the twelfth Monday after the first Monday in September and February, and may continue in session two weeks. In the county of Tom Green, on the fourteenth Monday after the first Monday in September and February, and may continue in session until the business is disposed of. [Acts 1909, p. 56.]

52. The fifty-second judicial district of Texas shall be composed of the counties of Coryell, Hamilton and Comanche, and the terms of district courts shall be held therein as follows: In Coryell county, on the second Monday in January and July, and may continue in session seven weeks. In Hamilton county, on the seventh Monday after the second Monday in January and July, and may continue in session seven weeks. In Comanche county on the fourteenth Monday after the second Monday in January and July, and may continue until business is disposed of. [Acts 1903, p. 24.]

53. The county of Travis shall constitute the fifty-third judicial district, and the district court shall be held therein as follows: On the first Monday in January, April, September and November in each year, and may continue in session until the business is disposed of; provided, the April term shall not continue longer than the last Saturday in June, and the November term longer than the last Saturday before the twenty-fifth day of December. [Acts of 1891, p. 89.]

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

54. The fifty-fourth judicial district of the state of Texas shall be composed of the following counties, to wit: Falls and McLennan, and the terms of the district court therein shall be held each year as follows: In the county of Falls, on the second Monday in January, and may continue in session seven weeks, and the first Monday in July, and may continue in session eight weeks. In the county of McLennan, on the first Monday in March and third Monday in September, and may continue in session until the business is disposed of. [Acts 1901, p. 126.]

55. Harris county shall constitute the fifty-fifth judicial district, as well as the eleventh judicial district, and the sixty-first judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county, but in civil cases only. [Acts 1897, p. 254.] The terms of the district court of said fifty-fifth judicial district shall be begun and holden in said county of Harris on the first Monday in January, March, May, September and November of each and every year, and may continue in session until the business of the court is disposed of. [Acts 1903, p. 23.]

[For special provisions relating to the eleventh, fifty-fifth and sixty-first districts, see subdivision 11 of this article.]

56. Galveston county shall constitute the fifty-sixth judicial district, as well as the tenth judicial district; and the jurisdiction of the district courts, in and for said judicial districts, shall be concurrent and co-extensive with the limits of Galveston county, but shall extend to civil cases only. The terms of the district court of the fifty-sixth judicial district shall be held therein as follows: On the first Mondays in February, April, June, October and December, and may continue in session until the business is disposed of. [Acts 1899, p. 116.]

[For special provisions relating to the tenth and fifty-sixth judicial districts, see subdivision 10 of this article.]

57. Bexar county shall constitute the fifty-seventh judicial district, as well as the thirty-seventh judicial district, and the forty-fifth judicial district; and the jurisdiction of the district courts, in and for said judicial districts, shall be concurrent and co-extensive with the limits of Bexar county. The district court of the fifty-seventh judicial district shall hold five terms: One term beginning on the first Monday in October, which may continue in session until the last Saturday before the first Monday in December; one term beginning on the first Monday in December, which may continue in session until the last Saturday before the first Monday in February; one term beginning on the first Monday in February, which may continue in session until the last Saturday before the first Monday in April; one term beginning on the first Monday in April, which may continue in session until the last Saturday before the first Monday in June; one term beginning on the first Monday in June, which may continue until the last Saturday before the first Monday in July. [Acts 1899, p. 112.]

[For special provisions relating to the thirty-seventh, forty-fifth and fifty-seventh judicial districts, see subdivision 37 of this article.]

58. Jefferson county shall constitute the fifty-eighth judicial district, and the sixtieth judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county. The terms of the district court of the fifty-eighth judicial district shall be begun and holden as follows: On the third Monday in September, and may continue in session for eleven weeks; on the second Monday in December, and may continue in session for ten weeks; on the first Monday in March, and may continue in session for eight weeks; on the first Monday in

May, and may continue in session until the first Saturday before the third Monday in September. [Acts 1905, p. 79, continuing in part Acts 1901, S. S., pp. 2-3; Acts 1903, p. 8.] The judges of said courts shall be elected at the time and manner provided for by law, by the qualified voters of Jefferson county. The clerk of the district court of Jefferson county shall perform the duties of the clerk of the courts of both the fifty-eighth and the sixtieth judicial districts, and, in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the fifty-eighth judicial district. In all suits, actions or proceedings, except criminal cases, it shall be sufficient in every instance, for the address and designation to be merely, the "district court of Jefferson county," and the clerk of the said court shall file and docket the even numbers thereof, in the court of the fifty-eighth judicial district, and the odd numbers thereof in the court of the sixtieth judicial district, but any cases pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so on from time to time. And in case of the disqualification of the judge of either of said courts, in any case, such case on the suggestion of such judge of this disqualification entered on the docket, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. [Acts 1903, p. 9.]

59. The fifty-ninth judicial district shall be composed of the counties of Collin and Grayson, and the district court shall be held therein as follows: Beginning in Grayson county, on the first Monday in December, and continuing until and including the Saturday before the first Monday in February. Beginning in Collin county, on the first Monday in February and continuing until and including the Saturday before the first Monday in April. Beginning in Grayson county, on the first Monday in April, and continuing until and including the Saturday before the third Monday in May. Beginning in Collin county, on the third Monday in May, and continuing until and including Saturday before the third Monday in July. Beginning in Grayson county, on the first Monday in August, and continuing until and including Saturday before the third Monday in September. Beginning in Collin county, on the third Monday in September, and continuing until and including the Saturday before the first Monday in December. [Acts 1909, 2 S. S. p. 393.]

60. Jefferson county shall constitute the sixtieth judicial district, as well as the fifty-eighth judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county. [Acts 1903, p. 8, sec. 1.] The terms of the district court of the sixtieth judicial district shall be begun and holden as follows: On the first Monday in October, and may continue until and including the last Saturday in November; on the first Monday in December, and may continue in session until and including the last Saturday in January; on the first Monday in February, and may continue in session until and including the last Saturday in March; on the first Monday in April, and may continue in session until and including the last Saturday in May; and on the first Monday in June, and may continue in session until and including the last Saturday in September. [Id. sec. 3.] The judge of the district court of the sixtieth judicial district, in his discretion, may have a grand jury drawn and organized for said court at any term thereof. [Id. sec. 7.]

61. Harris county shall constitute the sixty-first judicial district, as well as the eleventh judicial district, and the fifty-fifth judicial district; and the jurisdiction of the district courts, in and for said judicial districts, shall be concurrent and co-extensive with the limits of said county, but shall extend to civil cases only. The terms of the district court of said sixty-first judicial district shall be begun and holden on the third Monday in August, October,

December, February, April and June of each year, and may continue in session until the business is disposed of. [Acts 1903, p. 22.]

[For special provisions relating to the eleventh, fifty-fifth and sixty-first judicial districts, see subdivision 11 of this article.]

62. The sixty-second judicial district shall be composed of the counties of Hunt, Delta and Lamar, and the district courts shall be held therein each year as follows: In the county of Hunt, beginning on the fourth Monday after the first Monday in January, and may continue in session six weeks, and on the third Monday in May, and may continue in session ten weeks. In the county of Delta, beginning on the twelfth Monday after the first Monday in January, and may continue in session three weeks, and on the ninth Monday after the first Monday in August, and may continue in session three weeks. In the county of Lamar, beginning on the first Monday in August, and may continue in session eight weeks, and on the first Monday in December, and may continue in session until Saturday night next before the fourth Monday in January. [Acts 1905, p. 75.]

[For special provisions relating to this district, and to the sixth and eighth districts, see subdivisions 6 and 8 of this article.]

63. The sixty-third judicial district shall be composed of the counties of Jeff Davis, Presidio, Brewster, Pecos, Terrell, Val Verde, Kinney and Maverick, as now constituted, and the district courts shall be held therein as follows: In Jeff Davis county, on the first Monday in January and August, and may continue in session two weeks. In Presidio county, on the second Monday after the first Monday in January and August, and may continue in session three weeks. In Brewster county, on the fifth Monday after the first Monday in January and August, and may continue in session three weeks. In Pecos county, on the eighth Monday after the first Monday in January and August, and may continue in session two weeks. In Terrell county, on the tenth Monday after the first Monday in January and August, and may continue in session two weeks. In Kinney county, on the twelfth Monday after the first Monday in January and August, and may continue in session two weeks. In Maverick county, on the fourteenth Monday after the first Monday in January and August, and may continue in session three weeks. In Val Verde county, on the seventeenth Monday after the first Monday in January and August, and may continue in session until the business is disposed of. [Acts 1909, p. 110. Acts 1905, S. S., p. 426. Acts 1903, p. 77.]

64. The sixty-fourth judicial district of the state of Texas shall be composed of the counties of Castro, Swisher, Briscoe, Floyd, Hale, Lamb, Lubbock, Lynn, Terry and Yoakum, and the unorganized counties of Bailey, Cochran and Hockley. The terms of the district court shall be held in the counties of said district in each year as follows, to-wit: In the county of Floyd, on the first Monday in February and August, and may continue in session two weeks. In the county of Briscoe, on the second Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Swisher, on the fourth Monday after the first Monday in February and August, and may continue in session three weeks. In the county of Castro, on the seventh Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Lamb, on the ninth Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Yoakum, on the eleventh Monday after the first Monday in February and August, and may continue in session one week. In the county of Terry, on the twelfth Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Lynn, on the fourteenth Monday after the first Monday in February and August, and may continue in session

two weeks. In the county of Lubbock, on the sixteenth Monday after the first Monday in February and August, and may continue in session two weeks. In the county of Hale, on the eighteenth Monday after the first Monday in February and August, and may continue in session until the business is disposed of. [Acts 1909, p. 13.] The unorganized county of Bailey shall be attached to the county of Castro for judicial purposes, and the unorganized counties of Cochran and Hockley shall be attached to the county of Lubbock for judicial purposes. [Acts 1905, p. 11.]

[Note.—There is no sixty-fifth judicial district.]

66. The county of Hill shall be and the same is hereby constituted the sixty-sixth judicial district. The district court in the said sixty-sixth judicial district shall be holden as follows: On the first Mondays in January, March, May, July, September and November of each year; and each term of said court shall continue in session until the Saturday before the beginning of the next succeeding term, or until all the business is disposed of. [Acts 1905, p. 37.]

67. Tarrant county shall constitute the sixty-seventh judicial district, as well as the seventeenth judicial district and the forty-eighth judicial district; and the jurisdiction of the district courts of said judicial districts shall be concurrent and co-extensive with the limits of said county. [Acts 1907, p. 338.] The district court of the sixty-seventh judicial district shall be held on the first Mondays in March, June, September and December of each year, and may continue in session until the business is disposed of. [Acts 1907, S. S., p. 442.]

[For special provisions relating to the seventeenth, forty-eighth and sixty-seventh judicial districts, see subdivision 17 of this article.]

68. Dallas county shall constitute the sixty-eighth judicial district, as well as the fourteenth judicial district and the forty-fourth judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county, but shall extend to civil cases only. The terms of district court of the sixty-eighth judicial district shall be held as follows: Beginning on the first Mondays in February, May, September and December of each year, and may continue in session until the business is disposed of. [Acts 1909, p. 4.]

[For special provisions relating to the fourteenth, forty-fourth and sixty-eighth, see subdivision 14 of this article.]

69. The sixty-ninth judicial district shall be composed of the counties of Dallam, Sherman, Moore, Oldham, Hartley, Parmer and Deaf Smith; and the terms of the district courts shall be held therein each year, as follows: In the county of Sherman, on the second Monday in January and July, and may continue in session two weeks. In the county of Moore, on the second Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Oldham, on the fourth Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Hartley, on the sixth Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Dallam, on the eighth Monday after the second Monday in January and July, and may continue in session six weeks. In the county of Parmer on the fourteenth Monday after the second Monday in January and July, and may continue in session two weeks. In the county of Deaf Smith, on the sixteenth Monday after the second Monday in January and July, and may continue in session until the business is disposed of. [Acts 1909, pp. 16, 69.]

70. The seventieth judicial district of Texas shall be composed of the following counties: Midland, Ector, Gaines, Glasscock, Reeves, Ward, Andrews, Winkler, Upton, and the unorganized counties of Crane and Loving,

and the terms of the district court shall be holden in the organized counties thereof each year as follows: In the county of Midland, on the first Monday in February and September, and may continue in session four weeks. In the county of Ector, on the fourth Monday after the first Monday in February and September, and may continue in session two weeks. In the county of Winkler, on the sixth Monday after the first Monday in February and September, and may continue in session one week. In the county of Gaines, on the seventh Monday after the first Monday in February and September, and may continue in session one week. In the county of Andrews, on the eighth Monday after the first Monday in February and September, and may continue in session one week. In the county of Glassecock, on the ninth Monday after the first Monday in February and September, and may continue in session one week. In the county of Upton, on the tenth Monday after the first Monday in February and September, and may continue in session one week. In the county of Reeves, on the eleventh Monday after the first Monday in February and September, and may continue in session four weeks. In the county of Ward, in the year 1910, on the fifteenth Monday after the first Monday in September, and may continue in session two weeks, and thereafter in the county of Ward on the first Monday in January and on the fifteenth Monday after the first Monday in February, and may continue in session four weeks. [Acts 1910, 3 S. S., p. 18.] The unorganized county of Crane is hereby attached to Ector county for judicial and all other purposes, and the unorganized county of Loving is hereby attached to Reeves county for judicial and all other purposes. [Acts 1909, p. 11.]

Art. 31. Where apportionment law amended.—Rule as to return of writs and process, as to grand and petit jurors, appearance bonds and recognizances, and witnesses.—Wherever the law declaring what counties shall compose a judicial district, or the law prescribing the time or places for holding the terms of the district court of any judicial district, shall have been or may hereafter be amended, in every such case, all process and writs theretofore issued from any such district court and made returnable to a term of such court as fixed by law at the time of such issuance, shall be returnable to the next ensuing term of such court as prescribed by such amended law; and all such writs and process shall be as legal and valid as if the same had been made returnable to the term of such court as fixed by such amendment. Also all grand and petit jurors selected and drawn under theretofore existing laws in any county of any such judicial district shall be considered lawfully drawn and selected for the next term of the district court of such county as fixed by the amended law; and the obligees in all appearance bonds and recognizances taken in and for any such district court, as well as all witnesses summoned to appear before such district court under pre-existing law, shall be required to appear at the next term of such court as fixed by the amended law.

[Note.—This article is a consolidation of the provisions on the subject, found in practically all of the Acts reorganizing judicial districts.]

TITLE 6.

APPRENTICES.

Article.	Article.		
When minor may be apprenticed.....	32	Not lawful for the apprentice to reside out of the county, etc.....	44
Minor shall not be apprenticed to what persons	33	Apprentice kept out of county over thirty days without leave, is discharged.....	45
Duration of apprenticeship.....	34	Proceedings when apprentice runs away, etc.	46
Shall not be apprenticed without notice.	35	Apprentice discharged, when.....	47
In what county minor shall be apprenticed	36	County judge may cause person to whom minor is apprenticed to be cited, etc..	48
Obligations shall be entered into, and its conditions	37	Person to whom minor is apprenticed to be released, when.....	49
Minor 14 years of age may select, etc....	38	County judge shall inquire into treatment, etc.....	50
Obligation shall be approved, filed and recorded	39	Minor may again be apprenticed, when..	51
Order of court apprenticing minor.....	40	Proceedings may be in term time or vacation, except, etc.....	52
Certified copy of order sufficient authority, etc.....	41	Suit upon obligation.....	53
Moderate chastisement may be inflicted on minor.....	42	Costs shall be paid by whom.....	54
Rights of person to whom minor is apprenticed	43	No guardian of person when a minor is apprenticed	55

Article 32. [23] [18] **When minor may be apprenticed.**—The county court may bind a minor as an apprentice—

1. When such minor is an orphan and without sufficient estate for his maintenance and education.

2. When the parents of such minor have suffered him to become a charge upon the county.

3. When the parents of such minor, not being a charge on the county, shall consent in writing to such apprenticeship, which consent shall be signed by them, and filed and entered of record in such court. [Const., art. 5, sec. 16.]

Art. 33. [24] [19] **Minor shall not be apprenticed to what persons.**—A minor shall in no case be apprenticed to any one who is not legally competent to act as the guardian of such minor.

Art. 34. [25] [20] **Duration of apprenticeship.**—The duration of apprenticeship shall be until the minor, if a male, arrives at the age of twenty-one years; if a female, until she arrives at the age of eighteen years, or until she marries, if she marries before that age.

Art. 35. [26] [21] **Shall not be apprenticed without notice.**—A minor shall not be apprenticed without citation in the same manner as is provided in the case of an application for the guardianship of a minor.

Art. 36. [27] [22] **In what county minor shall be apprenticed.**—A minor shall be apprenticed in the county in which he resides, and shall not be apprenticed to any person who is not at the time a resident of such county.

Art. 37. [28] [23] **Obligation shall be entered into and its conditions.**—The person to whom such minor is apprenticed shall enter into an obligation in writing, payable to such minor, in the sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned—

1. That he will furnish said minor sufficient food and clothing.

2. That he will treat said minor humanely.

3. That he will teach, or cause to be taught, to said minor some trade or occupation, the same to be specified in such obligation.

4. That he will furnish said minor medicine and medical attention when necessary.

5. That he will, if practicable, send said minor to school at least three months in each year during the continuance of such apprenticeship, after said minor has arrived at the age of ten years, and while such minor is within the scholastic age.

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

7. That he will not remove said minor out of the state. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 38. [29] [24] **Minor 14 years of age may select, etc.**—A minor who is fourteen years old, or over, may select the person to whom he desires to be apprenticed; and the court shall, if such person be competent, apprentice the minor to the person so selected.

Art. 39. [30] [25] **Obligation shall be approved, filed and recorded.**—The obligations provided for by article 37, when approved by the court, shall be filed in the office of the clerk of the county court and recorded upon the minutes of the court.

Art. 40. [31] [26] **Order of the court apprenticing minor.**—When such obligation has been approved and filed, the court shall enter an order upon the minutes, reciting the fact that such obligation has been approved and filed, and directing that the same be recorded in the minutes, and authorizing the person to whom such minor is apprenticed to take charge and control of the person of such minor, and to retain the same until such minor arrives at the age of twenty-one years; or, if a female, until she arrives at the age of eighteen years, or until she marries, if she marries before that age; and the age of such minor at the time of entering such order shall be distinctly stated in such order.

Art. 41. [32] [27] **Certified copy of order sufficient authority, etc.**—A certified copy of such order, under the seal of the court, shall be sufficient evidence of the authority of the person named therein to control the person of such minor.

Art. 42. [33] [28] **Moderate chastisement may be inflicted on minor.**—The person to whom a minor has been apprenticed shall have the right, in the management and control of such minor, to inflict such moderate corporal chastisement as may be necessary and proper.

Art. 43. [34] [29] **Rights of persons to whom minor is apprenticed.**—The person to whom a minor has been apprenticed shall have the right to control the person of such minor, and shall be entitled to his services; and to all the profits arising from any such service during the continuance of such apprenticeship.

Art. 44. [35] [30] **Not lawful for apprentice to reside out of the county, etc.**—It shall not be lawful for any apprentice to reside out of the county in which he has been apprenticed without the order of the county judge of such county, entered upon the minutes of the court. When such leave is obtained, a certified copy of the order granting the same shall be filed in the office of the clerk of the county court of the county in which the future residence of the minor is to be, together with a certified copy of the obligation and order apprenticing such minor; and the same shall be filed and recorded upon the minutes of the county court of such last named county; and thereafter such court shall have the same power and control over the case as if it had been originally commenced therein.

Art. 45. [36] [31] **Apprentice kept out of county over thirty days without leave is discharged.**—When an apprentice has been removed out of the county in which he was apprenticed, by the person to whom he was apprenticed, or with the knowledge or consent of such person, and without an order authorizing such removal, as provided in the preceding article, and shall be detained out of said county for more than thirty days, such apprentice shall not be held bound for a further compliance with his apprenticeship, and can only be retained at the pleasure of such apprentice.

Art. 46. [37] [32] **Proceedings when apprentice runs away, etc.**—If any apprentice shall run away from or leave the employment of the person

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

Art. 47. [38] [33] **Apprentice discharged when, etc.**—Upon the investigation provided for in the preceding article, if the court be satisfied that such apprentice had good and sufficient cause for running away from or leaving the employment of the person to whom he was apprenticed, the court shall discharge said apprentice and revoke all authority granted to the person to whom such minor was apprenticed, and shall enter an order to that effect upon the minutes.

Art. 48. [39] [34] **County judge may cause person to whom minor is apprenticed to be cited, etc.**—The county judge may, upon the complaint of the minor or any other person, or without complaint, cause the person to whom a minor has been apprenticed to be cited to appear before him at any time and place mentioned in such citation, and show cause why his authority over such minor should not be revoked and the minor discharged from his apprenticeship. And upon the return of such citation served, the judge, if satisfied that such person is incompetent from any cause to properly control such minor, or that such person has in any material respect violated the obligation entered into by him, shall enter an order upon the minutes revoking such authority granted to such person over such minor, and discharging such minor from such apprenticeship.

Art. 49. [40] [35] **Person to whom minor is apprenticed may be released, when.**—A person to whom a minor has been apprenticed may at any time, upon good cause shown to the county judge, be released from future liability upon his obligation of apprenticeship; and in such case an order shall be entered upon the minutes revoking the authority of such person over such minor, and declaring such apprenticeship at an end.

Art. 50. [41] [36] **County judge shall inquire into treatment, etc.**—The county judge shall, from time to time, inquire into the treatment of the minors apprenticed by him, or by his predecessors in office, and shall defend them from all cruelty, neglect, breach of contract or misconduct on the part of the persons to whom they are apprenticed.

Art. 51. [42] [37] **Minor may be again apprenticed, when.**—When the person to whom a minor has been apprenticed dies, or when his authority has been revoked, the minor may be again apprenticed as in the first instance.

Art. 52. [43] [38] **Proceedings may be in term time or vacation, except, etc.**—The proceedings provided for in the preceding articles of this title may be had either in term time or in vacation, except that a minor shall be apprenticed only at a regular term of the court for probate business, and after notice as in the case of the appointment of a guardian.

Art. 53. [44] [39] **Suit upon obligation.**—In case of a breach of the obligation on the part of the person to whom a minor has been apprenticed, the minor, or the county judge, or any person for the use of the minor, may sue upon such obligation in any court of the county where such obligation, or certified copy thereof, has been filed and recorded, having jurisdiction of the amount claimed, and shall be entitled to recover such damages as the minor may have sustained by reason of such breach; and all such damages shall be the property of such minor.

Art. 54. [45] [40] **Costs shall be paid by whom.**—In all proceedings apprenticing a minor, or discharging him from apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom

such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

Art. 55. [46] [41] **No guardian of person when minor is apprenticed.**—When a minor is apprenticed, the person to whom such minor is apprenticed supplies the place of the guardian of the person of such minor, and in such case there shall be no guardian of the person of such minor.

TITLE 7.

ARBITRATION.

Chapter.

1. Arbitration in General.

Chapter.

2. Arbitration of Grievances Between Employer and Employed.

CHAPTER ONE.

ARBITRATION IN GENERAL.

Article.		Article.	
56	Right to arbitrate.....	64	Umpire to be selected in case of disagreement.....
57	Agreement to be in writing and name of arbitrators, etc.....	65	Appeal from an award.....
58	Agreement to be filed in court having jurisdiction.....	66	Procedure in case of an appeal.....
59	Day of trial to be designated by justice or clerk, etc.....	67	Costs.....
60	Oath of arbitrators.....	68	Penalty for refusing to proceed.....
61	Continuances permissible.....	69	Corporations, executors, etc., may arbitrate.....
62	Procedure on trial.....	70	Right to other mode of arbitration not affected.....
63	Award to be written out, filed and entered as judgment.....		

Article 56. [47] [42] **Right to arbitrate.**—All persons desiring to submit any dispute, controversy, or right of action supposed to have accrued to either party, to arbitration, shall have the right so to do in accordance with the provisions of this title. [Const., art. 16, sec. 13.]

Art. 57. [48] [43] **Agreement to be in writing and name arbitrators, etc.**—Such persons shall sign an agreement in writing, as plaintiff and defendant, to arbitrate their differences or matters in dispute, and in such agreement each party shall name for himself one arbitrator, who shall be over the age of twenty-one years, not related to either party by consanguinity or affinity, possessing the qualifications of a juror, and who is not interested in the result of the cause to be submitted for his decision. [Act April 25, 1846, p. 127. P. D. 60-63.]

Art. 58. [49] [44] **Agreement to be filed in court having jurisdiction.**—If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agreement shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved or matter in dispute may come within the jurisdiction of one court or the other. [Id.]

Art. 59. [50] [45] **Day of trial to be designated by justice or clerk, etc.**—When such agreement is filed, the justice of the peace or the clerk of the county or district court, as the case may be, shall forthwith designate a day for the trial of the cause, not less than two days thereafter, and shall issue process for such witnesses as either party may desire, returnable on the day fixed for trial. [Id. sec 5. P. D. 62.]

Art. 60. [51] [46] **Oath of arbitrators.**—On the assembling of the arbitrators on the day of trial, the justice or clerk shall administer an oath to each, substantially as follows: "You do solemnly swear (or affirm) that you will fairly and impartially decide the matter in dispute between A B, the plaintiff, and C D, the defendant, according to the evidence adduced and the law and equity applicable to the facts proved. So help you God." Id. sec. 5. P. D. 64.]

Art. 61. [52] [47] **Continuances permissible.**—After being sworn, the arbitrators may, for good cause shown, continue the hearing to some other

day, and during the progress of any trial, for like good cause, may adjourn the same over to some other time.

Art. 62. [53] [48] **Procedure on trial.**—The justice or clerk shall administer the necessary oath to the witnesses, and the trial of the cause shall proceed in like manner with trials in the courts of this state, the plaintiff holding the affirmative, and entitled to open and conclude the argument.

Art. 63. [54] [49] **Award to be written out, filed and entered as judgment.**—After hearing the evidence and arguments, if any, the arbitrators shall agree upon their award and reduce the same to writing, specifying plainly their decision, which award they shall file with the justice or clerk, as the case may be, and at the succeeding term of the court such award shall be entered and recorded as the judgment of the court, with like effect as other judgments of said court, and upon which execution may issue as on ordinary judgments. [Acts 1846, p. 127, sec. 7. P. D. 66.]

Art. 64. [55] [50] **Umpire to be selected in case of disagreement.**—If the arbitrators chosen as aforesaid can not agree, they shall select an umpire with like qualifications as themselves, or in case they disagree in the choice of an umpire, the justice or clerk shall select such umpire, and he shall be sworn in like manner as the arbitrators; and the cause may be tried anew at such time as the board of arbitration thus constituted may designate, with like proceedings as are prescribed in the preceding article. [Id. sec. 6. P. D. 65.]

Art. 65. [56] [51] **Appeal from an award.**—If a right of appeal is not expressly reserved in the original agreement to arbitrate, no such right shall exist, but the decision of the arbitrators shall be final. But if such right of appeal is reserved, and either party desire to appeal from such decision or award, he shall file his written application to that effect with the justice or clerk, as the case may be, on or before the return day of the term of the court next thereafter. [Id. sec. 7. P. D. 66.]

Art. 66. [57] [52] **Procedure in case of appeal.**—When an application for appeal is filed, as prescribed in the preceding article, the same shall be noted on the docket of the court, and the opposite party served with a citation, as in ordinary cases of suit by petition. Upon return of service upon the opposite party, the cause shall stand for trial de novo as in ordinary cases.

Art. 67. [58] [53] **Costs.**—The arbitrators may award the costs to either party; and, if their decision or award is silent as to costs, the same shall be taxed equally against both parties.

Art. 68. [59] [54] **Penalty for refusing to proceed.**—After an agreement to arbitrate is filed, as prescribed in article 58, the parties thereto shall be bound to that mode of trial under the following penalties, to-wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up by defendant in such agreement who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement. [Act 1846, p. 127.]

Art. 69. [60] [55] **Corporations, executors, etc., may arbitrate.**—The provisions of this title shall apply to corporations as well as natural persons; and executors, administrators and guardians may also consent to an arbitration of any controversy or matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

Art. 70. [61] [56] **Right to other mode of arbitration not affected.**—Nothing herein shall be construed as affecting the existing right of parties to arbitrate their differences in such mode as they may select.

CHAPTER TWO.

ARBITRATION OF GRIEVANCES BETWEEN EMPLOYER
AND EMPLOYED.

	Article.		Article.
Board authorized	71	Adjudication terminates powers of board, unless, etc.....	77
District judge to establish board, etc....	72	Status quo to be preserved pending arbi- tration	78
If controversy involves different labor organizations, concurrent action neces- sary	73	Compensation of board, witnesses, etc....	79
Submission must be in writing and show what	74	Award to take effect, when.....	80
Arbitrators to take oath, etc.....	75	Judgment to be entered, unless appeal, etc.	81
Powers and duties of chairman and board	76		

Article 71. [61a] **Board of arbitration authorized.**—Whenever any grievance or dispute of any nature, growing out of the relation of employer and employes, shall arise or exist between employer and employes, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employes concerned in such grievance or dispute, as the aforesaid, are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators; and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employes concerned in any such grievance or dispute, as aforesaid, are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board; and said board shall be organized as hereinbefore provided; and in case the employes concerned in any such grievance or dispute, as aforesaid, are not members of any labor organization, then a majority of said employes, at a meeting duly held for that purpose, shall designate two arbitrators for said board; and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators shall have been selected by each of the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator. [Acts 1895, p. 85, sec. 1.]

Art. 72. [61b] **District judge to establish board, etc.**—Any board, as aforesaid selected, may present a petition in writing to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition, it shall be the duty of said judge, if it appear that all requirements of this law have been complied with, to make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought. [Id. sec. 2.]

Art. 73. [61c] **If controversy involves different labor organizations, concurrent action is necessary.**—When a controversy involves and affects the interests of two or more classes or grades of employes belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employes shall be agreed

upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization. [Id. sec. 3.]

Art. 74. [61d] Submission must be in writing and must show what.—The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employes, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization, shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

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

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

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

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

5. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation; and no new arbitration upon the same subject between the same parties shall be had until the expiration of said one year. [Id. sec. 4.]

Art. 75. [61e] Arbitrators to take oath, etc.—The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business, it shall select one of its members to act as secretary, and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed. [Id. sec. 5.]

Art. 76. [61f] Powers and duties of chairman and board.—The chairman shall have power to administer oaths and to issue subpoenas for the production of books and papers and for the attendance of witnesses, to the same extent that such power is possessed by a court of record, or the judge thereof, in this state. The board may make and enforce the rules for its government and transaction of the business before it and fix its sessions and adjournment, and shall herein [hear and] examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute. [Id. sec. 6.]

Art. 77. [61g] Adjudication terminates the powers of the board, unless, etc.—When said board shall have rendered its adjudication and determination, its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in article 71, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as fully as if said board was originally created for the settlement of such difference or differences. [Id. sec. 7.]

Art. 78. [61h] Status quo to be preserved pending arbitration.—During the pendency of arbitration under this chapter it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge

the employes parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employes to order, nor for the employes to unite in, aid or abet strikes or boycotts against such employer or receiver. [Id. sec. 8.]

Art. 79. [61i] **Compensation of board, witnesses, etc.**—Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually traveled in getting to, or returning from, the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to, and returning from, the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award; and each of the parties to said arbitration shall, before the arbitrators proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties, in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration. [Id. sec. 9.]

Art. 80. [61j] **Award to take effect when.**—The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employes or their duly authorized representative. The award, being filed in the clerk's office of the district court, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record; in which case said award shall go into practical operation, and judgment shall be rendered accordingly when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom. [Id. sec. 10.]

Art. 81. [61k] **Judgment to be entered, unless appeal, etc.**—At the expiration of ten days from the decision of the district court, upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case, only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award. [Id. sec. 11.]

TITLE 8.

ARCHIVES.

Chapter.

1. Archives of the General Land Office.

Chapter.

2. Other Public Archives.

CHAPTER ONE.

ARCHIVES OF THE GENERAL LAND OFFICE.

	Article.		Article.
What shall be considered archives of the general land office.....	82	Deeds, etc., which are not archives.....	84
Effect to be given to archives deposited in the general land office.....	83	How such deeds, etc., may be withdrawn.	85

Article 82. [62] [57] **What shall be considered archives of the general land office.**—The following shall be deemed the records, books and papers of the general land office and constitute a part of the archives of the same:

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

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

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

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

5. All other books, transfers, powers of attorney, field-notes, maps, plats, legal proceedings, official reports, original documents and other papers appertaining to the lands of the republic or state of Texas that have been deposited or filed in the general land office in accordance with any law of the republic or state of Texas. [Act Dec. 22, 1836, p. 216, sec. 5; Hart Dig. 1786; Act June 12, 1837, p. 263, sec. 6; Hart Dig. 1819; P. D. 69; Act Dec. 14, 1837, p. 44, sec. 1; Hart Dig. 1835; P. D. 70-1; Act Dec. 2, 1850, p. 32; P. D. 73; Act Dec. 14, 1837, p. 62, sec. 6; P. D. 71.]

6. All owners of lands between the Nueces and Rio Grande rivers, under grants or titles from the former government, which grants or titles are such as are described in section 4 of article 13 of the present constitution, and have been, previous to the adoption of this constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this state, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office; and provided, further, that such titles when so archived shall be subject to all defenses and objections to which they would have been subject if not so archived; and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in

the proper county; and the commissioner of the general land office is hereby authorized and required to receive the same as archives of said office. [Acts 1881, p. 37.]

Art. 83. [63] [58] **Effect to be given to archives deposited in general land office.**—Nothing in the preceding article shall be construed to give any of the said books, records or other papers named in said article any greater force or validity by reason of their being so recognized as archives of the general land office than was accorded them by the laws in force at the date of their execution and deposit in the general land office.

Art. 84. [64] [59] **Deeds, etc., which are not archives.**—Deeds and other instruments of writing which were executed or issued prior to the second day of March, A. D. 1836, upon stamped paper of the second or third seal, and which deeds or instruments of writing are not original documents in the general land office, or expressly declared by law to be archives of the said office, are hereby declared to constitute no part of the archives of said office. [Act Feb. 11, 1850, p. 200; P. D. 76. Act Jan. 11, 1862, p. 35; P. D. 77.]

Art. 85. [65] [60] **How such deeds, etc., may be withdrawn.**—The owners of any land to which the deeds or other instruments of writing named in the preceding article relate may withdraw the same from the general land office, on making a written application therefor, under oath, to the commissioner of the general land office, setting forth the fact of such ownership; and, if the commissioner shall be satisfied that the person applying is in fact the owner of the land to which such deed or instrument of writing relates, he may deliver the same to such applicant, taking his receipt therefor, and describing in such receipt the deed or instrument of writing delivered, with a summary of its contents and the name of the original grantee of the land to which such deed or instrument of writing may relate or refer. [Id.]

CHAPTER TWO.

OTHER PUBLIC ARCHIVES

	Article		Article
Duty of secretary of state as to archives.	86	Archives of the comptroller's office.....	89
Archives of congress, of Republic of Texas, etc.	87	Certain books, records, etc., declared to be archives	90
Historical archives	88		

Article 86. [66] [61] **Duty of secretary of state as to archives.**—The secretary of state is authorized to take possession of one or more rooms in the basement of the capitol for the use of the state department and the better preservation and protection of the archives of the state department. [Act July 16, 1856, p. 3. P. D. 84.]

Art. 87. [67] [62] **Archives of congress of republic of Texas, etc.**—The entire archives of the congress of the late republic of Texas, and of the several legislatures of the state of Texas, arranged and filed according to law, together with the records, books and journals of said congress and legislatures of the state, prepared in accordance with law, and heretofore, or that may be hereafter, deposited in the office of the secretary of state, are declared to be archives of said office. [Acts of 1887, p. 47.]

Art. 88. [68] [63] **Historical archives.**—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the his-

tory of Texas as a province, colony, republic, or state, which have been or may hereafter be delivered to the state librarian by the secretary of state, comptroller, commissioner of the general land office, or by any of the heads of the departments, or by any person or officer, in pursuance of law, shall be deemed books and papers of the state library and shall constitute a part of the archives of said state library; and copies therefrom shall be made and certified by the state librarian upon application of any person interested, which certificate shall have the same force and effect as if made by the officer originally in custody of them, and for which the same fees shall be charged, to be collected in advance and turned over to the state treasurer quarterly. [Acts 1876, 225; 1856, 50; 1853, 38. Acts 1909, p. 122, sec. 10. P. D. 85, 86.]

Art. 89. [69] [64] **Archives of the comptroller's office.**—All the books, papers, records and archives, that were heretofore archives of the auditor's office, or of the office of the commissioner of the court of claims, and which have heretofore, in pursuance of law, been delivered to the comptroller, shall be deemed papers and records of the comptroller's office, and shall constitute a part of the archives of his office. [Act Jan. 16, 1858, p. 40. P. D. 87. Act Feb. 7, 1860, p. 48. P. D. 89.]

Art. 90. [70] [65] **Certain books, records, etc., declared to be archives.**—All the books, papers, records, rolls, documents, returns, reports, lists and all other papers that have been, are now, or that may hereafter be, required by law to be kept, filed or deposited in any of the offices of the executive departments of this state, shall constitute a part of the archives of the offices in which the same are so kept, filed or deposited.

TITLE 9.

ASSIGNMENTS FOR CREDITORS.

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

Article.		Article.	
91	General assignments, how made and construed; preferences void.....	100	Property fraudulently sold by assignor, passes by the assignment and may be recovered by assignee, etc.....
92	Assignment acknowledged, etc., and recorded; inventory attached, what shall contain and how verified.....	101	Failure to attach inventory presumption of fraud, but does not vitiate assignment; assignor, etc., may be examined.....
93	Assignment for creditors accepting, etc., and discharging assignor.....	103	Verified claim shall be allowed by assignee, unless contested.....
94	Notice of assignee's appointment, when and how given.....	103	Unmatured claims discounted and collateral securities estimated and deduction for same.....
95	How and when consenting creditors may accept.....	104	Assignee may be removed and vacancy from any cause filled, how.....
96	Where assignee shall reside, and his preliminary duties and bond approved by county or district judge.....	105	Dividend declared, when and how, and allowance to assignee.....
97	Fraud, etc., will not defeat assignment..	106	Final report and discharge of assignee..
98	Proof of claim, when and how made....		
99	Surplus in assignee's hands subject to garnishment.....		

Article 91. [71] **General assignment, how made and construed; preferences void.**—Every assignment made by an insolvent debtor, or in contemplation of insolvency, for the benefit of his creditors, shall provide, except as herein otherwise provided, for a distribution of all his real and personal estate, other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and, however made or expressed, shall have the effect aforesaid, and shall be construed to pass all such estate, whether specified therein or not; and in every assignment made under this title, whether for the benefit of all creditors, or accepting creditors, any attempted preference of one creditor, or creditors, of the assignor shall be deemed fraudulent and without effect. [Act of July, 24, 1879, p. 54.]

Art. 92. [72] **Assignment acknowledged, etc., and recorded. Inventory attached, what shall contain and how verified.**—Every assignment shall be proved or acknowledged and certified and recorded in the same manner as provided by law in conveyances of real estate or other property; and the debtor shall annex to such assignment an inventory containing the following statement:

1. A full and true account of all the creditors of such debtor or debtors.
2. The place of residence of each creditor, if known to such debtor or debtors, and if not known, that fact to be so stated.
3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, account, or otherwise executed.
4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose.
5. A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.
6. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate according to the best knowledge of such debtor or debtors.
7. An affidavit shall be made by such debtor or debtors, and annexed to, and delivered with, such inventory or schedule, that the same is in all respects just and true according to the best of such debtor or debtors' knowledge and belief. Nothing contained in this chapter shall affect the assignor's right to retain all such of his property as is by the constitution and laws of this state

exempt from execution, but such list and inventory shall not be conclusive, except as against the debtor making the same. [Id.]

Art. 93. [73] Assignment for creditors accepting, etc., and discharging assignor.—Any debtor, desiring so to do, may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate, and discharge him from their respective claims; and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto; and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee for the debtor a release therefrom; provided, that such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor. [Acts 1883, p. 46.]

Art. 94. [74] Notice of assignee's appointment, when and how given.—Every assignee shall, within thirty days after the execution of the assignment, give public notice of his appointment, in some newspaper printed in the county where the assignor resides, or where his principal business was conducted, or, if no newspapers be printed therein, then in the newspaper published nearest to such place of residence or business, and which notice shall be published for three successive weeks; and, so far as he can, the assignee shall also give personal notice, or notice by mail, to each of the creditors of the assigning debtor. [Act July 24, 1879, p. 37.]

Art. 95. [75] How and when consenting creditors may accept.—The creditors of the assignor consenting to such assignment shall make known to the assignee their consent in writing, within four months after the publication of the notice provided in the preceding article, and no creditor not assenting shall receive or take any benefit under the assignment; provided, however, that any creditor, who had no actual notice of such assignment, may make known his assent at any time before any distribution of assets under the assignment has been made; and provided, further, that the receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment. [Id.]

Art. 96. [76] Where assignee shall reside and his preliminary duties and bond approved by county or district judge.—Every such assignee shall be a resident of this state and of the county in which the assignor resides, or in which his principal business was conducted; and he shall forthwith, after the execution and delivery of the deed of assignment, cause the same to be recorded as herein provided, in the county of such assignee's residence, and also in every county in which there is any real property conveyed to him by such deed of assignment, and shall execute a bond, with sureties, to be approved by the judge of the county court of the county in which the assignee resides, or by the judge of the district court of the judicial district in which such county is situated, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto; which bond shall be payable to the state of Texas, and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor, and the creditor or creditors, who may maintain an action thereon against such assignee and sureties, in his or their own name, jointly or severally, for any breach thereof, or violation of this law, by reason of which such assignor or creditor shall sustain damage; and upon the filing of said bond the assignee shall take possession of the assigned property, and proceed to execute the assignment; and, if such assignee shall not, within five days after the delivery of the deed of assignment, execute an approved bond and file the same with the county clerk, as herein provided, such assignment

shall nevertheless take effect as against the assignor and his creditors; and it shall be the duty of the county judge, or judge of the district court, as aforesaid, upon the application of the assignor, or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee, who shall, upon the execution of such bond, approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment. [Acts 1883, p. 46.]

Art. 97. [77] **Fraud of assignor will not defeat assignment.**—No fraudulent act, intent or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof, but any such fraudulent act, intent or purpose on the part of the assignee shall be sufficient cause for his removal, as being an unsuitable person to perform the trust; and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property. [Id.]

Art. 98. [78] **Proof of claim, when and how made.**—Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just and that there are no credits or offsets that should be allowed against the claim, except as shown by the statement; and no creditor shall take any benefit under any assignment whatever who neglects to file such statement. [Acts of 1879, p. 57.]

Art. 99. [79] **Surplus subject to garnishment.**—Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands, after the payment to the consenting creditors the amount of their debts and the costs and expenses of executing the assignment. [Id.]

Art. 100. [80] **Property fraudulently sold by assignor passes by the assignment and may be recovered by assignee, etc.**—All property conveyed or transferred by the assignor previous to and in contemplation of the assignment, with the intent or design to defeat, delay or defraud creditors, or to give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover and collect the same, and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee; but, if it shall appear in such action that the purchaser of any such property bought the same of the assignor in good faith and for a valuable consideration, and without any reason to believe that the debtor was conveying or transferring the same with the intent or design aforesaid, such purchaser shall be held to have acquired as against the assignee and creditors aforesaid a good and valid title to such property. [Id.]

Art. 101. [81] **Failure to attach inventory presumption of fraud, but does not vitiate assignment; assignor, etc., may be examined.**—No assignment shall be declared fraudulent or void for want of any inventory or list, as provided herein, but the absence of the same shall be deemed prima facie evidence that the assignor or debtor has concealed or secreted some of his estate from his assignee or creditors; and whether the said list and inventory be prepared and filed or not, the judge of the district or county court, in whose court the proceedings shall have been filed, and having jurisdiction of the estate assigned, may, on the application of the assignee, or of any creditor of the

assignor or debtor, or without such application, if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or debtor, or any other person, to attend and submit to an examination, on oath, upon all matters relating to the disposition made, or status of, the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attendance and obedience to the orders made, by a writ or order directed to the sheriff, or any constable, commanding the arrest of the persons referred to in the writ or order, to be brought before the judge at a time named for the purpose of examination, as provided herein, and such examination shall be in writing, and shall be signed by the persons examined, and shall be attested or sworn to before the clerk of the court wherein the proceedings are pending and filed with such clerk, for the use of those interested in the estate; provided, nevertheless, that no assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem right and proper to order. [Acts 1883, p. 46.]

Art. 102. [82] **Verified claims shall be allowed by assignee unless contested.**—The statement of a creditor, verified and filed with the assignee as hereinbefore provided, shall be sufficient prima facie evidence to justify the assignee in allowing it as a valid claim against the estate, and shall be so allowed, and such creditor shall be entitled to his proportional share of the debtor's estate, unless the assignor, or another creditor disputing the same, shall, within sixty days after the expiration of the time within which the creditors are required by this title to file their statements, institute an action in the district or county court of the proper county to set aside the allowance and to restrain the payment thereon, for which purpose the assignor or any disputing creditor or creditors may have a remedy, jointly or severally, by injunction or other proper action to try the justness and validity of the disputed claim; and, if it appears that an action could not successfully be maintained at law by the creditor against the assignor upon such claim or any disputed part thereof, the same shall be disallowed, in whole or in part, as the case may be, and the assignee restrained from paying the same, or such portion thereof as may be disallowed; and, for the information of the assignor and creditors, it is further provided, that the assignee shall allow them, or any of them, to take a copy of any creditor's statement of his claim that has been filed with such assignee as herein provided. [Acts 1879, p. 57.]

Art. 103. [83] **Unmatured claims discounted and collateral securities estimated and deduction for same.**—Claims that are not due may be allowed at their present value, by discounting them at the rate of interest mentioned in the contract, if any, otherwise at the legal rate, and if any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed. [Id.]

Art. 104. [84] **Assignee may be removed, and vacancy from any cause filled, how.**—If any assignee becomes unsuitable to perform the trust, refuses or neglects so to do, or mismanages the property, the county judge or judge of the district court may, upon the application of the assignor, or one or more of the creditors, upon reasonable notice to all parties interested, by publication or otherwise, as such judge may direct, remove such assignee, and, in case of a vacancy by death or otherwise, shall appoint another in his place, who

shall have the same powers and be subject to the same liabilities as the original assignee. [Id.]

Art. 105. [85] **Dividend declared, when and how.—Allowance to assignee.**—Whenever any assignee shall have in his hands funds sufficient to pay ten per cent of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors, and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorneys' fees, all to be allowed, in case of difference between the parties, by the county judge or judge of the district court. [Id.]

Art. 106. [86] **Final report and discharge of assignee.**—Whenever any assignee shall have fully performed the duties of his trust and desires to be finally discharged therefrom, he may make a report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of, the truth of which shall be verified by his affidavit; and such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded; and no action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court, subject to be paid out upon the decree of said court. [Id.]

TITLE 10.

ASYLUMS.

Chapter.

- 1. The Lunatic Asylum.
- 2. Pasteur Hospital.

Chapter.

- 3. The Deaf and Dumb and the Blind and other Asylums.
- 4. Home for Lepers.

CHAPTER ONE.

THE LUNATIC ASYLUMS.

	Article.
Lunatic asylum recognized and continued.	107
1. Of the Board of Managers.	
Board of managers provided for.	108
Board of managers, how constituted and appointed.	109
Compensation of members of board.	110
Organization of the boards.	111
Meetings and records of the board.	112
Powers of the board.	113
Same subject.	114
Monthly inspections.	115
Biennial reports of the board.	116
Board to dispose of water.	117
Same.	118
2. Of the Superintendents.	
Their appointment, term, etc., qualifications.	119
Oath and bond.	120
Bond, where filed, etc.	121
Removal of superintendent.	122
Powers and duties of superintendent.	123
Same subject.	124
Accounts and reports of superintendent.	125
Same subject.	126
Annual inventory.	127
3. Fiscal Management.	
Officer not to deal with asylum.	128
Asylum money to remain in the treasury.	129
Board may regulate expenditures.	130
Funds from outside sources, how disposed of.	131
Requisites of the order.	132
Duties of the treasurer.	133

	Article.
4. Admission and Discharge of Patients.	
Who may be admitted.	134
Procedure for admission of private patients.	135
County judge must certify, etc.	136
Indigent patients at state expense.	137
Public patients, also, but state may be reimbursed.	138
Private patients at their own expense.	139
Preferences in admission.	140
Idiots, etc., not to be admitted.	141
Discharge of patients.	142
Same subject.	143
Insane discharged convict, proceedings as to.	144
County to pay expenses of conveying public patients to asylum.	145
County to be reimbursed, when.	146
Transportation home by the state.	147
Escapes from the asylum.	148
Fees for conveying patient back.	149
5. Of Judicial Proceedings in Cases of Lunacy.	
Apprehension of lunatics.	150
The writ and its requisites and execution.	151
Jury to be summoned.	152
Caused to be docketed, etc.	153
Jury impaneled and sworn.	154
Special issues to be submitted.	155
Verdict.	156
Judgment.	157
Reimbursement to the state from lunatics not indigent.	158
Limitation as to amount in procedure.	159
County attorney to represent state.	160
Warrant to convey lunatic to asylum.	161
Relative or friend may give bond, etc.	162
Record to be made up and forwarded.	163
Suitable clothes to be provided.	164
Fees of officer in lunacy cases.	165

Article 107. [87] [66] Lunatic asylum recognized and continued.—The asylums heretofore established by law and any others that may hereafter be established for the care and treatment of insane persons shall be managed and controlled in accordance with the provisions of this title. [Act 1883, p. 103.]

1. THE BOARDS OF MANAGERS.

Art. 108. [88] Board of managers provided for.—The general control, management and direction of the affairs of the Texas asylums for the insane shall be vested in boards of managers, to be styled, the boards of managers of the lunatic asylums, subject only to such rules and regulations as may be prescribed by the legislature. Three of the members of each board shall reside within five miles of their respective asylums. [Id.]

Art. 109. [89] [67] Board of managers, how constituted and appointed.—The governor shall appoint for each lunatic asylum a board of managers consisting of five members, who shall hold their office for two years, or

until their successors are appointed and qualified; and whenever a vacancy occurs in said boards it shall be filled by the governor, and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. The board of managers shall be appointed by the governor, by and with the advice and consent of the senate. [Id.]

Art. 110. [90] [68] **Compensation of members of board.**—Each of the members of the boards of managers shall be paid five dollars per day and five cents a mile for going and returning from the asylums for the purpose of holding their monthly meetings provided for by this act; and no member shall be paid, except in case of his actual attendance on said meetings; and the certificate of the president of the boards of managers, approved by the superintendent, shall be a sufficient voucher for the comptroller to draw his warrant upon the treasurer for the amount due each member of said board for his attendance on said meetings; provided, no meeting shall be for a longer time than one day. [Id.]

Art. 111. [91] [69] **Organization of the board.**—The boards of managers shall choose one of their number president, and the superintendent of the asylum shall be ex officio secretary of the board. A majority of the members of the boards shall constitute a quorum for the transaction of business. [Acts Feb. 5, 1858, p. 114, sec. 3; p. 116, sec. 6. P. D. 114, 118.]

Art. 112. [92] [70] **Meetings and records of the boards.**—The boards of managers shall hold monthly meetings at the asylums, and a full account of all their acts and proceedings shall be recorded by the secretary in a book to be provided for that purpose. [Acts 1883, R. S., p. 103.]

Art. 113. [93] [71] **Powers of the board.**—The members of said boards of managers shall be persons distinguished for their philanthropy; and, when appointed in accordance with this act, they shall have the general direction and control of all the property and business of the asylums, in accordance with the requirements of law; and in all those cases not provided for by law they shall have such direction and control of the property and business of the asylums according to the by-laws, rules and regulations of the asylums. They may take and hold in trust any gift or devise of real or personal estate for the benefit of the said asylums, and apply the same as the donor or devisor may direct. [Id.]

Art. 114. [94] [72] **Same subject.**—The board of managers shall have power—

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

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

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

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

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

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

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

Art. 115. [95] [73] **Monthly inspections.**—The managers shall maintain an effective inspection of their asylums, a committee for which purpose shall visit them once every month, a majority once every quarter, and the whole board once a year, at the time and in the manner prescribed by the by-laws.

In a book kept by the managers for this purpose, the visiting manager or managers shall note the date of each visit, the condition of the house, patients, etc., with remarks of commendation or censure, and all the managers present shall sign the same. [Id.]

Art. 116. [96] [74] **Biennial reports by the board.**—The general result of these inspections, with suitable hints and suggestions, shall be inserted in the biennial report detailing the past year's operations and actual state of the asylums, which the boards shall make to the legislature in the month of January of each alternate year, accompanied by the report of the medical superintendents and stewards. [Id.]

Art. 117, [96a] **Board authorized to dispose of artesian water.**—The members of the board of managers of the Southwest Texas lunatic asylum, situated at San Antonio, Texas, are hereby authorized and empowered to sell, lease, or dispose of the water belonging to the state, and flowing from any of the artesian wells on the grounds of said asylum, for such price and upon such terms and conditions as the said board may deem to the best interest of the state; provided, that the term of said lease shall not exceed ten years. [Act 1893, p. 20.]

Art. 118. [96b] **Same.**—The members of the board of managers of the state lunatic asylum, situated at Austin, Texas, are hereby authorized and empowered to sell, lease or dispose of the water belonging to the state, and flowing from any of the artesian wells on the grounds of said asylum, for such price and upon such terms and conditions as the said board may deem to the best interest of the state; provided, that the term of said lease shall not exceed ten years. [Act 1895, p. 107.]

2. THE SUPERINTENDENTS.

Art. 119. [97] [75] **Their appointment, term, qualifications, etc.**—The boards of managers of the lunatic asylums shall elect a medical superintendent of their respective asylums, who shall hold his office for two years. He shall be a married man, a skillful physician, and also be experienced in the treatment of insanity. He shall reside at the asylum with his family, and he shall devote his whole time exclusively to the duties of his office. [Act 1885, p. 9.]

Art. 120. [98] [77] **Oath and bond.**—The superintendent shall, before entering upon the duties of his office, take the oath prescribed by the constitution for all officers of the state, and shall enter into bond in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the treasurer of the state, payable to the state, and conditioned for the faithful performance of his duties as superintendent. [Act Aug. 28, 1856, p. 60; sec. 64; act Feb. 5, 1858, p. 116; P. D. 111, 118.]

Art. 121. [99] [78] **Bond, where filed, etc.**—The bond provided for in the preceding article shall be filed in the office of the treasurer of the state, and shall not become void upon a first recovery thereon, but may be sued upon until the full penalty is recovered. And certified copies of such bond, under the hand and official seal of the state treasurer, may be used in evidence in all courts and proceedings in this state with like effect as the original.

Art. 122. [100] [79] **Removal of superintendent.**—The boards of managers shall have power to remove the superintendent for good and sufficient cause only. [Acts 1883, p. 103.]

Art. 123. [101] [80] **Powers and duties of superintendent.**—The superintendent shall be the chief executive medical and disbursing officer of the institution, and, subject to the by-laws, shall have general care and control over everything connected therewith. He shall attend to the enforcement of the laws of this state relating to the asylums and the by-laws of the institu-

tion, and shall take care that all employes connected therewith diligently and faithfully perform the duties assigned to them; and it shall be his duty to admit any of the board of managers into every part of the asylum, and to exhibit to them, or either of them, on demand, all the books, papers and accounts belonging to the institution or pertaining to its business, management, discipline or government, also to furnish copies, abstracts and reports whenever required by the board. [Id.]

Art. 124. [102] [81] **Same subject.**—The superintendent shall also, with the consent of the board of managers, employ such officers, attendants and other persons as may be required for the service of the institution, and with like consent may discharge them at pleasure. He shall also receive and discharge patients, superintend repairs and improvements, and take care that all moneys intrusted to him are judiciously and economically expended. [Id. p. 116, P. D. 118.]

Art. 125. [103] [82] **Accounts and reports of superintendents.**—The superintendent shall keep also an accurate and detailed account of all moneys received and expended by him, specifying the sources from which such moneys were received, and to whom and on what account paid out; and, on the first days of January and July of each year, he shall report the same under oath to the governor. [Id. P. D. 118; const., art. 4, sec. 24.]

Art. 126. [104] [83] **Same subject.**—The superintendent shall also keep a register of all patients received into the asylum and discharged therefrom, together with a full record of all the operations of the institution; and, on the first day of November of each year, he shall report such operations in full to the governor, accompanied with such suggestions and recommendations concerning the management and operations of the asylum as he may deem important. [Act Feb. 5, 1858, p. 116, sec. 7; P. D. 119.]

Art. 127. [105] [84] **Annual inventory.**—On the first day of November of each year, the superintendent shall cause an inventory of all the personal property belonging to the asylum to be prepared, in which inventory the estimated value shall be set opposite each article, and shall submit the same to the board of managers. [Id. p. 116, sec. 6; P. D. 118.]

3. FISCAL MANAGEMENT.

Art. 128. [106] [85] **Officer not to deal with asylum.**—No manager or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith. [Act Feb. 5, 1858, p. 120, sec. 23.]

Art. 129. [107] [86] **Asylum money to remain in the treasury.**—The appropriations made from time to time by the legislature for the support and maintenance of the asylums shall remain on deposit in the state treasury and be paid out, as are other public funds, upon the warrant of the comptroller of public accounts.

Art. 130. [108] [87] **Board may regulate expenditures.**—The boards of managers may adopt such regulations as they deem proper and necessary for the payment of expenses other than salaries, the supplies provided for in chapter three of this title, and such other expenditures as may be regulated by law; but under such regulations no money appropriated by law shall be drawn from the treasury, except upon vouchers specifying in detail the exact purpose for which the same is needed, certified as true and correct by the superintendents and approved by the presidents of the boards of managers.

Art. 131. [109] [88] **Funds from outside sources, how disposed of.**—All funds of every character received into or belonging to the asylums, other than the sums of money appropriated for their support from time to time by the legislature, shall, as soon as received, be paid over to the state treasurer by

the superintendents or other persons receiving it; and the treasurer shall keep the same separate and apart from all other funds in his hands, and shall pay the same out only on the order of the superintendents, approved by the presidents of the boards of managers.

Art. 132. [110] [89] **Requisites of the order.**—The order mentioned in the preceding article shall specify on its face the purpose for which it is drawn and shall be deemed a sufficient voucher for the payment of the amount of money therein specified. [R. S. 1879, p. 89.]

Art. 133. [111] [90] **Duties of the treasurer.**—The treasurer of the state shall keep an exact account of the moneys received by him belonging to the asylums, from what source received, and to whom paid out and on what account; and to each annual report that he may be required to make by law to the governor or the legislature, he shall append a full report of his account with the asylum, showing the receipts and expenditures thereof for the year for which such report is made. [R. S. 1879, p. 90.]

4. ADMISSION AND DISCHARGE OF PATIENTS.

Art. 134. [112] [91] **Who may be admitted.**—The following persons may be admitted into the asylums as patients:

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

2. All persons who may be certified to be insane by some respectable physician, under the regulations hereinafter prescribed. This class shall be known as private patients. [Act Feb. 5, 1858, p. 117, sec. 13; P. D. 125.]

Art. 135. [113] [92] **Procedure for admission of private patients.**—Before any person can be received as a patient under paragraph 2 of the preceding article, the parent or legal guardian of such person, or, in case he has no parent or legal guardian, then some near relative or other person interested in him must present a written request to the superintendent for his admission, setting forth the name, age and residence of the lunatic, together with such other particulars as may be required by the superintendent or the by-laws of the institution; which written request must be under oath of the party presenting it, and be accompanied with the affidavit of the physician certifying to the insanity that he has made careful examination of the person for whom admission is applied for and verily believes him to be insane. [Id.]

Art. 136. [114] [93] **County judge must certify.**—The application referred to in the preceding article must also be accompanied by a certificate from the county judge of the county where the lunatic resides that the physician certifying to the insanity of the person is a respectable physician in regular practice, which certificate of the county judge must be attested by the seal of the county court of his county. [Id.]

Art. 137. [115] [94] **Indigent patients at state expense.**—All indigent public patients shall be kept and maintained at the expense of the state. [Acts Aug. 15, 1876, p. 139, sec. 4.]

Art. 138. [116] [95] **Public patients also, but state may be reimbursed.**—All public patients not indigent shall be kept and maintained at the expense of the state in the first instance, but in such cases the state shall be entitled to reimbursement in the mode pointed out in articles 158 and 159 of this chapter.

Art. 139. [117] [96] **Private patients at their own expense.**—All private patients shall be kept and maintained at the asylum at their own expense or the expense of their relatives or friends; and for the board of such patients, the superintendent may make a special contract at a rate of not less than five dollars per week; and, at the time of the admission of any such patient into

the asylum, his board must be paid in advance for six months, and bond and security given for the prompt payment of all future expenses of such patient as may from time to time be required by the by-laws of the institution. [Act Feb. 5, 1858, pp. 117-18, sec. 13; P. D. 125; act Aug. 15, 1876, p. 140, sec. 9.]

Art. 140. [118] [97] **Preferences in admission.**—If application be made for the admission of more patients than can be accommodated in the asylum, preference shall be given, in all instances, to public over private patients, and, of the former class, to cases of less than one year's duration over chronic cases, and to indigent patients over others possessed of property; and no private patients shall be admitted during pendency of an application by a public patient, nor shall any public non-indigent patient be admitted during the pendency of an application by an indigent public patient. [Acts of 1883, p. 105.]

Art. 141. [119] [98] **Idiots, etc., not to be admitted.**—No idiot who can be safely kept in the county to which he belonged, nor any person laboring under a contagious or infectious disease, shall be received into the asylum as a patient. [Act Feb. 5, 1858, p. 117, sec. 12, P. D. 124.]

Art. 142. [120] [99] **Discharge of patients.**—Any patient, except such as are charged with, or convicted of, some offense, and have been adjudged insane in accordance with the provisions of the Code of Criminal Procedure, may be discharged from the asylum at any time upon the recommendation of the superintendent, approved by the board of managers. Any patient coming within the above exception can only be discharged by order of the court by which he was committed. [Act Feb. 5, 1858, p. 118, secs. 11, 15; 127; P. D. 128.]

Art. 143. [121] [100] **Same subject.**—No patient shall be discharged without suitable clothing and sufficient money to pay his necessary expenses home; and, when a patient is discharged uncured, he shall be provided with a suitable guard and conveyed to his friends or to the county from which he was sent. [Act Feb. 5, 1858, p. 118, sec. 16; P. D. 128.]

Art. 144. [122] [101a] **Insane discharged convict, proceedings as to.**—When a convict shall be discharged from one of the state penitentiaries, and is insane at the time of his discharge, and it shall be adjudged by a court of competent jurisdiction within thirty days after his discharge that said convict is insane and that he should be placed under restraint, he shall be delivered to the superintendent of the penitentiaries, or to one of the assistant superintendents of the penitentiary, to be conveyed to one of the lunatic asylums of this state by said superintendent, or under his direction; and the expenses incurred in said adjudication and in keeping and conveying such patient to the asylum, including such clothing as shall be necessary for his comfort, shall be paid by the state upon the certificate of the superintendent of the penitentiary. [Acts of 1895, p. 164.]

Art. 145. [123] [101] **County to pay expenses of conveying public patients.**—The expenses of conveying all public patients to the asylum shall be borne by the counties, respectively, from which they are sent; and said counties shall pay the same upon the sworn account of the officer or person performing such service, showing in detail the actual expenses incurred in the transportation. [Act Aug. 15, 1876, p. 140, sec. 6.]

Art. 146. [124] [102] **County to be reimbursed, when.**—In case any public patient is possessed of property sufficient for the purpose, or any person legally liable for his support is so possessed of property, the county paying the expenses of such transportation shall be entitled to reimbursement out of the estate of the lunatic or the property of the person legally liable for his support, which may be recovered by the county in an ordinary action in any court of competent jurisdiction.

Art. 147. [125] [103] **Transportation home by the state.**—The expense of conveying to their homes public patients discharged from the asylums, and the

necessary clothing furnished to them at the time of their discharge, shall be paid by the state. [Act Aug. 15, 1876, p. 140, sec. 6.]

Art. 148. [126] [104] **Escape from asylum.**—If any person confined in the asylum shall escape therefrom, it shall be the duty of any sheriff or peace officer to apprehend and detain him and to report the same to the county judge of the county, and also to the superintendent of the asylum, and upon the order of either to convey such patient back to the asylum. [Act Feb. 5, 1858, p. 119, sec. 22; P. D. 133.]

Art. 149. [127] [105] **Fees for conveying patient back.**—Any officer who may convey a patient to the asylum in accordance with the provisions of the preceding article shall be paid for such service out of the funds of the asylum, at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning, and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route. [Act Feb. 5, 1858, pp. 119-20, sec. 22; P. D. 134.]

5. JUDICIAL PROCEEDINGS IN CASES OF LUNACY.

Art. 150. [128] [106] **Apprehension of lunatics.**—If information in writing and under oath be given to any county judge that any person in his county is a lunatic, or non compos mentis, and that the welfare of himself or of others requires that he be placed under restraint, or that such lunatic is a convict confined in the state penitentiary, and such county judge shall believe such information to be true, he shall forthwith issue his warrant for the apprehension of such person, or, upon the filing of such complaint before any justice of the peace, said justice may issue the warrant for the apprehension, returning said complaint and warrant to said county judge; and said county judge shall fix a day and place for the hearing and determining of the matter, which place shall be either in the court house of the county or at the residence of the person named, or at the state penitentiary, if he be a state convict, as the county judge may deem best for such person. [Acts 1903, p. 236; acts 1899, p. 172; acts 1876, p. 138.]

Art. 151. [129] [107] **The writ and its requisites.**—The warrant provided for in the preceding article shall run in the name of the "State of Texas," shall be directed to the sheriff or any constable of the county; and the officer receiving it shall forthwith take into custody the person named therein, and at the designated time and place have him before the county judge for trial and examination. [Id.]

Art. 152. [130] [108] **Jury to be summoned.**—At the time of issuing the warrant mentioned in the preceding article the county judge shall also issue an order to the sheriff or constable, directing him to summon a jury of six competent jurors of the county, to be and appear before such judge at the time and place designated in said order, for the hearing and determination of the matter. [Id.]

Art. 153. [131] [109] **Cause to be docketed, etc.**—The cause shall be docketed on the probate docket of the court in the name of the state of Texas as plaintiff, and of the person charged to be insane as defendant. The county attorney shall appear and represent the state on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the county judge may appoint counsel for that purpose. [Act Aug. 15, 1878, p. 138, sec. 1.]

Art. 154. [132] [110] **Jury impaneled and sworn.**—At the time appointed for the hearing, or at any other time to which the proceeding may have been postponed, the cause shall be called for trial and a jury of six men impaneled, to whom shall be administered the following oath:

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

Art. 155. [133] [111] **Special issues to be submitted.**—After the evidence is heard the county judge shall submit the matter to the jury upon the following special issues:

1. Is A B, the defendant, of unsound mind?
2. If the defendant is of unsound mind, is it necessary that he should be placed under restraint?
3. If you answer both the foregoing questions in the affirmative, then what is the age and nativity of the defendant?
4. How many attacks of insanity has he had, and how long has the present attack existed?
5. Is insanity hereditary in the family of defendant or not?
6. Is defendant possessed of any estate, and, if so, of what does it consist and its estimated value?
7. If the defendant is possessed of no estate, are there any persons legally liable for his support? If yea, name them. [Act Aug. 15, 1876, p. 138, secs. 1-2.]

Art. 156. [134] [112] **Verdict.**—The jury shall return plain answers in writing to the issues named in the preceding article, but, if they find either the first or second issue in the negative, they need not determine further, and the defendant shall be discharged.

Art. 157. [135] [113] **Judgment.**—Upon return of a verdict finding that the defendant is of unsound mind, and that it is necessary that he be placed under restraint, judgment shall be entered adjudging the defendant to be a lunatic, and ordering him to be conveyed to the lunatic asylum for restraint and treatment.

Art. 158. [136] [114] **Reimbursement to the state from lunatics not indigent.**—The special issues submitted to the jury, with the answers thereto, shall be incorporated in the judgment, and, if it be found that the defendant is possessed of property, or that some other person is legally liable for his support, the county judge may, from time to time, upon request of the superintendent of the lunatic asylum, cite the guardian of such lunatic, or other person legally liable for his support, to appear at some regular term of the county court for civil business, then and there to show cause why the state should not have judgment for the amount due it for the support and maintenance of such lunatic; and, if sufficient cause be not shown, judgment may be entered against such guardian or other person for the amount found to be due the state, which judgment may be enforced as in other cases.

Art. 159. [137] [115] **Limitation as to amount and procedure.**—The state, in cases provided for in the preceding article, shall in no instance recover more than five dollars per week for the support of any lunatic, and the certificate of the superintendent of the lunatic asylum as to the amount due shall be sufficient evidence to authorize the court to render judgment.

Art. 160. [138] [116] **County attorney to represent state.**—The county attorney shall appear and represent the state in all cases provided for in the two preceding articles.

Art. 161. [139] [117] **Warrant to convey lunatic to asylum.**—Immediately after any person is adjudged a lunatic, the county judge shall communicate with the superintendent of the asylum, and, if notified by the latter that there is a vacancy in the institution or that the patient can be accommodated, he shall issue his warrant to the sheriff or some other suitable person, directing him to convey the lunatic to the asylum without delay, which warrant shall prescribe the number of guards to be allowed, in no case to exceed

two, and shall be executed with all convenient dispatch. [Act Aug. 15, 1876, p. 139, sec. 3.]

Art. 162. [140] [118] **Relative or friend may give bond, etc.**—No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint, and will execute a bond in a sum to be fixed by the county judge, payable to the state, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues, or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law; which bond shall be filed with, and constitute a part of, the record of the proceedings, and may be sued and recovered upon by any party injured, in his own name. [Act Aug. 15, 1876, p. 138, sec. 1.]

Art. 163. [141] [119] **Record made up and forwarded.**—The proceedings in any inquisition of lunacy shall be entered of record in the probate minutes of the county court by the clerk thereof; and before any patient is sent to the asylum the county judge shall cause a complete transcript of the proceedings to be made up and certified by the clerk of the county court under the seal of said court, which transcript he shall forward by mail to the superintendent of the asylum. [Act Aug. 15, 1876, pp. 138-9, secs. 1, 3.]

Art. 164. [142] [120] **Suitable clothing to be provided.**—Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing. [Act Aug. 15, 1876, p. 139, sec. 3.]

Art. 165. **Fees of officers in lunacy cases.**—In judicial proceedings in cases of lunacy, as prescribed in this chapter, in each case the sheriff and county clerk shall be allowed the same fees as are now allowed said officers for similar services in misdemeanor criminal cases, the county attorney shall be allowed a fee of five dollars, provided, that such fees shall be allowed only when a conviction is obtained; said costs to be paid out of the estate of the defendant, if he shall have an estate sufficient therefor, otherwise said costs shall be paid out of the county treasury; and the jurors in such cases shall be allowed fifty cents each, to be paid out of the county treasury. Justices of the peace who may take complaints, issue warrants and subpoenas in such lunacy cases, shall receive the same fees as are now allowed them by law for taking complaints, issuing warrants and subpoenas in criminal misdemeanor cases. Constables shall receive for executing warrants and serving subpoenas in lunacy cases the same fees as are now allowed them by law for similar services in criminal misdemeanor cases; such fees to be paid upon conviction out of the estate of the defendant, if he shall have an estate sufficient therefor, otherwise the same shall be paid by the county upon an account approved by the county judge. [Acts 1903, p. 110.]

CHAPTER TWO.

PASTEUR HOSPITAL.

	Article.		Article.
Admission of patients; requirements as to	166	Laws, etc., same as those of institutions with which connected.....	168
Indigent and non-indigent patients, expenses, how met.....	167	Fees of non-indigent patients, used how.....	169
		Additional compensation to assistant physician	170

Article 166. **Admission of patients; requirements as to.**—Any person affected with hydrophobia within this state shall be admitted to the Pasteur Hospital or department for the treatment of hydrophobia, in connection with and under the management of the state lunatic asylum located at Austin, such admission to be upon the certificate of a practicing physician and the recommendation of the county judge of any county in this state. [Acts 1903, p. 195.]

Art. 167. **Indigent and non-indigent patients, expenses, how met.**—All indigent patients shall be treated and maintained at the expense of the state; but all non-indigent patients shall be kept and maintained at said hospital at their own expense, or that of the relative, friends or guardians. [Acts 1903, p. 195; acts 1907, p. 320, sec. 2.]

Art. 168. **Laws, etc., same as those of institution with which connected.**—Laws pertaining to the introduction and control of said patients shall be the same as those applying to the institution with which said hospital is connected. [Id. sec. 3.]

Art. 169. **Fees of non-indigent patients used, how.**—All fees collected from non-indigent patients shall be used as the board of managers and superintendent may direct for the support and maintenance of said hospital. [Id. sec. 3.]

Art. 170. **Additional compensation to assistant physician.**—The board of managers and superintendent may allow such additional compensation, not to exceed two hundred and fifty dollars per annum, to the assistant physician who does the work of this department, out of such fees collected as may be justified by the extra amount of labor required of said assistant. [Id. sec. 3.]

CHAPTER THREE.

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

	Article.		Article.
1. General Provisions.		Superintendent's term of office, duties, etc.	206
a. Board of Trustees.		Secretary to superintendent; appointment, duties, compensation, etc.	207
Boards of trustees	171	Applications for admission, etc.	208
Boards, how appointed and constituted	172		
Organization of the boards	173	e. Deaf, Dumb and Blind Asylum for Colored Youths.	
Meetings of the boards	174	Qualifications and term of office of the superintendent for the asylum for colored youths	209
Powers of the boards	175	Powers and duties of board of trustees, and regulations for asylum	210
May make requisition for improvements, etc.	176		
Statement and itemized account to be filed with comptroller	177	f. Epileptic Colony.	
Duplicate receipts to be taken	178	Asylum established and name	211
Reports of the trustees	179	Managers appointed by the governor, powers	212
Compensation of trustees	180	Support and management	212
Superintendent, appointment and term of office	181	Who admitted to colony	213
Oath and bond	182	Transfer of epileptics from insane asylums	214
Removal of superintendent	183	Transfer of transcripts and histories	215
Powers of superintendent	184	Transportation, etc., expenses, how paid	216
Same subject	185	Classification of transferred patients	217
Reports of receipts and expenditures	186	Classification of patients admitted	218
Reports of superintendent	187	Indigent public patients defined; supported by state	219
2. Particular Provisions.		Non-indigent public patients defined; maintained by state, but reimbursement; suit; duties of county attorney and superintendent	220
a. Blind Asylums.		Private patients admitted how; maintained at own expenses or that of relatives, etc.; contract and terms	221
Appointment of oculist and qualifications	188	Application for admission of public patients; requisites	222
Removal of oculist	189	Certificates to accompany application; requisites	223
b. Deaf and Dumb Asylum.		County judge's duty if not satisfied	224
Pupils to learn printing	190	County judge's duty if applicant appears entitled	225
Instructor, how appointed	191	Where applicant appears not indigent	226
His salary and removal	192	Compensation of county judge	227
Public printing at asylum	193	Patients to be received when there is room; preference to indigents and to public patients	228
Provisions for all deaf, dumb and blind children	194	Nothing to be supplied patients	229
Who to apply for	195	Clothing and transportation of indigent patients paid by county; that of non-indigents by them	230
c. Orphan Asylum.		Clothing, etc., non-indigent to pay for	231
Designation of institution	196	Escort, pay of	231
Superintendent appointed, how; duties	197	Object of colony	232
Industrial manager, appointed how; duties and salary	198		
Children admitted, when	199		
List of children to be made, etc.	200		
Child removed from, how	201		
Salary of superintendent	202		
Matron's salary, etc.	203		
Board to dispose of artesian water	204		
d. Confederate Home.			
Board of trustees, term of office, duties, etc.	205		

Article 171. [143] [121] **Board of trustees.**—The general control, management and direction of the affairs, property and business of the blind asylum, the deaf and dumb asylum, the orphan asylum, the Confederate home, the deaf, dumb and blind asylum for colored youths, and the epileptic colony, shall be vested in a board of trustees for each, to be styled, the board of trustees of said several asylums. The provisions of this chapter shall apply to each of said asylums, except where they conflict with special provisions relating to particular asylums.

Art. 172. [144] [122] **Boards, how constituted.**—The governor shall appoint a board of trustees for each, consisting of five members each, who shall hold their office for two years, or until their successors are appointed and qualified; and, whenever a vacancy occurs in said board, it shall be filled by the governor, and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. The appointment

of said board shall be by and with the advice and consent of the senate. [Acts of 1883, p. 109.]

Art. 173. [145] [123] **Organization of the boards.**—Each board of trustees shall choose one of its members as president; and the superintendent of the asylum to which it pertains shall be *ex officio* the secretary of the board, and shall keep a true record of all its acts and proceedings. A majority of each board shall constitute a quorum for the transaction of any business.

Art. 174. [146] [124] **Meetings of the boards.**—The boards of trustees shall hold monthly meetings at their respective asylums, and at such other times as they may be called together by their president, or the by-laws of the institution may prescribe. [Acts 1905, p. 47.]

Art. 175. [147] [125] **Powers of the boards.**—The boards of trustees shall have power—

1. To examine and pass upon all accounts and expenditures of the superintendent, and to approve or disapprove the same.

2. To make all contracts and necessary arrangements for the erection of any buildings, or the making of any improvements, upon the grounds of the asylum. [Act March 6, 1875, p. 66, sec. 2.]

Art. 176. [148] [126] **May make requisition for improvements, etc.**—All moneys appropriated by the legislature for the erection of buildings, or the making of improvements upon the grounds of an asylum, shall be subject to requisition by the board of trustees of such asylum, for the amount actually necessary to pay for such building or improvements; but no money shall be paid except it be upon estimate of completed work, furnished by the contractor, and approved by the architect and board of trustees; provided, that in no case shall more than three-fourths of the actual cost of building or improvements be paid until the work is completed and accepted. [Acts 1875, p. 66; acts 1899, p. 318.]

Art. 177. [149] [127] **Statement and itemized account to be filed with comptroller.**—In cases provided for in the preceding article, the board of trustees shall file with the comptroller a statement of the work done, together with an itemized account of the cost of the same, and thereafter the comptroller shall draw his warrant upon the treasurer, in favor of such board of trustees, for the amount specified. [Act March 6, 1875, p. 66.]

Art. 178. [150] [128] **Duplicate receipts to be taken.**—The board of trustees shall take receipts in duplicate for all moneys paid out under the two preceding articles, one of which shall be filed with the comptroller of public accounts. [Id.]

Art. 179. [151] [129] **Reports of the trustees.**—On the first of January of each year, the board of trustees shall report in writing to the legislature the general operations of their respective asylums for the past two years, and accompany the same with such suggestions as they may deem important to the welfare of the institution. [Acts of 1883, p. 103.]

Art. 180. [152] [130a] **Compensation of trustees.**—The members of the respective boards of trustees shall be paid five dollars each per day and mileage at the rate of three cents per mile, in going to and returning from their respective asylums, for their services in attending the monthly meetings provided for in article 174; provided, that no member shall draw pay for said monthly meetings, unless he shall have actually attended said meeting; and provided, further, that no member can draw pay under this article for more than one day's attendance upon said monthly meeting; and the certificate of the president of the board, approved by the superintendent, shall be sufficient evidence upon which the comptroller can draw a warrant upon the treasurer

of the state to pay the amount provided for in this article. [Acts 1905, p. 47; acts 1883, p. 103.]

Art. 181. [153] [130] **Superintendent, appointment and term of office.**—The board of trustees of each of said asylums, respectively, shall elect a superintendent of each of said asylums, who shall hold his office for the period of two years. Each of said superintendents shall have had special advantages and practical experience in the management of the persons committed to his charge by virtue of his appointment. [Acts of 1883, p. 103.]

Art. 182. [154] [131] **Oath and bond.**—The superintendent of each of said asylums shall, within twenty days after notification of his appointment, enter into bond in the sum of ten thousand dollars, payable to the state, with two or more good and sufficient sureties to be approved by the governor, conditioned for the faithful performance of all the duties of said office; and he shall also take the oath prescribed by the constitution, which oath and bond shall be filed in the office of the secretary of state. [Id.]

Art. 183. [155] [132] **Removal of superintendent.**—The board of trustees of each of said asylums shall have power to remove the superintendent for good cause only. [Id.]

Art. 184. [156] [133] **Powers of superintendent.**—The superintendent shall be the administrative head of the asylum for which he is appointed, and shall have the power—

1. To establish such rules and regulations for the government of the institution as, in his judgment, will best promote the interest and welfare of all who may be placed in his charge.

2. Where not otherwise provided by law, to appoint the subordinate officers, the necessary number of teachers and all other employes, and, subject to the approval of the board of trustees, to fix their salaries.

3. To remove at his discretion any officer, teacher or employe who does not discharge his duty, or whose conduct may be such as to endanger the morals of the pupils or the best interests of the asylum. [Act March 6, 1875, p. 67, secs. 4, 5.]

Art. 185. [157] [134] **Same subject**—The superintendent shall also have the care and custody of the buildings, grounds, furniture and other property pertaining to the asylum, and shall act as the general financier and purchasing agent of the asylum for all supplies not furnished by contract in accordance with the provisions of chapter one of title 125. [Id.]

Art. 186. [158] [135] **Report of receipts and expenditures.**—At each regular meeting of the board of trustees, the superintendent shall present an itemized account of all receipts and expenditures by him on account of the asylum, which account shall be verified by his own affidavit; and for any expenses other than the supplies provided for in chapter one of title 125, the comptroller shall not draw his warrant upon the treasurer, unless the account upon which such warrant is drawn is certified as correct and just by the superintendent and is approved by the president of the board of trustees. [Id.]

Art. 187. [159] [136] **Reports of superintendent.**—On the first days of January and July of each year, the superintendent of each asylum shall report to the governor, under oath, a full statement of all moneys and choses in action received by him and disbursed or otherwise disposed of; and, on the first day of November of each year, he shall make his annual report to the governor, showing in detail the operations of the institution for the year, accompanied with such suggestions and recommendations as he may deem important to the well being of the institution over which he presides. [Const., Art. 4, sec. 24.]

2. PARTICULAR PROVISIONS.

a. Blind Asylum.

Art. 188. [160] [137] **Appointment of oculist and qualifications.**—The board of trustees and the superintendent shall appoint an oculist for the blind asylum, who shall be skilled in his profession and a married man, and who shall attend regularly at the asylum and administer treatment to all cases of blindness among its pupils deemed curable. [Acts of 1883, p. 109; amend. 1895, Sen. Jour., p. 478.]

Art. 189. [161] [138] **Removal of oculist.**—The oculist shall hold his office for the period of two years, and the board of managers and the superintendent may remove him for good cause only. [Id.]

b. Deaf and Dumb Asylum.

Art. 190. [162] [139] **Pupils to learn printing.**—A certain number of the pupils at the deaf and dumb asylum, to be designated by the superintendent and trustees of that institution, shall each year receive instruction in the art of printing in all its branches; and the studies of such pupils shall be so arranged as not to interfere with such instruction and the execution of any public printing by them for the state. [Act March 13, 1875, pp. 91-2, secs. 1,2.]

Art. 191. [163] [140] **Instructor, how appointed.**—The board of public printing shall employ some competent practical printer as instructor at said asylum in the art of printing; and the person so employed shall, in addition, discharge such other duties as may be required of him by such board. [Id. sec. 1.]

Art. 192. [164] [141] **His salary and removal.**—The instructor provided for in the preceding article may be paid a compensation not to exceed one thousand dollars annually, and may be discharged at any time by the board of public printing. [Id.]

Art. 193. [165] [142] **Public printing at asylum.**—Any public printing for the state may be executed at the deaf and dumb asylum without regard to any contract with an individual to do the public printing thereof. [Id.; act June 27, 1876, p. 35, sec. 7.]

Art. 194. **Provision for all deaf, dumb, and blind children.**—The superintendent of the deaf and dumb asylum is hereby authorized and directed to make such provision as he may deem necessary for the maintenance, care and education of all children in the state who are deaf, dumb and blind. [Acts 1901, S. S., p. 20.]

Art. 195. **Who to apply to.**—Application for the maintenance, care and education of all such children shall be made by the parent or guardian of such child, or children, to the superintendent of the deaf and dumb asylum, under such rules as may be prescribed by him; provided, said children shall be placed in a reputable school established for the purposes herein mentioned. [Id.]

c. Orphan Asylum.

Art. 196. [166] **Designation of institution.**—This institution shall be known as the state orphan home or asylum. [Acts 1887, p. 129; acts 1899, p. 303.]

Art. 197. [166] **Superintendent appointed how; duties.**—The board of trustees of the orphan asylum shall appoint a superintendent for said home or alsyum, upon the nomination of the governor, whose duties of office shall be the supervision of the affairs of said home or asylum, under the direction of the board of trustees. [Id.]

Art. 198. [166] **Industrial manager, appointed how; duties, salary.**—The said board shall also elect an industrial manager for said home or asylum, whose duties and salary shall be prescribed by the board of trustees, subject to legislative appropriation, not to exceed fifteen hundred dollars. [Id.]

Art. 199. [167] **Children admitted, when.**—Said board shall admit all children under the age of fourteen years, subject only to such restrictions as they may deem requisite to the welfare and good government of said asylum. [Acts 1887, p. 129.]

Art. 200. [168] **List of children to be made, etc.**—In addition to the other duties of said superintendent, he shall keep a carefully prepared list containing the names and ages of each and every child, as well as such other data concerning the history of said children as the board of trustees may prescribe, said lists to be recorded in a well bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver over to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are provided with proper educational facilities. He shall promptly answer all inquiries, by correspondence or otherwise, concerning the orphans under his charge, and promptly inform the board of trustees when an opportunity is presented to secure a good and permanent home for any child under his charge. [Id.]

Art. 201. [169] **Child removed from, how.**—No person shall be permitted to remove a child from said asylum except under such lawful rules and regulations as the board of managers may adopt; and in no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption. [Id.]

Art. 202. [170] **Salary of superintendent.**—The superintendent of said home or asylum shall receive such salary each year as may be provided by the board of trustees, subject to legislative appropriation, not to exceed one thousand dollars. [Acts 1899, p. 304. Acts 1887, p. 129.]

[Note.—See appropriation bill, Acts 1909, p. 495.]

Art. 203. [171] **Matron's salary, etc.**—There shall be a matron of said asylum to be chosen by the superintendent, with the consent of the board of trustees, whose salary shall not exceed forty-five dollars per month. [Acts 1887, p. 129.]

Art. 204. [171a] **Board to dispose of artesian water.**—The board of trustees of the state orphans home, situated at Corsicana, Texas, are hereby authorized and empowered to sell, lease or dispose of the surplus water belonging to the state, and flowing from the artesian well on the grounds of said orphans home, for such price and upon such terms and conditions as the said board may deem best; provided, that the term of said lease shall not exceed ten years. [Acts 1895, p. 15.]

d. Confederate Home.

Art. 205. [172] **Board of trustees, term of office, duties, etc.**—The governor shall appoint a board of trustees of five ex-confederate soldiers for the management of said home, said trustees to remain in office two years, or until their successors are appointed and qualified; and they shall be governed in their regulations of the affairs of said home by the laws now in existence relative to the deaf, dumb and blind institutions of this state, so far as the same may be applicable, and shall make and prescribe such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce obedience to and compliance with said rules and regulations by discharging from the home, if in

its judgment it be necessary, any inmate who may violate said rules and regulations; and said board shall be required to make such examinations from time to time as it may deem necessary, as to the qualifications and record as a soldier in the confederate army or navy of any inmate, and to discharge at once any said inmates who procured admission to the home by fraud or misrepresentation; and said board shall, every three months, cause to be examined by a board of physicians, consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician, or by any member of the board of trustees, as to the physical condition of such inmate, and, if it be shown from said examination and report of said examining board that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all the rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examinations shall be selected by the board of trustees; and they shall be paid for such service two dollars and fifty cents each for each examination made by them; and that said board of managers shall also have charge of all the property received from the John B. Hood camp confederate veterans, or from any other source, for the maintenance of said home. Said board of trustees shall make annual reports to the governor on the first day of each December, embracing a full statement of all expenditures and transactions of the institution for the fiscal year next preceding. They shall visit the home at least once each month. [Acts 1891, p. 14; and 1895, p. 42.]

Art. 206. [173] Superintendent's term of office, duties, etc.—The said board of trustees shall appoint a superintendent, who shall be an ex-confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of the same, and its general management, under the direction of the board of trustees. He shall be under the control of and subject to removal (for cause, duly spread upon the records of said home) by said board, and unless sooner removed by said board, for cause, shall hold his office for the term of two years, or until his successor shall be appointed and qualified.

In addition to his other duties he shall keep in a book prepared for that purpose the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity, in which the military service was performed, and the state from which he entered the service, and such other data concerning the history of the inmates as the board of trustees may prescribe. The superintendent of said home shall receive a salary of fifteen hundred dollars per annum. [Id.]

Art. 207. Secretary to superintendent; appointment, duties, compensation, etc.—The superintendent of said home shall be authorized to employ one clerk or secretary, who shall keep the books of the institution and discharge such other duties as may be required of him by the superintendent. He shall be furnished board and lodging similar to other employes of the home, and receive as compensation for his services the sum of seven hundred and twenty dollars per annum, to be paid from any money in the state treasury not otherwise appropriated. [Acts 1903, p. 54.]

Art. 208. [174] Applications for admission, etc.—All applications for admission to said home must show on the oath of applicant—

1. Name of applicant.
2. His age.

3. His residence (county and postoffice address).
4. The company, regiment, brigade and army in which he served.
5. That he is disabled and indigent, and is not receiving a pension from any source, and is now a bona fide citizen of Texas. And further (if he did not serve in a Texas command) that he was a bona fide resident of Texas on January 1, 1895. Proof of the honorable service of applicant, as stated by himself, must be made by affidavit of two reputable persons, or by his written discharge, duly authenticated with sufficient proof of identity, or such other proof in manner and form as may be entirely satisfactory to the board of trustees. The application must also be accompanied by a certificate of a regular practicing physician that the applicant is unable to provide a support for himself, giving the character of the disability, and that the applicant is not a lunatic, and is not afflicted with any contagious or infectious disease. All applications for admission to said home shall be referred to and passed upon by the board of trustees. [Id.; amend., 1895, p. 42.]

e. Deaf, Dumb and Blind Asylum for Colored Youths.

Art. 209. [175] **Qualification and term of office of the superintendent for the asylum for colored youths.**—The board of trustees of this asylum shall appoint a superintendent of said asylum, whose salary shall be fifteen hundred dollars per year. Said superintendent shall be a man of mature years and experience and familiar with the duties of the position to which he may be elected. He shall be under the control of, and subject to removal, by said board, and, unless sooner removed by said board for cause, shall hold his office for a term of two years. [Acts of 1887, p. 150.]

Art. 210. [176] **Powers and duties of board of trustees, and regulations for asylum.**—The board of trustees shall make all necessary rules and regulations for the government of said asylum, said rules and regulations to conform as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this state. Said board of trustees shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation; but said rules, appointments, and compensation shall not be in force until approved by the governor. The admission of all applicants to said asylum, their treatment, instruction, and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein or thereabout, shall be governed by the rules and regulations of the state asylums for white youths for the deaf and dumb and blind. [Id.]

f. Epileptic Colony.

Art. 211. **Asylum established, and name.**—There shall be built, established and maintained a branch asylum for the care, treatment and support of the epileptic insane of the state, and such other insane persons as it may become necessary from time to time to confine and treat in said asylum. Said branch asylum shall be known as the epileptic colony. [Acts 1899, p. 4, sec. 1.]

Art. 212. **Managers appointed by governor, powers.**—The governor shall appoint a board of trustees for said branch asylum, with such powers and duties as are provided in this title. [Id. sec. 5.]

Support and management.—The support and general management of said asylum shall be the same as is now provided for other branch asylums of the state. [Id. sec. 6.]

Art. 213. **Who admitted to colony.**—All persons afflicted with epilepsy, who shall have been bona fide residents of this state for one year next preceding the filing of his application with the county judge, as herein provided,

shall be admitted into the epileptic colony under the provisions of this subdivision with the following exceptions:

1. Idiots and imbeciles who are afflicted with epilepsy.
2. Those who are infirm and bedridden, or suffering from contagious or infectious disease.

By the terms idiot and imbecile are meant children or persons who, by arrest of development before or soon after birth, have but little or no mind. [Acts 1903, p. 163.]

Art. 214. Transfer of epileptics from insane asylums.—All epileptics, with the above exceptions, confined in the three insane asylums when the epileptic colony is ready for occupancy shall at once be transferred to the colony. When any person is admitted to any of the insane asylums, and it shall be found that such person is an epileptic, he shall at once be transferred to the epileptic colony. [Id. sec. 2.]

Art. 215. Transfer of transcripts and histories.—It shall be the duty of the superintendents of the insane asylums to transmit to the superintendent of the epileptic colony all transcripts of legal proceedings and histories of all epileptics transferred, which they may have in their possession. [Id., sec. 2.]

Art. 216. Transportation, etc., expenses, how paid.—The expense of the transportation of all patients and necessary attendants transferred from the insane asylums to colony shall be paid out of the appropriation for the support and maintenance of the colony. [Id., sec. 2.]

Art. 217. Classification of transferred patients.—All patients so transferred shall be received in the epileptic colony as of the class in which they were admitted into the insane asylums; that is, as indigent public patients, public patients not indigent, or private patients. [Id., sec. 2.]

Art. 218. Classification of patients admitted.—Patients admitted to the epileptic colony shall be of three classes, viz.:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients. [Id., sec. 3.]

Art. 219. Indigent public patients defined; supported by state.—Indigent public patients are those who possess no property of any kind, nor have any one legally liable for their support and able to reimburse the state. This class shall be supported entirely at the expense of the state. [Id., sec. 3.]

Art. 220. Non-indigent public patients defined; maintained by state, but reimbursement; suit; duties of county attorney and superintendent.—Non-indigent public patients are those who possess some property, out of which the state may be reimbursed, or who have some one legally liable for their support and able to reimburse the state. This class shall be kept and maintained at the expense of the state in the first instance; but in such cases the state shall have the right to be reimbursed for the support of such patients, and the claim of the state for such support shall constitute a valid indebtedness against any such patient, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto, as herein aforesaid, and such claim may be collected by suit or other proceedings in the name of the state by the county attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support, as the case may be; such suit or proceeding to be instituted upon the request in writing of the superintendent of the colony, accompanied by his certificate as to the amount due the state, which shall in no case exceed five dollars per week. In all such suits or proceedings the certificate of the superintendent shall be sufficient evidence of the amount due the state for the support of such patient. It shall be the duty of the county attorney, upon such request being made, to institute and conduct such suit or proceedings, and for which he

shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected, less the commission above provided, shall be by the county attorney paid into the state treasury, and placed in the general funds. [Id. sec. 3.]

Art. 221. Private patients admitted how; maintained at own expense or that of relatives, etc., contract and terms.—Private patients may be admitted into said colony upon application of parent, guardian, or friend, under such regulations as the board of managers and superintendent may prescribe, not in conflict with the provisions of this subdivision. Such patients shall be kept and maintained at the colony at their own expense, or at the expense of their guardian, relatives, or friends, and, for the board and care of such patients, the superintendent may make a special contract at a rate not less than five dollars per week; and at the time of the admission of any such patient into the colony his board must be paid in advance for six months and bond and security given for the prompt payment of all future expenses of such patient, as may from time to time be required by the rules and regulations of the colony. All moneys so collected shall be paid directly into the state treasury and placed in the general fund. [Id., sec. 3.]

Art. 222. Application for admission of public patient; requisites.—The parent, guardian, or friend of any epileptic, not seeking admission as a private patient, may make application in writing and under oath to the county judge of the county wherein such epileptic resides, for the admission of the epileptic into the epileptic colony, which application shall show, (1) the name of the epileptic, (2) sex, (3) age and nativity, (4) whether possessed of any property, and if so, what, and the estimated value thereof, (5) whether the epileptic has any one legally liable for his support, if so, whom, what property possessed by such person, and the estimated value thereof, (6) residence of the epileptic for the year next preceding the date of application, (7) occupation, trade or employment, (8) parent or parents, if living, or guardian, if any, (9) name of husband or wife, if any, (10) children, if any, number, age and sex, (11) relatives similarly affected, insane, inebriate, consumptive or criminal. [Id., sec. 4.]

Art. 223. Certificates to accompany application; requisites.—Said application shall be accompanied with a certificate of a reputable practicing physician, stating that he has carefully examined the person for whose admission application is made and that such person is afflicted with epilepsy, and which certificate shall also show, (1) the age of the epileptic at first attack, (2) the date of the last attack, (3) physical condition, (4) accompanying bodily disorders; and it shall be the duty of the county judge to certify that the physician making this certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this state granting license to physicians to practice medicine. [Id., sec. 5.]

Art. 224. County judge's duty if not satisfied.—If the county judge is not satisfied as to the showing made in said application and certificate, or either, he may subpoena witnesses and examine them under oath touching such matters. [Id., sec. 6.]

Art. 225. County judge's duty if applicant appears entitled.—If it be made to appear to the county judge that such epileptic is entitled to admission into the colony under the provisions of this subdivision, he shall forward an application for admission to the superintendent of the colony, which application shall be accompanied with full copy of the proceedings had in such case, and the original shall be filed in the office of the county clerk. [Id., sec. 6.]

Art. 226. Where applicant appears not indigent.—If the county judge should find that the person for whom application is made is in fact not indigent, then he shall make application for his admission as a non-indigent pa-

tient, and so show in his application to the superintendent. The object of this provision is to make it the duty of the county judge upon careful investigation to determine whether such person shall be admitted into the colony as an indigent public patient, or a non-indigent public patient. [Id., sec. 6.]

Art. 227. **Compensation of county judge.**—For all services needed in connection with such matter in each case, the county judge shall be paid by the county the sum of three dollars. [Id., sec. 6.]

Art. 228. **Patients to be received when there is room; preference to indigents and to public patients.**—When there is room in the colony, it shall be the duty of the superintendent to receive such patient, and, when application is made for more patients than can be admitted, he shall give preference to indigent public patients over non-indigent public patients, and shall at all times give preference to both of the classes mentioned over private patients. [Id., sec. 7.]

Art. 229. **Clothing to be supplied patients.**—It shall be the duty of the county judge to see that each patient admitted to the colony is supplied with three full suits of substantial clothing. [Id., sec. 8.]

Art. 230. **Clothing and transportation of indigent patients paid by county; that of non-indigents by them, etc.**—The expense of such clothing and the transportation of indigent public patients and necessary escort, and compensation to such escort, shall be paid by the county from which the patient shall be sent. [Id., sec. 8.]

Art. 231. **Clothing, etc., non-indigent to pay for; escort, pay of.**—Non-indigent public patients shall pay for such clothing and transportation and escort, or the same may be paid by his parent, guardian or friend. In no case shall such escort be entitled to charge or receive more than two dollars per day and expenses actually necessary in going to and returning from the colony. [Id., sec. 8.]

Art. 232. **Object of colony.**—The object of the colony being to secure the humane, scientific and economical treatment of epileptics, to fulfill this design it shall be the duty of the superintendent and board of managers of the colony to prepare and adopt by-laws, rules and regulations for the government of the colony, prescribing the duty of all officers and employes, and for enforcing the necessary discipline and restraint of all patients. [Id., sec. 9. Acts 1901, p. 11; 1900, p. 16; 1899, p. 4.]

TITLE 11.

ATTACHMENT AND GARNISHMENT.

Chapter.
1. Attachment.

Chapter.
2. Garnishment.

CHAPTER ONE.

ATTACHMENT.

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

Article.	Article.		
Attachment issued, when and by whom..	240	Claimant's bond and affidavit.....	257
What further facts must appear.....	241	Replevy by the defendant.....	258
Not to issue until suit begun.....	242	Sale of perishable property, etc.....	259
May issue on debt not due, but, etc.....	243	Procedure for sale of perishable prop-	
Plaintiff must give bond and security..	244	erty.....	260
Bond to be approved and filed.....	245	Sale of perishable property, how made..	261
Form of bond.....	246	Return of sale of perishable property....	262
Attachment abated for want of bond or		Preservation of property not replevied	
affidavit.....	247	or sold, etc.....	263
When affidavit and bond filed, writ to is-		Return of writ of attachment.....	264
sue instantanr.....	248	Requisites of the return.....	265
Several writs may issue.....	249	Report of disposition of property made	
Form of writ of attachment.....	250	after return of original writ.....	266
Writ to be dated and tested and delivered		Attachment creates a lien.....	267
to the sheriff, etc.....	251	Judgment of foreclosure.....	268
Writ to be levied immediately.....	252	Judgment when the property has been	
Officer executing may demand indem-		replevied.....	269
nity.....	253	Order of court when attachment quashed;	
Property subject to attachment.....	254	pending appeal property may be re-	
Levy, how made.....	255	plevied.....	270
Personal property to remain in hands of			
officer, unless.....	256		

Article 240. [186] [152] **Attachments may be issued by whom.**—The judges and clerks of the district and county courts and justices of the peace may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit in writing, stating—

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

12. That the debt is due for property obtained under false pretenses. [Acts Dec. 16, 1863, p. 37.]

Art. 241. [187] [153] **What facts must further appear.**—The affidavit shall further state—

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

2. That the plaintiff will probably lose his debt unless such attachment is issued. [Act Dec. 16, 1863, p. 37. P. D. 142.]

Art. 242. [188] [154] **Not to issue until suit begun.**—No such attachment shall issue until the suit has been duly instituted; but it may be issued in a proper case either at the commencement of the suit or at any time during its progress. [Act March 11, 1848. P. D. 165.]

Art. 243. [189] [155] **Attachment may issue on debt not yet due, but no judgment until debt becomes due.**—The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due. [Act March 11, 1848. P. D. 154.]

Art. 244. [190] [156] **Plaintiff must give bond with security.**—Before the issuance of any writ of attachment, the plaintiff must execute a bond, with two or more good and sufficient sureties, payable to the defendant, in a sum not less than double the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. [Act March 11, 1848. P. D. 143.]

Art. 245. [191] [157] **Bond to be approved and filed.**—Such bond shall be delivered to and approved by the officer issuing the writ, and shall, together with the affidavit, be filed with the papers of the cause.

Art. 246. [192] [158] **Form of bond.**—The following form of bond may be used:

“The State of Texas,

“County of—

“We, the undersigned, A B, ——— as principal, and ——— and ——— as sureties, acknowledge ourselves bound to pay to C D the sum of ——— dollars, conditioned that the above bound A B, plaintiff in attachment against the said C D, defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this ——— day of ——— 19—

“A B,
“E F,
“G H.”

[Act March 11, 1848, P. D. 163.]

Art. 247. [193] [159] **Attachment abated for want of affidavit or bond.**—Every original attachment issued without affidavit and bond, as herein provided, shall be abated on motion of the defendant; but such affidavit and bond shall not be void for want of form, provided they contain all essential matters. [Act March 11, 1848. P. D. 147-8.]

Art. 248. [194] [160] **Upon execution of affidavit and bond, writ to issue instant.**—Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant may be supposed to be, commanding him to attach so much of the property of the defendant as

shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit. [Act March 11, 1848. P. D. 145.]

Art. 249. [195] [161] **Several writs.**—Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession, and sent to different counties, until sufficient property shall be attached to satisfy the writ.

Art. 250. [196] [162] **Form of the writ.**—The following form of writ may be issued:

“The State of Texas,

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

“We command you that you attach forthwith so much of the property of C D, if to be found in your county, repleviable on security, as shall be of value sufficient to make the sum of ——— dollars, and the probable costs of suit, to satisfy the demand of A, B, and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before our court in ———, in the county of ———, on the ——— day of ——— 19—, when and where you shall make known how you have executed this writ.” [Id. P. D. 163.]

Art. 251. [197] [163] **Writ to be dated, tested and lodged with sheriff, etc.**—The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 252. [198] [164] **Duty of sheriff, etc.**—The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ. [P. D. 145.]

Art. 253. [199] [165] **May demand indemnity.**—Whenever an officer shall levy an attachment, it shall be at his own risk; and such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him, if it should afterward appear that the property levied upon by him does not belong to the defendant. [P. D. 151.]

Art. 254. [200] [166] **Property subject to attachment.**—The writ of attachment may be levied on such property, and none other, as is, or may be, by law subject to levy under the writ of execution.

Art. 255. [201] [167] **Levy, how made.**—The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

Art. 256. [202] [168] **Personal property to remain in the hands of officer, unless.**—When personal property is attached, the same shall remain in the hands of the officer attaching until final judgment, unless a claim be made thereto and bond be given to try the right to the same, or unless the same be replevied or be sold as provided by law. [P. D. 145.]

Art. 257. [203] [169] **Claimant's bond and affidavit.**—Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving bond required by the provisions of the title relating to the trial of the right of property. [P. D. 5310.]

Art. 258. [204] [170] **Replevy by the defendant.**—At any time before judgment, should the property not have been previously claimed or sold, as provided in this chapter, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that,

should the defendant be condemned in the action, he shall satisfy the judgment which may be rendered therein, or shall pay the estimated value of the property with lawful interest thereon, from the date of the bond. [P. D. 150.]

Art. 259. [205] [171] **Sale of perishable property, etc.**—Whenever personal property which has been attached shall not have been claimed or replevied as above provided, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom. [P. D. 155.]

Art. 260. [206] [172] **Procedure for sale of perishable property, etc.**—In ascertaining the facts which authorize the making of such order of sale under the preceding article, the judge, or justice of the peace, as the case may be, may require or dispense with notice to the parties, and may act upon such information, by affidavit, certificate of the attaching officer, or other proof as may seem to him necessary to protect the interest of the parties.

Art. 261. [207] [173] **Sale of perishable property, how made.**—Such sale shall be conducted in the same manner as sales of personal property under execution, except as to the time of advertisement, which may be fixed by the judge, or the justice, for a shorter period, according to the exigency of the case. [P. D. 155.]

Art. 262. [208] [174] **Return of sale of perishable property, etc.**—The proceeds of such sale shall, within five days thereafter, be paid over by the officer making the sale to the clerk of the court, or justice of the peace, as the case may be, accompanied by a statement in writing, signed by such officer officially, to be filed with the papers, stating the time and place of the sale, the name of the purchaser, and the amount received, with an itemized account of the expenses attending the sale. [P. D. 155.]

Art. 263. [209] [175] **Judge may make necessary orders for the preservation, etc. of property not replevied.**—If the personal property be not replevied or claimed or sold under the several provisions of this chapter, the judge, or justice of the peace, as the case may be, may either in term time or in vacation make such order for the preservation or use of the same as shall appear to be to the interest of the parties.

Art. 264. [210] [176] **Return of the writ.**—The officer executing the writ of attachment shall return the writ, with his action indorsed thereon or attached thereto, signed by him officially, to the court from which it issued, on or before the first day of the next term thereof.

Art. 265. [211] [177] **Requisites of the return.**—Such return shall describe the property attached with sufficient certainty to identify it, and shall state when the same was attached, and whether any personal property attached remains still in his hands, and, if not, the disposition made of the same; and when personal property has been replevied he shall deliver the replevy to the clerk to be filed with the papers of the cause.

Art. 266. [212] [178] **Report of disposition of property, made after return of original writ.**—When the property levied on is claimed, replevied, or sold, or otherwise disposed of, after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property; and such report shall be filed among the papers of the cause.

Art. 267. [213] [179] **Attachment creates a lien.**—The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from

the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

Art. 268. [214] [180] **Judgment of foreclosure.**—Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment; provided, however, that when an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment, and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment. [Acts of 1885, p. 73.]

Art. 269. [215] [181] **Judgment when property is replevied.**—When personal property has been levied on, as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

Art. 270. [216] [182] **Order of court when attachment quashed; pending appeal, property may be replevied.**—Should the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court directing that it be turned over to the defendant. But the property, or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect; provided, that, pending the final disposition of the main case, the defendant shall have the right at any time to replevy the property in the same manner as is provided for in article 258 of this chapter; or if the property has been sold he may replevy the proceeds of such sale by giving a bond in double the amount of the money arising from such sale, with like conditions as are contained in article 258. And any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated. [Acts of 1891, p. 29.]

CHAPTER TWO.

GARNISHMENT.

[See Title, Insurance.]

Article.	Article.		
Writ of garnishment, who may issue and when	271	Duty when garnishee fails to appear or to answer	291
Bond to be executed in certain cases	272	Judgment of the court in such cases	292
Application for the writ, etc.	273	Judgment against garnishee when he is indebted	293
Proceeding by, shall be docketed, etc.	274	For effects	294
Requisites of writ when incorporated company, etc., is garnishee	275	Attachment against garnishee for refusing to deliver effects	295
Form of writ	276	Judgment against incorporated companies, etc., for shares, etc.	296
To be dated and tested, etc., how	277	Sales of such shares, etc., how made	297
Sheriff, etc., to execute and return forthwith	278	Effect of such sale	298
Effect of service of, defendant may replevy	279	Traverse of answer of garnishee, by plaintiff	299
Answer to, must be under oath, in writing and signed	280	By defendant	300
Garnishee to be discharged on answer, when	281	Trial of issue on controverted answer	301
Judgment by default, when	282	When garnishee resides in another county, proceeding to be certified to such county	302
Residing in another county and failing to answer proceedings against	283	Duty of clerk, or justice, of such county in such cases	302
Form of commission	284	Notice, to whom directed and how executed	304
Tested, how	285	Issue, how tried	305
Duty of commissioner to issue writ	286	Current wages not subject to garnishment	306
Form of writ in such cases	287	Costs in garnishment proceedings	307
Writ, tested, how	288	Garnishee discharged from liability to defendant	308
To be executed and returned immediately	289		
Duty of commissioner when garnishee in another county appears and answers	290		

Article 271. [217] [183] **Writ of garnishment, who may issue and when.**

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

1. Where an original attachment has been issued as provided in the foregoing chapter.

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

3. Where the plaintiff has a judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this state, subject to execution, sufficient to satisfy such judgment. [P. D. 157. P. D. 3785. Act April 20, 1874, p. 113, sec. 1.]

Art. 272. [218] [184] **Bond when no attachment has issued and no judgment has been rendered.**—In the case mentioned in subdivision two of the preceding article; the plaintiff shall execute a bond, with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. [Act April 20, 1874, p. 113, sec. 1.]

Art. 273. [219] [185] **Application for the writ, etc.**—Before the issuance of the writ of garnishment, the plaintiff shall make application therefor in writing, under oath, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the

garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

Art. 274. [220] [186] **Case shall be docketed, etc.**—When the foregoing requisites have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant; and shall immediately issue a writ of garnishment, directed to the sheriff or any constable of the county where the garnishee is alleged to reside or be, commanding him forthwith to summon the garnishee to appear before the court out of which the same is issued, on the first day of the ensuing term thereof, to answer upon oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession. [P. D. 157.]

Art. 275. [221] [187] **Requisites when writ is against incorporated or joint stock company to subject shares, etc.**—Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served. [Act March 13, 1875, p. 102, secs. 1, 2.]

Art. 276. [222] [188] **Form of writ.**—The following form of writ may be used:

“The State of Texas,

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

“Whereas, in the ——— court of ——— county [if a justice's court, state also the number of the precinct], in a certain cause wherein A B is plaintiff and C D is defendant, the plaintiff, claiming an indebtedness against the said C D of ——— dollars, besides interest and costs of suit, has applied for a writ of garnishment against E F, who is alleged to be a resident of your county [or to be within your county, as the case may be]; therefore you are hereby commanded forthwith to summon the said E F, if to be found within your county, to be and appear before the said court at the next term thereof, to be held at ———, in said county, on the ——— day of ———, 19—, then and there to answer upon oath what, if anything, he is indebted to the said C D, and was when this writ was served upon him, and what effects, if any, of the said C D he has in his possession, and had when this writ was served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; [and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or interested therein, then the writ shall proceed: And further to answer what number of shares, if any, the said C D owns in such company, and owned when such writ was served.] Herein fail not, but of this writ make due return as the law directs.”

Art. 277. [[223] [189] **Writ to be dated, tested and delivered to the sheriff, etc.**—The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 278. [224] [190] **Sheriff, etc., to execute and return writ forthwith.**—The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Art. 279. [225] [191] Effect of service of writ; defendant may replevy.—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effects, shares, or interest as may be necessary to satisfy the plaintiff's demand; provided, however, that the defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnished, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which bond when properly approved shall be filed among the papers in the cause in the court in which the suit is pending; and in all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit. [Acts of 1889, p. 1.]

Art. 280. [226] [192] Answer to the writ must be in writing, under oath and signed.—The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

Art. 281. [227] [198] Garnishee to be discharged on his answer, when.—Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it shall further appear from such answer that the defendant is not and was not, when the writ was served, the owner of any of such shares, or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

Art. 282. [228] [194] Judgment by default, when.—Should the garnishee, being a resident of the county where the proceeding is pending, fail to make answer to the writ, it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, and on or after default day, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs. [P. D. 159.]

Art. 283. [229] [195] When garnishee residing in another county fails to answer, commission to issue.—If the garnishee resides in some other county than that in which the proceeding is pending, and fails to make answer to the writ, the court shall, on motion of the plaintiff, issue a commission addressed to the clerk of the district court, the county judge, the clerk of the county court, or any notary public of the county in which the garnishee is alleged to reside or be, requiring him to cite such garnishee to answer the writ of garnishment. [P. D. 167.]

Art. 284. [230]. [196] Form of commission.—The following form of commission may be used:

“The State of Texas,

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

“Whereas, on the _____ day of _____, _____, in a certain cause pending in this court wherein A B is plaintiff and C D is defendant, the plaintiff claiming

an indebtedness against the said C D of ——— dollars, besides interest and costs of suit, a writ of garnishment was issued by this court against E F, of your county, which was afterward returned duly served on the ——— day of ———, 19——; and whereas the said E F has failed to make answer to the said writ; now, therefore, you are hereby commanded worthwith to summon the said E F before you, to answer upon oath what, if anything, he is indebted to the said C D and was when the said writ of garnishment was served upon him, and what effects, if any, of the said C D he has in his possession and had when the said writ was served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; [and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, the commission shall proceed: And further to answer what number of shares, if any, the said C D owns in such company and owned when the said writ was served, and what interest, if any, he has in said company, and had when the said writ was served.] Herein fail not, but of this commission make return forthwith.”

Art. 285. [231] [197] **Tested, how.**—The commission shall be dated and tested as writs usually are.

Art. 286. [232] [198] **Duty of officer receiving commission.**—Upon the receipt of such commission, by any of the officers named in the preceding article, he shall immediately issue a citation, directed to the sheriff or any constable of his county, commanding him forthwith to summon the garnishee to appear before him at a time and place to be named in the citation, to answer upon oath as directed in article 230. [284.] [P. D. 167.]

Art. 287. [233] [199] **Form of writ to be issued by commissioner for garnishee residing in another county.**—The following form of writ may be used in such cases:

“The State of Texas,

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

“Whereas, in a certain cause pending in the ——— court of ——— county [if a justice’s court state the number of the precinct], wherein A B is plaintiff and C D is defendant, wherein the plaintiff claims of the said defendant the sum of ——— dollars, besides interest and costs of suit, a writ of garnishment was issued against E F of your county, which was duly served upon him on the ——— day of ———, 19——, requiring him to answer thereto before the said court at its late term, and whereas the said garnishee has failed to answer as required by said writ, and whereas a commission has been issued by the said court and lodged in my hands, whereby I am commanded to summon the said E F before me to make such answer; therefore, you are hereby commanded forthwith to summon the said E F, if to be found within your county, to be and appear before me, at my office in ———, on the ——— day of ———, 19——, then and there to answer upon oath what, if anything, he is indebted to the aforesaid C D, and was when the aforesaid writ of garnishment was so served upon him, and what effects, if any, of the said C D he has in his possession and had when the said writ was so served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; and if the garnishee is an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, the writ shall proceed: And further, to answer what number of shares, if any, the said C D owns in such company and owned when the said writ was served, and what interest, if any, he has

in such company, and had when the said writ was served.] Herein fail not, but of this writ make return forthwith.”

Art. 288. [234] [200] **Writ to be dated and tested, how.**—The writ shall be dated and tested by the officer issuing it, with his official signature and seal of office.

Art. 289. [235] [201] **Sheriff, etc., to execute and return writ forthwith.**—The sheriff or constable receiving such writ shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof without delay to the officer who issued it.

Art. 290. [236] [202] **Duty of commissioner when garnishee in another county appears and answers.**—Should the garnishee appear and answer, in obedience to the writ, the officer executing the commission shall return the same, together with the answer of the garnishee, duly certified under his hand and seal of office, to the clerk of the court or justice of the peace who issued it; whereupon, like proceedings shall be had as provided in cases of answers of a garnishee residing in the county. [P. D. 167.]

Art. 291. [237] [203] **Duty of commissioner when he fails to appear and answer.**—Should the garnishee fail to appear in obedience to the writ, or having appeared, should he fail or refuse to answer, or to answer fully, the officer holding such commission shall return the same, together with the citation for the garnishee issued by him, and the service indorsed thereon, and a statement duly certified by him under his hand and seal of office of such failure or refusal, to the clerk of the court or justice of the peace who issued the commission. [P. D. 167.]

Art. 292. [238] [204] **Proceedings on return of certificate of such refusal to answer.**—Upon the return of such commission with the citation for the garnishee, and the return thereon, and the certificate of such failure or refusal of the garnishee to answer, as mentioned in the preceding article, it shall be lawful for the court at any time after judgment shall have been rendered against the defendant, and on or after default day, to render judgment against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs, unless the defendant shall have previously filed a full and complete answer to the writ, and shall have also shown some good and sufficient excuse for his failure to appear and answer before the officer holding such commission. [P. D. 167.]

Art. 293. [239] [205] **Judgment against the garnishee when he is indebted.**—Should it appear from the answer of the garnishee, made in either of the modes provided for in this chapter, or should it be otherwise made to appear, as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee, for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount of the plaintiff's judgment against the defendant, with interest and costs, in which case it shall be for the amount of such judgment, interest and costs. [P. D. 157.]

Art. 294. [240] [206] **Judgment against the garnishee for effects.**—Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff or any constable presenting an execution in favor of the plaintiff against the defendant, such effects or so much of them as may be necessary to satisfy such execution. [P. D. 157.]

Art. 295. [241] [207] **Remedy when garnishee refuses to deliver effects found to be in his possession.**—Should the garnishee be adjudged to have effects of the defendant in his possession, as provided in the preceding article, fail or refuse to deliver them to the sheriff or constable on such demand, the

officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause at the next term of the court why he should not be attached for contempt of court for such failure or refusal; and should the garnishee fail to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Art. 296. [242] [208] **Judgment against incorporated companies, etc., for shares of stock or interest.**—Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution, in favor of the plaintiff against the defendant, of such shares, or interest, of the defendant in such company, or so much thereof as may be necessary to satisfy such execution. [Act March 13, 1875, p. 103, sec. 3.]

Art. 297. [243] [209] **Sales of shares of stock, etc., how made.**—The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the sheriff or constable making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold. [Act March 13, 1875, p. 103, sec. 5.]

Art. 298. [244] [210] **Effect of such sale.**—Such sale shall be valid and effectual to pass to the purchaser all right, title and interest which the defendant had in such shares of stock, or in such company; and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself. [Act March 13, 1875, p. 104, sec. 3.]

Art. 299. [245] [211] **Plaintiff may traverse answer to garnishee.**—If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by an affidavit in writing, signed by him, stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same is incorrect. [P. D. 161.]

Art. 300. [246] [212] **Defendant may traverse the answer.**—The defendant may also, in like manner, controvert the answer of the garnishee. [P. D. 160.]

Art. 301. [247] [213] **Trial of issue on controverted answer.**—If the garnishee whose answer is controverted, as provided in the two preceding articles, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as other cases. [P. D. 161.]

Art. 302. [248] [214] **Trial of issue on controverted answer when garnishee resides in another county.**—If the garnishee whose answer is so controverted be a resident of some county other than that in which the proceeding is pending, the plaintiff may file in any court of the county where the garnishee may reside, having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of such original judgment and of the proceedings in garnishment, including the plaintiff's application for the writ and the answer of the garnishee and the affidavit controverting the same. [P. D. 161.]

Art. 303. [249] [215] **Case to be docketed and notice to issue.**—It shall be the duty of the clerk of such court or the justice of the peace, as the case may be, on receiving such certified copies, to docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and to issue a notice to the garnishee, stating that his answer has been so controverted,

and that the issue between him and the plaintiff will stand for trial at the next term of court. [P. D. 164.]

Art. 304. [250] [216] **Notice, to whom directed and how executed.**—Such notice shall be directed to the sheriff or any constable of the county, and shall be dated and tested as other process from such court, and shall be served by delivering a copy thereof to the defendant.

Art. 305. [251] [217] **Issue tried as other cases.**—Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as other cases. [P. D. 161.]

Art. 306. [252] [218] **Current wages not subject to garnishment.**—No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness. [Const., art. 16, sec. 28.]

Art. 307. [253] [219] **Costs.**—Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this chapter; where the answer is contested, the costs shall abide the issue of such contest.

Art. 308. [254] [220] **Garnishee discharged from liability to defendant.**—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee, or on the possession by him of any effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter.

TITLE 12.

ATTORNEY AT LAW.

Article.	Article.		
Boards of legal examiners; appointment, qualifications; oath, term, etc.	309	Persons convicted of felony shall not be licensed	323
Duties of boards; sessions.	310	Misbehavior or contempt, how punished.	324
Course of study prescribed by supreme court, for examination.	311	May be suspended or license revoked, when	325
Application for license; certificate of residence, character, etc.	312	Shall be cited to show cause, etc., when.	326
Examination	313	Complaint, how made, etc.	327
Applicant refused must apply again to same board.	314	Citation, how issued and when served.	328
Examinations, how conducted.	315	Trial, how conducted.	329
License granted to whom.	316	Judgment of the court.	330
License to holder of diploma from University of Texas, conditions; clerk to issue; oath	317	Barratry; forfeiture of license by, etc.	331
Immigrant attorney granted license, how	318	Penalty for refusing to pay over money.	332
Boards to keep records.	319	Allowed to inspect papers.	333
Fees of examiners.	320	Officers not allowed to appear as attorneys	334
Supreme court, entry of attorney's name on rolls of, how effected.	321	Attorney for plaintiff may be required to show his authority as such.	335
Oaths of attorneys.	322	Proceedings upon his failure to show authority	336
		Cause shall not be continued or delayed by motion	337

Article 309. [256] [222] **Boards of legal examiners; appointment; qualifications; oath, terms, etc.**—Each of the courts of civil appeals shall, every two years, appoint a board of legal examiners for their respective districts, which said board shall consist of three members, possessing the same qualifications required for eligibility to the office of district judge, and who shall reside in the district for which they are appointed during their term of office. Said members shall each, before entering upon their duties, take and subscribe the following oath: "I do solemnly swear that I will faithfully and impartially discharge the duties of legal examiner, as required by law and the rules and regulations of the supreme court of the state of Texas, to the best of my skill and ability. So help me God." And said legal examiners shall hold their office for the term of two years and until their successors are appointed and qualified, and the majority of said members shall constitute a quorum. [Acts 1897, p. 17. Acts 1846, p. 245. Acts 1903, p. 59.]

Art. 310. [256] [222] **Duties of boards; sessions.** It shall be the duty of said board of legal examiners to examine, in writing, applicants for license in practice of law in the manner hereinafter required. They shall hold not less than four sessions in each year, which sessions shall be held at the place where their respective courts are located, and may hold other sessions in other parts of their respective districts, if they should see proper to do so. [Id. sec. 2.]

Art. 311. **Course of study prescribed by supreme court for examination.**—It shall be the duty of the supreme court to prescribe a course of study to be pursued and the subjects in which applicants shall be examined and such general rules governing such examinations as said court may find necessary, and the same shall be uniform throughout the state. [Id. sec. 3.]

Art. 312. [256] [222] **Application for license; certificate of residence, character, etc.**—Any person desiring to obtain any license to practice as attorney and counselor at law, in the courts of this state, shall make application to one of the boards of legal examiners, accompanied with a certificate from the county commissioners' court of the county of his residence, that he has been a resident of the state at least six months, that he is twenty-one years of age, and that he has a good reputation for moral character and honorable deportment. Such applicant shall also furnish such other evi-

dence of moral character and honorable deportment as may be required by the rules of the supreme court. [Id. sec. 4.]

Art. 313. [256] [222] **Examination.**—The applicant shall appear at some meeting of said board within six months next thereafter, and be examined as prescribed by the rules of the supreme court and this article. [Id. sec. 4.]

Art. 314. [256] [222] **Applicant refused must apply again to same board.**—When any applicant, upon examination, is refused license, all subsequent applications by such applicant must be made to the same board of legal examiners that refused the license. [Id. sec. 4.]

Art. 315. [256] [222] **Examinations, how conducted.**—All applicants shall be examined in writing on all of the subjects prescribed by the supreme court, and their answers shall be graded; and no applicant shall be granted a license, unless he makes a grade of not less than fifty in all branches and a general average of not less than seventy-five. [Id. sec. 5.]

Art. 316. [256] [222] **License granted to whom.**—All applicants who make the required grade shall be granted by said board a permanent license to practice as attorney and counselor at law in all courts of this state, the same to be signed by all or a majority of said board, and sealed with the seal of their respective courts. [Id. sec. 6.]

Art. 317. [257] [222a] **License to holder of diploma from university of Texas; conditions; clerk to issue; oath.**—Any person holding a diploma from the law department of the university of Texas shall be entitled to a license to practice as an attorney and counselor at law in all the courts of this state, without any further examination, upon presentation to the clerk of the supreme court of the state such diploma within twelve months from the issuance of the same together with a certificate from the commissioners' court of the county in which such person resides, showing that such person bears a good reputation for moral character and honorable deportment, that he has resided in such county for at least six months, is at least twenty-one years of age, and such other and further facts as may be required by the supreme court of this state; and the clerk of the supreme court of Texas is hereby authorized and empowered to issue said license upon payment of the fee of ten dollars, as required by law; provided, that nothing herein shall be construed to exempt the applicant for license from taking the oath required by law; and provided, further, that any diploma issued by said university on a grade less than that prescribed by the supreme court for examinations of applicants shall not entitle the holder thereof to such license. [Acts 1903, p. 60. Acts 1897, p. 17. Acts 1846, p. 245. Acts 1905, p. 150.]

Art. 318. [258] [223] **Immigrant attorney granted license, how.**—Any person who immigrates to this state from any other state of the United States, with a view of permanently residing herein, and who has been granted a license to practice in the courts of record in said state, may file his said license, together with a certificate of a good reputation for moral character and honorable deportment given under the hand and seal of a judge of a court of record of the county or district of his residence in the state from which he removes, said certificate to be of date not exceeding three months prior to his removal to this state, with the board of legal examiners, in lieu of his certificate from the commissioners' court, and be examined in the same manner as resident applicants. [Acts 1897, p. 17. Acts 1846, p. 245. Acts 1903, p. 60.]

Art. 319. **Board to keep records.**—Said board of legal examiners shall keep a record of all applicants and the grades made by them, and abstract of all licenses issued, which said records shall be kept in the office of the

clerk of their respective courts of civil appeals, and shall be a part of the record of said court. [Id. sec. 9.]

Art. 320. Fees of examiners.—The board of legal examiners shall be entitled to a fee of ten dollars for each applicant examined by them, or to whom a license is granted, said fee to be paid in advance by the applicant. [Id. sec. 10.]

Art. 321. Supreme court, entry of attorney's name on rolls of, how effected.—All attorneys desiring their names entered on the rolls of the supreme court shall forward their license or diploma to the clerk of the supreme court, who shall enter the name of said attorney on the roll of said court, and return said license and diploma without charge. [Id. sec. 11.]

Art. 322. [260] [225] Oath of attorney.—Every person admitted to practice law shall, before receiving license, take an oath that he will support the constitution of the United States and of this state; that he will honestly demean himself in the practice of the law, and will discharge his duty to his client to the best of his ability; which oath shall be indorsed upon his license, subscribed by him and attested by the officer administering the same. [Act Jan. 18, 1860, p. 25. P. D. 172.]

Art. 323. [261] [226] Persons convicted of felony shall not be licensed.—No person convicted of a felony shall receive license as an attorney at law; or, if licensed, any court of record in which such person may practice shall, on proof of a conviction of any felony, supersede his license and strike his name from the roll of attorneys. [Act May 12, 1846, p. 245. P. D. 173.]

Art. 324. [262] [227] Misbehavior or contempt, how punished.—Each attorney at law shall be subject to fine or imprisonment by any court in which he may practice for misbehavior or for contempt offered to such court; but no attorney shall be suspended or stricken from the rolls for contempt, unless it involve fraudulent or dishonorable conduct or malpractice. [Act Jan. 18, 1860, p. 25. P. D. 177.]

Art. 325. [263] [228] May be suspended or license revoked, when.—Any attorney at law who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or of contempt, involving fraudulent or dishonorable conduct or malpractice, may be suspended, or his license may be revoked by the district court of the county in which such attorney resides, or of the county where such conduct or malpractice occurred in manner and form as hereinafter provided. [Id. P. D. 177.]

Art. 326. [264] [229] Shall be cited to show cause, etc., when.—If any district court observes any fraudulent or dishonorable conduct or malpractice by any attorney at law, or if complaint be made to the district court of such conduct or malpractice by a judge of any court, a practicing attorney, a county commissioner or justice of the peace, such court shall order the attorney to be cited to show cause why his license shall not be suspended or revoked.

Art. 327. [265] [230] Complaint, how made, etc.—Such complaint shall be made in writing, shall be subscribed and sworn to by the prosecutor and filed with the clerk of the court. If the citation be ordered upon the observation of the court, the charge and the grounds thereof shall be set out distinctly in the order of the court.

Art. 328. [266] [231] Citation, how issued and when served.—The citation shall be issued in the name of the state of Texas and in manner and form as in other cases; and the same shall be served upon the defendant at least five days before the trial day.

Art. 329. [267] [232] Trial, how conducted.—Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the state of Texas against the defendant, and the state shall be represented by the county or

district attorney. A jury of twelve men shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as other cases.

Art. 330. [268] [233] **Judgment of the court.**—If the attorney be found guilty, or if he fail to appear and deny the charge after being cited as aforesaid, the said court, by proper order entered on the minutes, may suspend his license for a time, or revoke it entirely, and may also give proper judgment for costs.

Art. 331. **Barratry, forfeiture of license by, etc.**—Any attorney or counselor at law who shall violate any of the provisions of the Penal Code, relating to barratry, shall, in addition to the penalty therein provided, forfeit his right to practice law in this state, and shall be subject to have his license revoked, and be disbarred in the manner provided by law for dishonorable conduct or malpractice, whether he has been convicted for violating said penal provision or not. [Acts 1901, p. 126.]

Art. 332. [269] [234] **Penalty for refusing to pay over money.**—Each attorney who receives or collects money for his client, and refuses to pay over the same when demanded, may be proceeded against by motion of the party injured or his attorney before the district court of the county in which such attorney usually resides, or in which he resided when he collected or received the money; notice of which motion with a copy thereof shall be served on such party at least five days before the trial thereof; and, in case the motion be sustained, judgment shall be rendered against the defendant for the amount by him collected or received, with legal interest, and also not less than ten nor more than twenty per cent damages on the principal sum. [Act May 12, 1846, p. 245, sec. 11. P. D. 178.]

Art. 333. [270] [235] **Allowed to inspect papers.**—Each attorney at law, practicing in any court, shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested without being required to take copies thereof; but no person whatever shall be allowed to take any papers out of the office to which they belong without the permission of the clerk or keeper of the records; and the party withdrawing said papers shall leave a descriptive receipt for the same. [Id. sec. 12.]

Art. 334. [271] [236] **Officers not allowed to appear as attorney.**—No judge of the supreme court, or court of criminal or civil appeals, or district court, sheriff, or deputy sheriff, clerk, or deputy clerk of any court, or constable, shall be allowed to appear and plead as an attorney in any court of record in this state; nor shall any county judge be allowed to appear and practice as an attorney at law in any of the county courts or courts of the justices of the peace in this state. [Act Aug. 19, 1876, p. 216. Id. sec. 8. P. D. 174.]

Art. 335. [272] [237] **Attorney for plaintiff may be required to show his authority as such.**—Any defendant in any suit or proceeding pending in any court of this state may, by motion in writing under oath, stating that such defendant believes that such suit or proceeding was instituted against him or is being prosecuted against him without authority on the part of the plaintiff's attorney, cause such attorney to be cited to appear before such court and show by what authority he instituted, or by what authority he prosecutes, such suit or proceeding, notice of which motion shall be served upon such attorney at least five days before the trial of such motion.

Art. 336. [273] [238] **Proceeding upon his failure to show authority.**—Upon the hearing of the motion provided for in the preceding article, the burden of proof shall devolve upon the defendant therein to show sufficient authority from the plaintiff in such suit or proceeding to institute or prosecute the same; and, upon his failure to show such authority, the court shall refuse to permit such attorney to appear in said cause, and, if no person

who is authorized to prosecute said cause shall appear, the same shall be dismissed.

Art. 337. [274] [239] **Cause shall not be continued or delayed by motion.**—The trial of the cause in which the motion provided for in the two preceding articles has been filed shall not be continued or delayed for the hearing of such motion; but such motion may be heard and determined at any time before the parties to the cause have announced ready for trial.

TITLE 13.

ATTORNEYS—DISTRICT AND COUNTY.

Chapter.

1. District Attorney.
2. County Attorney.

Chapter.

3. General Provisions Applicable to Both District and County Attorneys.

CHAPTER ONE.

DISTRICT ATTORNEYS.

Legislature may provide for election of, etc.	Articles. 338	when; qualifications; bond, etc., authority; term.	Articles. 342
What districts shall elect district attorneys	339	Compensation of assistant district attorney	343
Bond and oath of	340	Removal of assistant district attorney	344
Failure to attend court, shall forfeit, etc.	341	Vacancy in office of, how filled, etc.	345
Assistant district attorney appointed			

Article 338. [275] [240] **Legislature may provide for election of, etc.**—The legislature may provide for the election of district attorneys in such districts as may be deemed necessary; and they shall hold office for the term of two years and until their successors are qualified, and shall be commissioned by the governor. [Const., art. 5, sec. 21.]

Art. 339. [276] [241] **What districts shall elect district attorneys.**—The following judicial districts in the state shall each respectively elect a district attorney, viz.: first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, twelfth, thirteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, forty-sixth, forty-seventh, fiftieth and fifty-first, also the twenty-sixth and fifty-third districts combined, and the criminal district composed of Galveston and Harris counties. [Acts 1901, p. 127.]

Art. 340. [277] [242] **Bond and oath of.**—Each district attorney, before entering on the duties of his office, shall give a bond, payable to the governor and his successors in office, in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the district judge of their respective districts, conditioned that such district attorney will faithfully pay over, in the manner prescribed by law, all money which he may collect or which may come to his hands for the state or for any county; and he shall take and subscribe the oath of office prescribed by the constitution of the state; which bond and oath shall be deposited in the office of the comptroller of public accounts. [Act May 13, 1846. P. D. 181.]

Art. 341. [278] [243] **Failure to attend courts shall forfeit, etc.**—When any district attorney shall fail to attend any term of the district court of any county in his district, the clerk of the district court of such county shall certify the fact of such failure under his official seal to the comptroller of public accounts, and, unless some satisfactory reason for such failure is shown to the comptroller, such district attorney shall receive no salary for the time that he has so failed to attend. [Id. P. D. 183.]

Art 342. **Assistant district attorneys appointed when; qualifications, bond, etc.; authority; term.**—The governor shall appoint one assistant district attorney in districts in which there is situated a city of fifty thousand population or over, according to the United States census of 1900, and in which there is no criminal district court established by law; provided, the district attorney or district judge in said district shall furnish data to the governor

showing that the district attorney is in need of an assistant, and is himself unable to attend to all of the duties required of him by law, and that it is necessary to the best interests of the state that an assistant district attorney be appointed. Every person so appointed shall be a qualified resident attorney of the district in which said appointment is made, and shall give bond and take the oath of office required of district attorneys by this state, and shall have the power and authority to perform all the acts and duties of district attorneys under the law of this state; and such appointment shall be for such time as the governor shall deem best in the enforcement of the law, not to be less than one month. [Acts 1909, p. 94.]

Art. 343. **Compensation of assistant district attorney.**—Such assistant district attorney shall be paid for the time of actual service rendered at the rate of the sum of two thousand dollars per annum, by the comptroller of the state of Texas, and said amounts to be paid in monthly payments, upon certificate of the district clerk and district judge of said district, that said assistant district attorney has performed his duties, and is entitled to pay. [Id. sec. 2.]

Art. 344. **Removal of assistant district attorney.**—The governor of the state of Texas, at any time he deems said assistant unnecessary in any district, or that the person appointed is not attending to his duty as required by law, remove said person from office, by merely writing the district attorney and district judge of said district to that effect. [Id. sec. 3.]

Art. 345. [279] [244] **Vacancy in office of, how filled, etc.**—When a vacancy occurs in the office of district attorney, the governor shall appoint a qualified person, resident of the district, to fill the same; and the person so appointed shall take the oath and give the bond required of district attorneys, and shall hold the office until the next general election and until his successor is qualified.

CHAPTER TWO.

COUNTY ATTORNEYS.

	Articles.		Articles.
Election and term of office.....	346	Joint duties of county and district attorneys.....	350
May appoint assistants.....	347	Bond and oath of.....	351
Vacancy in office of, how filled.....	348		
Shall be no county attorney when there is a resident criminal district attorney	349		

Article 346. [280] [245] **Election and term of office.**—A county attorney for counties in which there is not a resident criminal district attorney shall be elected by the qualified voters of each county, who shall be commissioned by the governor and hold his office for the term of two years. [Acts of 1883, p. 2.]

Art. 347. [281] [245a] **May appoint assistants.**—County attorneys shall have power, by consent of the commissioners' court, to appoint in writing one or more assistants, not to exceed three, for their respective counties, to continue in office during the pleasure of their principals, and who shall have the power and authority to perform all the acts and duties of their principals, and who shall have the qualifications prescribed by law for county attorneys; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, which shall be indorsed upon his appointment, together with the cer-

tificate of the officer administering the same; and such appointments and oaths shall be recorded in the office of the county clerk, and deposited in said office. [Acts of 1891, p. 91.]

Art. 348. [282] [246] **Vacancy in office of, how filled.**—In case of a vacancy in such office, the county commissioners' court of the county shall have power to appoint a county attorney until the next general election.

Art. 349. [283] [247] **No county attorney when there is resident criminal district attorney.**—When a resident criminal district attorney is elected and has qualified, and there is in the county of his residence a county attorney, such county attorney shall cease to perform the functions of such office, and there shall be no county attorney in such county during the time there may be a resident criminal district attorney therein. By the term, criminal district attorney, is meant an attorney for a criminal district court. [Acts of 1883, p. 2.]

Art. 350. [284] **Joint duties of county and district attorneys.**—In counties where there is a county attorney, it shall be his duty to attend the terms of the county and other inferior courts of his county, and to represent the state in all criminal cases under examination or prosecution in said county, and also to attend the terms of the district court, and to represent the state in all cases in said court during the absence of the district attorney, and to aid the district attorney, when so requested; and, when representing the state alone, he shall be entitled to and receive the fees allowed by law to the district attorney; and when, at the request of the district attorney, he shall aid him in the prosecution of any case in behalf of the state, he shall receive one-half of the fee allowed by law, and the district attorney the remainder. [Acts of 1879, p. 94.]

Art. 351. [285] [248] **Bond and oath of.**—Each county attorney, before he enters upon the discharge of the duties of such office, shall take and subscribe the oath of office prescribed by the constitution of the state, and shall execute a bond with at least two good and sufficient sureties, payable to the governor and his successors in office, in the sum of twenty-five hundred dollars, to be approved by the county commissioners' court of his county, conditioned that he will faithfully pay over, in the manner prescribed by law, all moneys which he may collect, or which may come to his hands for the state or any county; which bond and oath shall be recorded in the office of the clerk of the county court of his county, and deposited in the comptroller's office. [Act August 7, 1876, p. 86, sec. 11.]

CHAPTER THREE.

GENERAL PROVISIONS APPLICABLE TO BOTH DISTRICT AND COUNTY ATTORNEYS.

Articles.		Articles.
352	Shall be licensed attorneys.....	361
353	Duties and powers of.....	362
354	Residence of.....	362
355	Shall notify attorney general and comptroller of residence, etc.....	363
356	Shall give opinion, etc., to officers.....	364
357	With consent of attorney general, to buy property for state.....	365
358	With consent of attorney general may sell property of state so purchased... ..	366
359	With consent of commissioners' court, may sell property of county so purchased	367
360	Shall give receipt for money collected... ..	368
		369

Article 352. [286] [249] **Shall be licensed attorneys.**—District and county attorneys shall be attorneys at law, duly licensed to practice in the district courts of this state, and no person who is not so licensed shall be eligible to either of said offices. [Act Aug. 7, 1876, p. 85, sec. 2.]

Art. 353. [287] [250] **Duties and powers of.**—The duties and powers of district and county attorneys shall be such as are prescribed in this title and in the Code of Criminal Procedure of this state.

Art. 354. [288] [251] **Residence of.**—District attorneys shall severally reside in the districts for which they were elected, and county attorneys shall severally reside in the county for which they were elected. [Id. sec. 1.]

Art. 355. [289] [252] **Shall notify attorney general and comptroller of residence, etc.**—District and county attorneys shall notify the attorney general and comptroller of public accounts of the county of their residence and of their postoffice address respectively, as soon after their election and qualification as practicable. [Id. sec. 1.]

Art. 356. [290] [253] **Shall give opinion, etc., to officers.**—The district and county attorney shall give to the assessor of taxes, the collector of taxes, or the treasurer of a county within his district or county, upon request, an opinion in writing touching their duties concerning the revenue of the state or county, and shall also give such advice in writing to the clerk, sheriff or other officer of his district or county as he may deem necessary to insure the prompt collection of all money for which judgments may have been rendered in favor of the state or of a county. [Id. sec. 3.]

Art. 357. [291] **With the consent of attorney general to buy property.**—In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state except execution issued upon judgments in cases of scire facias, the agent or attorney representing the state, by and with the advice and consent of the attorney general of the state, is authorized and required to attend such sales, and bid on and buy in for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon. [Acts of 1879, p. 9.]

Art. 358. [292] **May sell property bought for state, with consent of attorney general.**—The agent or attorney of the state, buying for the state any such property at such sale, shall be authorized, by and with the advice and consent of the attorney general, at any time to sell or otherwise dispose of said property so purchased, in the manner and upon such terms and conditions as he may deem most advantageous to the state; and, if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury

and placed to the credit of the general revenue; and, when such sale is made, the attorney general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property; which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof. [Id.]

Art. 359. [293] **May sell property of county.**—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the state, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy in and dispose of such property for the county as the agent or attorney for the state is given in article 357 in similar cases; and, when any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and, whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property. [Id.]

Art. 360. [294] [254] **Shall give receipt for money collected.**—It shall be the duty of a district or county attorney, upon the collection of any money for the use of the state, or of any county, to deliver to the person paying the same a receipt therefor. [Acts 1876, p. 85, sec. 4. Act May 13, 1846. P. D. 188.]

Art. 361. [295] [255] **Shall report collections for state, etc.**—Each district or county attorney shall, on or before the last day of August of each year, file in the office of the comptroller of public accounts an account in writing, verified by the affidavit of such attorney, of all money received by him, by virtue of his office, during the preceding year, payable into the state treasury. [Act Aug. 7, 1876, p. 86, sec. 5.]

Art. 362. [296] [256] **Shall report collections for county.**—Such attorney shall also, on or before the last day of August of each year, file with the county treasurer of each county for which money has been collected by him, an account in writing, verified by his affidavit, of all moneys received by him, by virtue of his office, during the preceding year, payable into the treasury of such county. [Id. sec. 6.]

Art. 363. [297] [257] **Shall pay over money collected in thirty days.**—Whenever a district or county attorney has collected money for the state, or for any county, he shall, within thirty days after receiving the same, pay it into the treasury of the state, or of the county to which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the state or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the state or for any county; provided, that ten per cent shall be allowed on all such sums heretofore collected since the adoption of the Revised Statutes. This article shall also apply to money realized for the state under the escheat law. [Id. secs. 5, 6.]

Art. 364. [298] [258] **Shall keep register of official acts, etc.**—Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office; and the same shall at all times be

open to the inspection of any person appointed by the governor, or by the county commissioners' court of a county, to examine the same. [Id. sec. 8.]

Art. 365. [299] [259] **Shall not receive fee, etc., to prosecute case.**—A district or county attorney shall not take any fee, article of value, compensation, reward or gift, or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute; nor shall he take any fee, article of value, compensation, reward or gift, or any promise thereof, from any person whomsoever, in consideration of, or as a testimonial for, his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined. [Id. sec. 21.]

Art. 366. [300] [260] **Shall institute proceedings against officers, when, etc.**—When it shall come to the knowledge of any district or county attorney that any officer in his district or county, intrusted with the collection or safe keeping of any public funds, is in any manner whatsoever neglecting or abusing the trust confided in him, or is in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer, and to preserve and protect the public interests. [Act Aug. 7, 1876, p. 86, sec. 9.]

Art. 367. [301] **To sue for penalty against railroads.**—It shall be the duty of the county attorney to sue for and recover the penalties against railroad companies for failing to keep in repair public crossings, as prescribed in article 6494 of these statutes; and it shall be the duty of the county attorney, upon the making of an affidavit of the facts by any person, to at once institute against the company violating the provisions of said article 6494 suit in the proper court to recover such penalty or penalties; and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under said article shall be conducted in the same manner as civil suits; and the county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as a part of the costs of the case; provided, that when two or more penalties are sought to be recovered in one and the same suit, but one such fee shall be allowed; and provided, further, if the county be cast in the suit, no costs shall be charged against the county. [Acts 1885, p. 45; amend., 1895, Sen. Jour., p. 478, sec. 13.]

Art. 368. [302] **To institute quo warranto proceedings.**—It shall be the duty of district and county attorneys to institute and prosecute quo warranto proceedings against persons and corporations in such cases and under such circumstances as are prescribed in article 6403 herein, and in such other cases as may be prescribed by law. [Acts of 1879, S. S., p. 43.]

Art. 369. [303] [261] **Admission made by, shall not prejudice the state.**—No admission made by the district or county attorney, in any suit or action in which the state is a party, shall operate to prejudice the rights of the state. [Act May 1, 1846, p. 295, sec. 13. P. D. 193.]

TITLE 14.

BANKS AND BANKING.

Chapter.

1. Banks.
2. Banks and Trust Companies.
3. Savings Banks.

Chapter.

4. Savings Departments.
5. Bank Deposit Guaranty Law.
6. General Provisions.

CHAPTER ONE.

BANKS.

Articles.	Articles.
Banks, incorporated how.....	up
Articles of association, requisites.....	Powers of corporation.....
To be signed, acknowledged, recorded, etc.	Cash reserve
No certificate of incorporation valid un- less, etc.	Duties of directors, limitation upon bor- rowing, etc., by directors and officers..
Board of directors.....	No branch bank to be maintained, etc., except, etc.
Capital stock prescribed; to be fully paid	

Article 370: **Banks, incorporated how.**—Five or more persons, a majority of whom shall be residents of this state, who shall have associated themselves by articles of agreement, in writing, as provided by the general corporation law, for the purpose of establishing a bank of deposit or discount, or both of deposit and discount, may be incorporated under any name or title designating such business. [Acts 1905, S. S., p. 489, sec. 1.]

Art. 371. **Articles of association, requisites.**—The articles of association shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated in this state for similar purposes, or any imitation of such name, and which shall include as a part thereof, either the word “bank,” or “banking.”

2. The name of the city or town and county in which the corporation is to be located.

3. The amount of the capital stock of the corporation, which shall be divided into shares of one hundred dollars each; that the same has been bona fide subscribed, and actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors or managers.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of directors or managers, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case shall exceed fifty years. [Id. sec. 2.]

Art. 372. **To be signed, acknowledged, recorded, etc.**—Such articles shall be signed by and acknowledged by the parties thereto and filed in the office of the secretary of state; and a certified copy thereof shall be returned by the secretary of state to the incorporators, which said certified copy shall be recorded in the office of the county clerk of the county in which the corporation is to be located. [Id. sec. 2.]

Art. 373. **No certificate of incorporation valid, unless, etc.**—No certificate of incorporation under this title shall be valid, unless, at the time the articles of agreement were acknowledged, the capital stock therein mentioned shall have been bona fide subscribed and paid up in lawful money. [Id. sec. 2.]

Art. 374. **Board of directors.**—The affairs and business of every banking corporation shall be managed by a board of directors or managers, consist-

ing of not less than five nor more than twenty-five shareholders, who shall be elected annually, a majority of whom shall be bona fide resident citizens of the state, and each of whom shall be a bona fide owner of at least ten shares of the capital stock thereof; provided, that, where the capital stock of such corporation does not exceed ten thousand dollars, each director shall be a bona fide owner of at least five shares of the capital stock thereof; nor shall any person be a director in any bank against whom such bank shall hold a judgment. Every person who shall be elected a director of a bank shall, within thirty days after said election, qualify himself as such director by filing with the officers of such bank a written acceptance of the position, a copy of which said acceptance shall be spread upon the records of the acts of the directors. Failure to comply with this provision, within the time specified, shall work a forfeiture of the position; and, when any vacancy occurs by such failure, the board of directors shall, at the next regular meeting thereafter, enter the fact of such vacancy upon their records, and immediately proceed to elect some competent person to fill the vacancy for the unexpired term. In the event of vacancy happening from any cause in the board, previous to the annual election, remaining members thereof may fill such vacancy. [Id. sec. 6.]

Art. 375. **Capital stock prescribed; to be fully paid up.**—The capital stock, which shall be fully paid up, shall not be less than ten thousand dollars for banks located in towns and cities having less than twenty-five hundred inhabitants, nor less than twenty-five thousand dollars for banks located in towns and cities having twenty-five hundred or more and less than ten thousand inhabitants, nor less than fifty thousand dollars for banks located in towns and cities having ten thousand or more and less than twenty thousand inhabitants, nor less than one hundred thousand dollars in towns and cities having twenty thousand inhabitants or more. The population of all towns and cities for the purpose of fixing the minimum capital stock of banks, under this title, shall be ascertained by reference to the last United States census taken prior to their incorporation. [Id. sec. 5.]

Art. 376. **Powers of corporation.**—Every such corporation shall be authorized and empowered to conduct the business of receiving money on deposit, and allowing interest thereon, and of buying and selling exchange, gold and silver coins of all kinds; of loaning money upon real estate and personal property and upon collateral and personal securities at a rate of interest not exceeding that allowed by law; provided, that no bank organized under this title shall loan more than fifty per centum of its securities upon real estate; and no such bank shall make a loan on real estate of an amount greater than fifty per centum of the reasonable cash value thereof; also of buying, selling and discounting negotiable and non-negotiable paper of all kinds, as well as all kinds of commercial paper. [Id. sec. 3.]

Art. 377. **Cash reserve.**—Every banking corporation shall, at all times, have an amount of cash on hand and cash due from other banks equal to at least twenty-five per cent of the aggregate amount of its demand deposits, ten per cent of which is to be actual cash in the bank. Whenever the reserve of a bank, as hereinbefore required, shall fall below twenty-five per cent of the demand deposits, then such bank shall not make any new loans or discounts until it shall, by collections, restore its lawful reserve. The reserve fund, or any part thereof, together with the current receipts, may be kept on hand or on deposit, payable on demand, in any bank or banking association of the state of Texas, or any bank, banking association, or trust company, regularly chartered and operating under the laws of any other state, or under the laws of the United States, approved by the commissioner of insurance and banking, and having a paid up capital stock of fifty thousand dollars or more; but the deposits in any one bank or trust company shall not exceed

twenty per cent of the total deposits, capital and surplus of said bank. [Acts 1907, p. 60, sec. 7. Acts 1905, S. S., p. 491.]

Art. 378. Duties of Directors.—The board of directors of each and every bank organized under this title, shall meet at least once per month, and pass upon the business of the bank back to the previous meeting of the board, and shall keep a written record of its approval or disapproval of each and every loan; and, at each monthly meeting, the records shall show the aggregate of the then existing indebtedness and liability of each of the directors and officers of the bank; and no bills payable shall be made, and no bills shall be rediscounted by the bank, except with the consent of the board of directors. [Acts 1905, S. S., p. 491, sec. 6.]

Limitation upon borrowing, etc., by directors and officers.—No director of a bank in this state shall be permitted to borrow any of the money of the bank of which he is a director, in excess of ten per cent of the capital and surplus, without the consent of a majority of the directors of the bank (other than the borrower) first having been obtained at a regular meeting of the board; said consent to be made a matter of record before loan is made; and no officer, whether a director or not, shall be indebted to such bank in any sum whatever without the consent of the board, obtained and recorded in like manner. [Id.]

Art. 379. No branch bank to be maintained, etc., except, etc.—No such corporation shall maintain any branch bank, receive deposits, or pay checks, except over the counter of and in its own banking house, except where such corporation is a county or state depository, in any county other than that of its home, or is a county depository and is not located at the county seat; and provided, that nothing in this article shall prohibit ordinary clearing house transactions between banks. Corporations created under the terms of this title shall not be authorized to engage in business at more than one place, which shall be designated in their charters. [Id. sec. 4.]

CHAPTER TWO.

BANK AND TRUST COMPANIES.

Article	Article
Bank and trust company, incorporated	383
how; definition	380
Articles of agreement; requisites	381
To be signed, acknowledged, recorded, etc.	382
Board of directors	383
Capital stock prescribed	384
Powers of corporation	385

Article 380. Bank and trust company incorporated how; definition.—Any five or more persons, a majority of whom are residents of this state, who shall have associated themselves by articles of agreement, in writing, as provided by law, for the purpose of establishing a banking and trust company, may be incorporated under any name or title designating such business. "Trust company," wherever appearing in the following articles of this title, is intended to mean "banking and trust company," and to refer to corporations created under this and the succeeding articles of this title, relating to banking and trust companies. [Acts 1905, S. S., p. 492, sec. 8.]

Art. 381. Articles of agreement; requisites.—The articles of agreement shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.

2. The name of the city or town and county in which the corporation is to be located.

3. The amount of the capital stock of the corporation authorized by the articles of agreement, which shall be divided into shares of one hundred dollars each; that said capital is subscribed and actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors and managers.

4. The names and places of residence of the several shareholders and the number of shares subscribed by each.

5. The number of the board of directors or managers, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case shall exceed fifty years.

7. The purposes for which the association or company is formed, which shall be the establishment of a bank of deposit or discount, or both of deposit and discount, with the power set out in article 376, and may include any one or more of the purposes set out in article 385. [Id. sec. 9.]

Art. 382. To be signed, acknowledged, recorded, etc.—The articles of agreement shall be signed and acknowledged by the parties thereto, and recorded in the office of the secretary of state, and a certified copy thereof returned by the secretary of state to the incorporators, which shall be filed in the office of the county clerk of the county in which such corporation is to do business. [Id. sec. 10.]

Art. 383. Board of directors.—The property or business of the corporation shall be controlled and managed by directors, not less than five nor more than twenty-five in number, who shall respectively be stockholders of such corporation, and a majority of whom shall be bona fide citizens of this state, to be elected by ballot by the shareholders of such corporation for one year, if the number of directors of such corporation does not exceed five, at such time and place as shall be directed by the by-laws of such corporation, of which time and place at least two weeks notice shall be published in some newspaper, published at least once a week, in the city or county in which the corporation is located, which circulates in the locality where such corporation is located. Such election shall be made by such shareholders as shall attend in person, or by proxy in writing; and, in case the election shall not be made on the day named, the corporation shall not thereby be dissolved, but the election may be had at any other time, agreeably to the by-laws of said corporation; and the persons so elected shall hold their office until others are elected and qualified. If the board of directors of such corporation named in the articles of the association shall exceed five in number, they shall, as soon as may be after their organization, divide themselves by ballot into three classes of equal number, as near as may be, designated the first, second and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years; and at each annual election, conducted in the manner heretofore designated, directors shall be elected for the term of three years to fill the vacancies created by the retiring class. In case of death or resignation of one or more of said directors, the survivors shall fill the vacancy until the next election. [Id. sec. 12.]

Art. 384. Capital stock prescribed.—The amount of capital stock of any trust company shall not be less than fifty thousand dollars nor more than ten million dollars. [Id., sec. 12.]

Art. 385. Powers of corporation.—Corporations may be created under articles 380 and 381 for the purpose of establishing a bank of deposit or discount,

or both of deposit and discount, with the powers set out in article 376, and any one or more of the following purposes:

1. To act as the fiscal or transfer agent of any state, municipality, body politic, or corporation, and, in such capacity, to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose.

2. To receive deposits or trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

3. To lease, hold, purchase and convey any and all real property necessary in the transaction of its business, or which it shall acquire in satisfaction, or partial satisfaction, of debts due the corporation, under sales, judgments or mortgages, or in settlement, or partial settlement, of debts due the corporation by any of its debtors; which shall be alienated in good faith to some person other than some one interested in the company, within five years from the date of its acquisition.

4. To act as trustee under any mortgage or bond issue, by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

5. To accept trusts from, and execute trusts for, married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

6. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or other persons, corporation or party.

7. To take, accept and execute any and all such legal trusts, duties and powers, in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power, which it may so accept.

8. To take, accept and execute any and all such trusts and powers of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in, guarantee and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys, or securities for moneys, are borrowed or received on deposit, or for investment, the bonds or obligation of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

10. To act as executor under the last will or as administrator of the estate of any deceased person, or as guardian of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary under appointment of any court of record having jurisdiction of the estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict.

11. To guarantee the fidelity and diligent performance of their duty by persons or corporations holding places of private or public profit or trust, in all cases where individual bonds are not required by law, to guarantee

or become surety on any bond given by any person or corporation, and to reinsure or guarantee any person or corporation against loss or damage by reason of any risk assumed by insuring the fidelity or the diligent performance of duty of any such person or corporation, or by guaranteeing or becoming surety on any bond; provided, this act shall never be construed as authorizing the granting of a trust not lawful as between individuals. [Id. sec. 11.]

CHAPTER THREE.

SAVINGS BANKS.

Article	Article		
Savings Banks, incorporated how.....	386	Division of net profits; guaranty and indemnity funds	412
Articles of association, requisites.....	387	Safety deposit box rent, default in payment of; proceedings on	413
Further requisites	388	Powers of savings bank as to real estate.	414
To be signed, acknowledged, recorded, etc.	389	Corporation, etc., shall not repurchase lands sold	415
Board of directors and other officers...	390	Powers of directors.....	416
Meetings of board of directors—quorum.	391	Notices and rules posted, effect of.....	417
Capital stock prescribed, to be subscribed and paid up.....	392	Compensation of directors, when and how allowed	418
Capital stock limited; requirements as to increase of	393	No director to receive pay for services, except, etc.....	419
Stock a guarantee fund and invested, etc.	394	Restrictions as to fees, brokerage, etc...	420
Powers of corporation.....	395	No director or officer to borrow funds, nor use, except, etc., nor be surety, etc., for loans to bank.....	421
May limit deposits, etc.	396	Fees, etc., to member of board to be reported	422
Payment of deposits; regulations, notice; interest	397	Penalty for directors borrowing, etc., being surety, failure to attend meetings, etc.	423
Pass book, requirements as to.....	398	Security from officers, agents, etc., for fidelity	424
Deposit in name of minor or female thereafter married	399	Annual report of savings bank, etc., to commissioner; form; requisites.....	425
Deposit in trust	400	Report continued, and requisites.....	426
No interest paid or declared until when, nor unless, etc.	401	Report continued and requisites; examination of books, as to basis, etc., forfeiture for failure to report.....	427
Interest rate paid, to be regulated by directors	402	Commissioner may give directions to savings banks, etc., when; communication to attorney general; his duties; order of court	428
Deposits invested, how	403	Visitation of savings banks, etc., by commissioner, etc., powers, expenses, certificate; report	429
Same subject	404	Commissioner to report to legislature, requisites	430
Application for loans, how made; record of; presented to board	405		
Cash reserve	406		
Indemnity fund and guaranty fund.....	407		
Guaranty and indemnity funds; rule in determining per cent of.....	408		
No dividend over ten per cent, etc., nor except as provided	409		
Dividend not over ten per cent may be declared when, etc.	410		
Dividends, further provisions as to, and as to net profit	411		

Article 386. **Savings banks, incorporated how.**—Any five or more persons who shall have associated themselves by articles of agreement, in writing, may be incorporated as a savings bank, under any name or title designating such business, such agreement in writing to constitute the articles of association of such corporation. [Acts 1905, S. S., pp. 489, 491, sec. 13.]

Art. 387. **Articles of association, requisites.**—Such agreement shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, nor an imitation of such name.

2. The name of the city, town or county in which such corporation is to be located.

3. The amount of capital stock of the corporation, which shall be divided into shares of one hundred dollars each; and that the entire amount thereof

has been subscribed and actually paid up, in lawful money of the United States, and is in possession of the persons named as the first board of directors.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case is to exceed fifty years.

7. The purpose for which the corporation is formed. [Id. sec. 13.]

Art. 388. **Further requisites.**—The articles of association shall state that the entire amount of the capital stock of such proposed corporation has been paid in. [Id. sec. 14.]

Art. 389. **To be signed, acknowledged and recorded.**—Said articles of association shall be sworn to and shall be signed and acknowledged by the parties thereto, and filed in the office of the secretary of state, and by him recorded, and a certified copy returned to the incorporators, who shall record the same in the county clerk's office of the county of the domicile of such corporation. [Id. sec. 14.]

Art. 390. **Board of directors and other officers.**—The property and business of savings banks shall be controlled and managed by a board of directors, not less than five nor more than thirteen in number, who shall be stockholders of the corporation, and a majority of whom shall be bona fide citizens of the state, to be elected by ballot of the shareholders of the corporation, for one year, at such time and place as shall be directed by the by-laws of the corporation, of which time and place at least two weeks' notice shall be published in some newspaper, published at least once a week, in the city or county where such corporation is located. Such election shall be made by such of the shareholders as shall attend in person or by proxy in writing. In case the election shall not be made on the date named, the corporation shall not thereby be dissolved, but an election may be held any other time, agreeably to the by-laws of the corporation; and the persons so elected shall hold office until their successors are elected and qualified. If the board of directors shall exceed five, they shall, as soon as may be after organization, divide themselves by ballot into three classes of equal number, as near as may be, designated the first, second and third class, of which the first class shall remain in office for one year, the second class two years and the third class three years; and, at each annual election, conducted in the manner hereinbefore designated, directors shall be elected for the term of three years, to fill vacancies created by the retiring classes. In case of death or resignation of one or more of such directors, the survivors shall fill the vacancies until the next election. The directors shall elect from their number a president, one or more vice presidents, a secretary and treasurer, and may appoint such other officers and agents as they may deem necessary for the proper conducting of the business of the corporation, and may allow them reasonable compensation for services rendered; and the vote of a majority of the full board shall be requisite for the appointment of any officer receiving a salary therefrom, or to fix or increase the salary of any officer. No person shall be disqualified from being a director by reason of his being a director or officer of a bank or savings institution organized under the laws of this state. [Id. sec. 19.]

Art. 391. **Meetings of board of directors, quorum.**—Regular meetings of the board of directors of savings banks shall be held at least once in each month, for the purpose of receiving reports of the officers and committees, and for the transaction of other business. A quorum at any regular, special or adjourned meeting shall consist of not less than a majority of directors, but less

than a quorum may adjourn from time to time, until the next regular meeting. [Id. sec. 23.]

Art. 392. Capital stock prescribed, to be subscribed and paid up.—The capital stock of any savings bank shall not be less than ten thousand dollars, in cities having a population of fifty thousand inhabitants or under, and not less than fifty thousand dollars in cities having a population of more than fifty thousand; the entire amount of capital stock to be subscribed in good faith, and actually paid up in lawful money of the United States at the time of filing of article of association. [Id. sec. 15.]

Art. 393. Capital stock limited, requirements as to increase of.—No savings bank formed under the provisions of this chapter shall have a capital stock of more than five million dollars, and any such corporation may increase its capital stock in any amount within the limit of this article; but all increase of stock shall be subscribed for in good faith and shall be paid up in full in lawful money of the United States, at the time of filing the certificate of increase; provided, that stockholders shall have the first right to subscribe to such increase in capital stock in proportion to the amount of stock held by each. [Id. sec. 27.]

Art. 394. Stock a guarantee fund, and invested, etc.—Said capital stock, however, shall be regarded as a guarantee fund, for the security of depositors, and shall be invested as provided in article 403. [Id. sec. 15.]

Art. 395. Powers of corporation.—Savings banks shall have authority:

1. To receive, accumulate and safely keep any deposits of money from any persons, corporations or societies, and to invest, hold and repay the same, crediting and paying interest thereon, as in this act authorized and provided, and not otherwise.

2. At its option, in connection therewith, to take and receive as bailee, for safe keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuables, guaranteeing their safety upon such terms and for such compensation as may be agreed upon, and to let out vaults, safes, and other receptacles for the use, benefit and purposes of such corporations. [Acts 1905, S. S., p. 495. Acts 1907, p. 305, sec. 16.]

Art. 396. May limit deposits, etc.—Every such corporation shall have the right to limit the aggregate amount which they will receive from any one person or society to such sum as they may deem expedient, and may, in their discretion, refuse to receive the sum offered, and may also at any time return all or any part of any sum received; provided, that the aggregate amount that may be received from any one individual or corporation shall not exceed four thousand dollars, inclusive of dividends. But this limitation shall not apply to moneys arising from judicial sales or trust funds, or if received pursuant to order of a court of record, or to moneys or property received as bailee for safe keeping and storage only. [Act 1905, S. S., p. 489, sec. 26.]

Art. 397. Payment of deposits; regulations; notice, interest.—Deposits made with savings banks shall be paid to depositors, or their representatives, when requested, under regulations as the board of directors may prescribe, not inconsistent with the provisions of this act, which regulations shall be printed and conspicuously posted in all places where deposits are received, accessible and visible to all depositors; but no alteration in such regulations shall in any manner affect depositors in respect to any deposits or interest thereon, made prior to such alterations, and it shall be lawful to require sixty days written notice of the withdrawal of any deposit. Any account may be closed at any time upon notice to the depositor, and, after such notice, the deposit shall cease to draw interest; provided, nothing in this section [article] shall be so construed as to prevent the issuing of certificates of deposit, payable

on demand, or such other time as may be agreed upon by the depositor and this bank or corporation. [Id. sec. 24.]

Art. 398. **Pass book, requirements as to.**—A pass book shall be issued by savings banks to each depositor, containing the rules and regulations adopted by the board of directors, governing deposits, in which book shall be entered each deposit made by, and each payment made to, such depositor; and no payment or check against any such savings account shall be made, unless accompanied by, and entered in, the pass book issued therefor, except for good cause and on assurance satisfactory to the officers of the bank. At least once in every three years the pass book of all depositors shall be called in and verified in such manner as the board of directors shall elect. The directors may provide for making payments in case of loss of pass book or other exceptional case, when its production may produce loss or serious inconvenience to the parties. [Id. sec. 26.]

Art. 399. **Deposit in name of minor or female thereafter married.**—Whenever any deposit shall be made with any savings bank by or in the name of any person being a minor or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, together with the interest thereon, upon production of, and proper entry in, the pass book at the time of such payment, and in accordance with the by-laws of the corporation, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor or female shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the corporation. [Id. sec. 25.]

Art. 400. **Deposit in trust.**—Whenever any deposit shall be made by any persons in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made. [Id. sec. 25.]

Art. 401. **No interest paid or declared until when, nor unless, etc.**—No interest shall be paid or declared by savings banks until the board of directors of such corporation cause an examination to be made of the assets and securities, and find the amount of such interest and dividend has been actually earned and accrued, and no interest or dividend shall be paid or declared, unless authorized by a vote of the board of directors, at a regular meeting duly entered on the minutes. [Id. sec. 33.]

Art. 402. **Interest rate paid, to be regulated by directors.**—It shall be the duty of the board of directors of savings banks to regulate, from time to time, the rate of interest to be allowed to depositors out of the net profits, and to pay or credit the same semi-annually on semi-annual interest dates, to be fixed by the by-laws; provided, however, that the directors of any such corporation may classify its depositors according to character, amount and duration of their dealings with the corporation, and regulate the interest allowed in such manner that each depositor shall receive the ratable portion of interest as all others of the same class. [Id. sec. 28.]

Art. 403. **Deposits invested, how.**—All sums so received, except those held as bailee, for safe keeping and storage only, and the income derived therefrom, and all moneys intrusted to any such corporation by order of court, shall be invested as follows:

1. In bonds or interest bearing notes or obligations of the United States, or of those for which the faith of the United States is pledged for the payment of principal and interest.

2. In bonds of the state of Texas, or of any state in the union that has not, within the last five years previous to making such investments, defaulted in the payment of any part of either principal or interest thereof.

3. In bonds of any city, county, town or school district of this state, which has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investments.

4. In the first mortgage bonds of any steam railroad, the income of which is sufficient to pay all operating expenses and fixed charges, which has its domicile in the state.

5. In bonds or notes secured by first mortgages or deed of trust on unincumbered real estate worth at least twice the amount loaned thereon. But the mortgage investment of such corporation shall not exceed sixty per cent of its total assets.

6. In real estate sufficient to reasonably furnish a domicile for such corporation, and no more. [Id. sec. 17.]

Art. 404. **Same subject.**—It shall be the duty of the directors of any such savings bank, as soon as practicable, to invest such fund of money, by purchase or otherwise, in the securities mentioned in article 403, and, from time to time, sell and invest the proceeds of such investments, but, for the purpose of meeting current demands and expenses in excess of the receipts, any of the securities may be sold or pledged. [Id. sec. 18.]

Art. 405. **Application for loans, how made; record of; presented to board.**—All applications for loans shall be made in writing through the treasurer of the corporation, who shall keep a record thereof, showing the date, name of applicant, amount asked for and security offered, and shall cause the same to be presented to the board of directors. [Id. sec. 20.]

Art. 406. **Cash reserve.**—There shall be kept an available cash fund of not less than fifteen per cent of the whole amount of its assets, and the same, or any part thereof, may be kept, on hand or on deposit, payable on demand, in any bank or banking association of the state of Texas, or under the laws of the United States, approved by the superintendent of banking, and having a paid up capital stock of fifty thousand dollars or more, but the deposits in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of such savings banks. [Id. sec. 18.]

Art. 407. **Indemnity fund and guaranty fund.**—When the guaranty fund of any savings bank amounts to a sum equal to the capital stock of the corporation, and after interest on the deposits and dividends on the capital stock have been paid, as herein provided, the board of directors shall, at the time of making the regular semi-annual dividends, set aside and reserve from the remaining net profits which have accumulated during the preceding six months, a sum not exceeding one-fourth of one per cent of the total deposits on such interest day, to be known as indemnity fund, until such fund amounts to ten per cent of the whole deposits; and such fund shall thereafter be maintained and held to meet any contingency or loss from depreciation of securities or otherwise. [Id. sec. 31.]

Art. 408. **Guaranty and indemnity funds, rule in determining per cent of.**—In determining the per cent of the guaranty and indemnity funds so held by savings banks, the interest-bearing notes and bonds shall not be estimated above their par value, or above their market value, if below par; its bonds and mortgages and deeds of trust, not in arrears of interest for a period longer than one year, at their face; its real estate at not above cost. All debts due any savings bank or institution on which the interest is past due for a period of twelve months, unless well secured and in process of collection, shall be

considered as bad debts, and shall be charged to profit and loss account at the expiration of that time. [Id. sec. 35.]

Art. 409. **No dividend over ten per cent, etc.; nor except as provided.**—No dividend exceeding ten per cent per annum shall be paid on its capital stock in any event, and no dividend shall be paid except as herein provided. [Id. sec. 15.]

Art. 410. **Dividend not over ten per cent may be declared when, etc.**—Whenever interest at rate of not less than three per cent per annum shall have been paid or credited by savings banks out of the net profits of the current six months on all savings or trust funds which may be entitled thereto, the board of directors may, out of the remaining net earnings of such six month, if any there be, declare and pay a dividend on the capital stock of the corporation, not exceeding the rate of ten per centum per annum on the par value thereof; provided, however, that no such dividends shall be declared or paid until at least one-tenth of the profits of the corporation for such period of six months shall be carried to the credit of the guaranty fund, until such fund equals the amount of the capital stock, which sum shall be invested as provided herein for the investment of the capital fund. [Id. sec. 29.]

Art. 411. **Dividends, further provisions as to, and as to net profit.**—If, for any period of six months, the net profits shall not be sufficient to pay a dividend on the capital stock of any savings bank, amounting to three per cent for such six months, then, if there are any net profits in any succeeding six months period or periods, over the interest required to be paid depositors for such period or periods, and the amount required to be carried to the guaranty fund, such excess or net profits shall be applied to the arrears of the dividend on the capital stock, until such arrears of dividend are paid in full; and no part of the net profit shall be credited on the indemnity fund, as provided in article 407, or to the payment of the extra interest to the depositors, as provided in article 412. [Id. sec. 30.]

Art. 412. **Division of net profit, guaranty and indemnity funds.**—Once in every term of three years, if the net profits of savings banks which have accumulated over and above the guaranty and indemnity funds, as provided in articles 407 and 410, amount to one per cent of the deposits which have remained with such corporation, for at least one year next preceding, such net profits shall be divided among the depositors whose deposits shall have remained therein at least one year next preceding, in proportion to the amount of interest which has been paid on their deposits during the three years then next preceding. But nothing in this section [article] shall be so construed as to require the payment of any interest on money or property received as bailee for safe keeping and storage only. [Id. sec. 32.]

Art. 413. **Safety deposit box rent, default in payment of; proceedings on.**—Any corporation which has been authorized, or may hereafter be authorized, to own or control a safety vault and rent the boxes therein, may, if the amount due for the use of any safe or box in the vault of such corporation shall not have been paid for two years, at the expiration thereof, cause to be sent to the person in whose name such safe or box stands on its books, a notice in writing, in a securely closed, postpaid, registered letter, directed to such person at his postoffice address, as recorded upon the books of the corporation, notifying such person that, if the amount then due for the use of such safe or box is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box to be opened in the presence of its president, or vice president, or secretary, or treasurer, and of a notary public, not an officer or in the employ of the corporation, and the contents thereof, if any, to be sealed up by such notary public in a package, upon which such notary public shall distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated

value thereof. And the package so sealed and addressed, **when** marked for identification by such notary public, will be placed by such notary public in one of the general safes or boxes of the corporation, and retained by the corporation, subject to the payment of all rent that may be unpaid, and of all expenses incurred in opening the safe or box, and also of a reasonable compensation for the safe-keeping of the contents, after their removal from the safe or box. [Id. sec. 57.]

Art. 414. Powers of savings bank as to real estate.—It shall be lawful for any savings bank to purchase, hold, sell and convey real estate as follows:

1. The house and lot on which is the domicile of such corporation, and from portions of which, not required for its own use, any revenue may be derived, not to exceed in value twenty per cent of the capital of such association.

2. Such as shall be purchased by it at sales upon foreclosure of mortgages or deeds of trusts owned by such corporations, or upon judgments or decrees rendered for debts due to it, or purchased or taken in settlement to secure such debts, and all such interest shall be sold by such corporation within five years after same shall be vested in it, unless the superintendent shall extend the time within which such sale shall be made. [Id. sec. 20.]

Art. 415. Corporation, etc., shall not repurchase lands sold.—At the sale of lands or real estate acquired by said corporation the said corporation shall not repurchase said real estate, directly or indirectly, nor shall any officer, director or person holding stock in said corporation be a purchaser of said real estate for the use of the corporation. [Id. sec. 20.]

Art. 416. Powers of directors.—The board of directors of any such corporation shall have power, from time to time, to make such laws, rules and regulations as they may think proper for the election of officers, for prescribing their respective powers and duties, and the manner of discharging same; for the appointment of committees, and generally for transacting, managing and directing the affairs of the corporation; provided, such by-laws, rules and regulations be not repugnant thereto, nor inconsistent with the provisions of this title, nor the constitution of this state, nor of the United States. [Id. sec. 19.]

Art. 417. Notices and rules posted, effect of.—Notices and rules, posted conspicuously by savings banks in the room where such business is transacted, shall be equivalent to a personal notice, to each person or party interested. [Id. sec. 34.]

Art. 418. Compensation of directors, when and how allowed.—It shall be lawful for directors, acting as officers of savings banks, whose duties may require their regular and faithful attendance at the institution, to receive such compensation as the majority of the board of directors shall deem just and reasonable; but such majority shall be exclusive of any director to whom such compensation shall be voted. But it shall not be lawful to pay the directors as such for attendance at the meetings of the board. [Id. sec. 36.]

Art. 419. No director to receive pay for services, except, etc.—No director shall, directly or indirectly, receive any payment or emolument for his services as such of any savings bank, except as provided in article 418. [Id. sec. 22.]

Art. 420. Restriction as to fees, brokerage, etc.—No such corporation, or any person acting in its behalf, shall negotiate, take or receive a fee, brokerage, commission or gift, or other consideration, for or on account of the loan made by and in behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made. But nothing contained herein shall apply to any reasonable charge for services in the examination of title, and the preparation of conveyance to such corporation as security for its loan. [Id. sec. 20.]

Art. 421. No director or officer to borrow funds, nor use, except, etc., nor be surety, etc., for loans to bank.—No director or officer of such corporation shall,

directly or indirectly, for himself, or as agent or partner of others, borrow any of the funds of the corporation, or funds in its custody, or in any manner use the same, except to make necessary current payments for the corporation, or to make investments, or to deposit for safety, under the direction and authority of the board of directors; nor shall any director or officer of such corporation be an indorser or surety or in any way be an obligor for moneys loaned by or borrowed of the corporation. [Id. sec. 22.]

Art. 422. **Fees, etc., to member of board, to be reported.**—All sums paid for services, fees, or otherwise, to a member of the board of directors shall be reported in detail at each regular meeting of the directors. [Id. sec. 20.]

Art. 423. **Penalty for directors borrowing, being surety, failure to attend meetings, etc.**—Whenever a director of such corporation shall borrow, directly or indirectly, any of the funds of the institution of which he is a director, or become surety or guarantor for any money borrowed of, or loan made by, such corporation; or, upon his failure to attend regular meetings of the board, or to perform any duties devolved upon him as such director, for three successive months, without having been excused by the board for such failure, the office of such director shall become vacant; but the director vacating his office, for failure to attend meetings, or to discharge his duties, may, in the discretion of the board, be eligible to re-election. [Id. sec. 22.]

Art. 424. **Security from officers, agents, etc., for fidelity.**—The board of directors of savings banks may, from time to time, require from the officers, employes and agents such security for their fidelity and good conduct as may be necessary. [Id. sec. 37.]

Art. 425. **Annual report of savings banks, etc., to commissioner; form; requisites.**—Every savings bank organized under this title shall, on or before the first day of November in each year, make a report in writing to the commissioner of insurance and banking, in such form as he may prescribe, of its condition on the first day of September preceding. Such report shall state the amount loaned on bonds and mortgages, together with a list thereof; the par value and the estimated market value of all bond investments, designating each particular kind, and the amount invested in each; the amount loaned upon pledge of deposits, with a statement of the amount held as collateral for such loans; the amount of cash on hand and on deposit in banks or trust companies, with their names and amount deposited in each; the amount of all assets, including interest accrued and not enumerated above, and such other information as the commissioner may require. [Id. sec. 69.]

Art. 426. **Report continued and requisites.**—Such reports shall also state all liabilities of such savings bank, on the morning of the first day of September, the amount due depositors, which shall include any dividend to be created to them for six months on that day, and any other claims against the corporation which are or may be charged against its assets. Such reports shall also state the amount of all deposits made during the fiscal year ending that day, and the amount drawn out during the same period; the whole amount of interest received and earned, and the amount of interest paid and credited to depositors, together with the amount of each semi-annual credit of interest; the number of accounts opened and re-opened, the number closed during the year, and the number of open accounts at the end of such year, and such other information as the commissioner may require. [Id. sec. 70.]

Art. 427. **Report continued, and requisites, examination of books as basis, etc., forfeiture for failure to report.**—Such report shall be verified by the oath of the two principal officers of such savings bank; and the statement of the assets shall be verified by the oath of at least three of the board of directors, who shall examine the same pursuant to the requirements of this section [article.] It shall be the duty of not less than three of the directors, on or about the first day of September of each year, to thoroughly examine the books,

vouchers and assets of such institution, and its affairs generally; and the statement of assets and liabilities reported to the commissioner on the first day of November of each year shall be based upon such examination; but nothing herein contained shall be construed as prohibiting the directors from requiring such examination at such other times as they shall prescribe. Any such corporation failing to furnish to the commissioner any report or statement required by this act shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be so withheld; and the commissioner may maintain an action in his name of office to recover such penalty, and, when collected, the same shall be paid into the treasury of the state, and be applied to the school fund; but the commissioner may, for sufficient cause, extend the time for making such report, not exceeding thirty days. [Id. sec. 71.]

Art. 428. Commissioner may give directions to savings bank, etc., when; communication to attorney general; his duties; order of court.—Whenever it shall appear to the said commissioner, from any such examination or report, that any such savings bank is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal and unsafe, or unauthorized practices, and strict conformity with the requirements of the law, and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make any such report, as is hereinbefore required, or comply with any such orders, as aforesaid, or whenever it shall appear to the commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interests of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or of malversation in his official position, injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the attorney general, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order restraining the institution from paying more than ten per cent of its funds in any six months, or until a further order of court, or for the removal of one or more of the board of directors, or for the appointment of a receiver or receivers, to wind up the affairs of such corporation. And the court before which such proceedings shall be instituted shall have the power to grant such orders, and, in its discretion, from time to time, modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved shall seem to require; and, whenever in such proceedings, an order shall be granted, restraining such corporation from paying out or disposing of any money or property of or held by such corporation, the commissioner may, and, if directed by the court, shall, take temporary possession of all the assets, property and rights of or held by such corporation, and hold such possession until restored to the directors, or until further order of the court. [Id. sec. 74.]

Art. 429. Visitation of savings banks, etc., by commissioner, etc.; powers, expenses; certificate; report.—It shall be the duty of the commissioner, once in two years, either personally or by one or more competent persons to be appointed by him, to visit and examine every such savings bank in this state. The commissioner shall also have the power in like manner to examine any such corporation whenever, in his judgment, it may be deemed necessary or expedient. The commissioner and every other such examiner shall have the power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination by summons, subpoena, or attachment, in the manner now authorized in respect to the attendance of per-

sons as witnesses in the courts of record of the state; and all books and papers, which it may be deemed necessary to examine by the superintendent or examiner so appointed, shall be produced, and their production may be compelled in like manner. The expense of every such special examination, if any, shall be paid by the corporation examined, in such manner as the commissioner shall certify to be just and reasonable; but, whenever such special examination shall be made by the commissioner in person, or by one or more of the regular clerks in his department, no charge shall be made except for necessary traveling and other actual expenses. The result of any such examination shall be certified by the examiners, or one of them, upon the records of the corporation examined; and the result of all the regular examinations during the previous year shall be embodied in the annual report of the commissioner required by this chapter to be submitted to the legislature. [Id. sec. 73.]

Art. 430. **Commissioner to report to legislature, requisites.**—It shall be the duty of the commissioner on or before the first day of February, during the session of the legislature, to communicate to the legislature a statement of the condition of every such savings bank from which a report has been received for the past preceding years; also the name and location of the savings banks and institutions for savings authorized by him during the previous two years, with the date of their incorporation. [Id. sec. 72.]

CHAPTER FOUR.

SAVINGS DEPARTMENTS.

Article	Article		
Bank, etc., desiring to establish savings departments, etc., shall do what.....	431	Statement of assets and liabilities of savings department; no savings deposits to be received unless, etc.....	438
Shall invest not over 85 per cent of savings deposits, now; power to sell and reinvest	432	Directors may provide for interest on savings deposits, etc.; provided, etc...	439
May sell securities and reinvest proceeds. To meet current demands securities may be sold, or taken up by bank, etc., out of guaranty fund	433	Accumulated earnings of savings department may be transferred to general fund of bank, etc., when.....	440
Not less than fifteen per cent of deposits to be kept on hand in cash in savings department	434	Savings department governed by provisions of this title, etc.....	441
Notice of withdrawal of deposits.....	435	Directors may adopt regulations; to be submitted to commissioner, etc.....	442
Exclusive prior lien of savings depositors on cash of savings department, etc...	436	Certain acts forbidden.....	443
	437	Assets not to be reduced below deposits, and fifteen per cent to be cash.....	444

Article 431. **Bank, etc., desiring to establish savings department, etc., shall do what.**—Any state bank or banking and trust company, incorporated under the laws of this state, desiring to maintain a savings department or to use or continue to use the word “savings” as part of its corporate name, or in or as part of any sign or advertisement, or in or upon any stationery used or to be used by it, shall establish and maintain a savings department in compliance with the provisions of this chapter. Such savings department may be established by the board of directors adopting a resolution providing therefor, at a regular meeting, which shall contain a copy of this chapter; and a certified copy of which shall be filed in the office of the commissioner of insurance and banking, and also recorded in the office of the county clerk of the county in which such bank or banking and trust company is located; such copies to be filed in the bank or banking and trust companies maintaining such savings departments and using the word “savings” as above provided, which desire

to continue to do so, and be filed by banks desiring to establish such savings departments prior to the establishment of such department. All banks or banking and trust companies establishing or maintaining a savings department or using the word "savings," as above provided, or which, having such departments or using the word "savings," shall continue to maintain such departments or to so use the word "savings," shall keep the business of such department entirely separate and distinct from the general business of such bank or banking and trust company, and shall keep all moneys received as such savings deposits and the funds and securities in which the same may be invested at all times segregated from and unmingled with the other moneys and funds of the bank or banking and trust company. [Acts 1909, 2 S. S., p. 406, sec. 13.]

Art. 432. Shall invest not over eighty-five per cent of savings deposits, how; power to sell and reinvest.—Such banks or banking and trust companies may invest not more than eighty-five per cent of the total amount of such savings deposits in any of the following classes of securities, and not otherwise, to wit:

1. In bonds or interest bearing notes or obligations of the United States or of those for which the faith of the United States is pledged for the payment of principal and interest.

2. In bonds of any city, county, town or school district or other subdivision of this state, now organized or which may hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the constitution and laws of this state, which has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investments.

3. In bonds of the state of Texas, or of any state of the union that has not within the last five years previous to making such investment defaulted in the payment of any part of either principal or interest thereof.

4. In the first mortgage bonds of any steam or electric railroad, the income of which is sufficient to pay all operating expenses and fixed charges, which has its domicile in the state.

5. In bonds or notes secured by first mortgage, deed of trust or other valid lien on unincumbered, improved real estate to run for a term of not longer than ten years, situated in the state, worth at least twice the amount loaned thereon, such bonds or notes to be always accompanied by a complete abstract of title to the property mortgaged and an attorney's certificate or title insurance policy in some company incorporated under the laws of this state, certifying said bonds or notes to be the first lien on the land mortgaged.

It shall be the duty of the directors of such bank or banking and trust company, as soon as practicable, to invest the moneys and funds of such savings department, by purchase or otherwise, in the securities above described. [Id. sec. 13.]

Art. 433. May sell securities and reinvest proceeds.—The directors shall, from time to time, sell and reinvest the proceeds of such investments. [Id. sec. 13.]

Art. 434. To meet current demands, securities may be sold, or taken up by bank, etc., out of guaranty fund.—For the purpose of meeting current demands in excess of the receipts, any of the securities may be sold, or taken up and replaced in cash, by the bank or banking and trust company, out of its general fund. [Id. sec. 13.]

Art. 435. Not less than fifteen per cent of deposits to be kept on hand in cash in savings department.—There shall be kept on hand, at all times, not less than fifteen per cent of the whole amount of such deposits in actual cash, in such savings department. [Id. sec. 13.]

Art. 436. Notice of withdrawal of deposits.—It shall be lawful to require sixty days written notice of the withdrawal of any savings deposits, as pro-

vided for in this chapter, at the option of the bank or banking and trust company. [Id. sec. 13.]

Art. 437. Exclusive prior lien of savings depositors on cash of savings department, etc.—In case of the insolvency or liquidation of any state bank or banking and trust company which shall establish or maintain a savings department, under the terms of this chapter, its savings depositors shall have an exclusive prior lien upon all the assets, including cash, of such savings department, and which shall be first paid; and the remainder, after they have been paid in full, shall be applied to the payment of claims of general creditors. [Id. sec. 13.]

Art. 438. Statement of assets and liabilities of savings department; no savings deposits to be received unless, etc.—It shall be the duty of the president of each state bank or banking and trust company, maintaining a savings department under the provisions of this chapter, to file with the commissioner of insurance and banking, not less than ten days after the first day of each calendar month, a statement of the assets and liabilities of such savings department, upon a form to be prescribed by the commissioner of insurance and banking; and it shall be unlawful for any officer of any state bank or banking and trust company to receive or assent to the receiving of any savings deposits, when the last preceding monthly statement, as herein provided for, is not conspicuously posted in the office from wherein its business is transacted. [Id. sec. 13.]

Art. 439. Directors may provide for interest on savings deposits, etc., provided, etc.—The directors of any state bank or banking and trust company establishing or maintaining, or continuing to maintain, a savings department, may provide that such rate of interest shall be paid on the savings deposits, as it may see fit, payable at such periods and upon such terms and conditions as may be reasonable; provided, that in any case the earnings of such savings department are insufficient to pay any interest due upon any savings deposits, such interest, or the deficiency therein, shall be paid by the bank or banking and trust company out of its general funds. [Id. sec. 13.]

Art. 440. Accumulated earnings of savings department may be transferred to general fund of bank, etc., when.—At the end of any period for which such bank or banking and trust company may lawfully declare a dividend upon its stock, it shall be proper to transfer to the general fund of such bank or banking and trust company all accumulated earnings of the said savings department, after the payment or credit of all interest due on the accrued savings deposits and the legitimate expenses of such department have been provided for. [Id. sec. 13.]

Art. 441. Savings department governed by provisions of this title, etc.—All such savings departments shall be governed by the terms and provisions of this title, so far as the same are applicable and are not in conflict with the special provisions of this chapter, and shall also be governed by such provisions of laws of the state applicable to savings banks as are not in conflict with any of the provisions of this title or of this chapter. [Id. sec. 13.]

Art. 442. Directors may adopt regulations; to be submitted to commissioner, etc.—Such reasonable rules and regulations for the control of such savings departments may be adopted and put in force by the board of directors at any regular meeting of the stockholders at any annual meeting; provided, that such rules and regulations shall not become effective until they have been submitted to the commissioner of insurance and banking, and by him approved. [Id. sec. 13.]

Art. 443. Certain acts forbidden.—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this chapter, to knowingly misappropriate

any moneys or funds belonging to such savings department, or to use or consent to the use of any such moneys or funds, otherwise than for the payment of lawful demands of savings depositors, and in the making of such investments as are prescribed in this chapter, and in the payment of such dividends to the shareholders as are allowed by the law to be paid therefrom, or to borrow any of the funds belonging to such savings department, or to in any way be an obligor for moneys loaned by or borrowed of such savings department, or to receive or accept, directly or indirectly, any commission, brokerage or other valuable thing or favor of any kind by reason or on account of any loan or investment made out of the funds of such savings department, or to sell such savings department any security or other investment. [Id. sec. 13.]

Art. 444. Assets not to be reduced below deposits, and fifteen per cent to be cash.—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this chapter, to wilfully and knowingly do or perform any act or transaction by or as a result of which, at any time, the assets of such savings department, including cash, shall not at least equal in amount the deposits in such savings department, at least fifteen per cent of which shall be actual cash in such savings department. [Id. sec. 13.]

CHAPTER FIVE.

BANK DEPOSIT GUARANTY LAW.

Article	Article
<p>What banking, etc., corporations may protect depositors under provisions of this chapter 445</p> <p>State banking board created, powers, etc. 446</p> <p>Such bank, etc., to have option of methods of securing deposits, must adopt one, when, etc. 447</p> <p>Bank, etc., electing guaranty fund method, to pay what and when, for creation of fund 448</p> <p>Fund paid to whom, and how; how paid out; no diversion; not state fund; duty of board 449</p> <p>Certain bank and trust companies to pay what, credit fund 450</p> <p>Board to admit, etc., only such banks, etc., as they deem solvent, etc.; applications; grounds of refusal to be stated 451</p> <p>National banks may avail of protection of guaranty fund; may withdraw when. 452</p> <p>Commissioner may wind up affairs of bank, by receiver, or etc.; bond; notice. 453</p> <p>No bank, etc., notified, shall have a lien or charge against assets for payment, etc., thereafter 454</p> <p>Bank, etc., may resume business with consent of board when, etc. 455</p> <p>General powers and duties of commissioner 456</p> <p>Shall collect debts, etc. 457</p> <p>On order of court, etc., may sell etc., bad debts, or real estate, or personal property 458</p> <p>May enforce liability of stockholders if, etc. 459</p> <p>May appoint agents, etc., and give what authority 460</p> <p>May employ counsel and expert assistance, etc. 461</p> <p>May require security from agents, etc. 462</p> <p>Notices to claimants and creditors, statement therein 463</p> <p>May reject claim if, etc.; notice, etc.; action on 464</p> <p>Claims presented after expiration of time; rights of 465</p> <p>Inventory of assets of bank; and list of claims; requisites; filing; open to inspection 466</p> <p>Compensation of agents, etc., expenses. 467</p> <p>Disposition of moneys collected by commissioner 468</p> <p>Dividends may be declared when, and how 469</p> <p>Guaranty fund to receive its portion of dividends, with interest, how paid. 470</p> <p>Objections to allowed claim 471</p> <p>Provision by court for unproved or unclaimed deposits 472</p> <p>Bank aggrieved may enjoin proceedings by commissioner 473</p> <p>Continued liquidation by commissioner decided by stockholders, when. 474</p> <p>Continued liquidation by commissioner. 475</p> <p>Continued liquidation by agent of stockholders; selection; bond 476</p> <p>Transfer, etc., by commissioner, and his discharge from liability 477</p> <p>Duties of agent continuing liquidation. 478</p> <p>On death, etc., of agent, successor selected; powers, etc. 479</p> <p>Dividends and unclaimed deposits, unpaid, disposition of 480</p> <p>Commissioner's report to show what. 481</p> <p>Commissioner to pay over moneys on order of board, etc., order of court if, etc. 482</p> <p>Interest on such moneys how applied; report to include amount, etc. 483</p> <p>Bank may place affairs under commissioner, how, etc. 484</p>	<p>Effect of posting notices by commissioner, etc., bars attachment, etc. 488</p> <p>Depositors paid in full out of guaranty fund, etc., excepting interest bearing and secured deposits paid pro rata from assets 486</p> <p>State to have first lien on assets, for benefit of guaranty fund; deposits not insured, etc., share in dividends of assets, etc. 487</p> <p>National bank receiver to refund amounts paid depositors out of guaranty fund. 488</p> <p>Savings department deposits not included in estimate of payment into guaranty fund 489</p> <p>When depositors paid in full, pro rata of guaranty fund returned. 490</p> <p>Bank, etc., electing bond security to file bond when and where; requirements, approval 491</p> <p>Bond to secure depositors at time of filing, and for twelve months thereafter 492</p> <p>Requirements in case of personal security 493</p> <p>Who may make bonds, etc., and who not. 494</p> <p>Who may take advantage of bond security system; shall file bond; requirements; approval; certificate 495</p> <p>On default of bond, etc., secured bank, duty of commissioner, etc. 496</p> <p>Securities, etc., to pay commissioner full amount of bond, or etc., in trust for depositors; to be paid pro rata to depositors, etc. 497</p> <p>Texas corporation, surety, etc., refusing, etc., to pay, etc. Charter subject to forfeiture, etc., attorney general's duty. 498</p> <p>Foreign corporation, surety, etc., refusing, etc., to pay, permit subject to forfeiture; duty of secretary of state. 499</p> <p>Suit by attorney general, etc., in case of default on bond, etc. 500</p> <p>Venue of suit on bond, etc., limitation. 501</p> <p>Surety, etc., paying, subrogated to rights of depositors 502</p> <p>Fees for examination of bank with view to bond 503</p> <p>Form of guaranty bond 504</p> <p>Security may be divided into two or more bonds, etc. 505</p> <p>Additional security where deposits excessive; penalty 506</p> <p>Upon failure to give bond, etc., or avail of guaranty fund, suit to forfeit charter 507</p> <p>New or additional security may be required, when; penalty for failure to give; powers of commissioner and attorney general 508</p> <p>National bank may avail depositors of protection of bond security system. 509</p> <p>Certain banks and trust companies created by special acts, may avail of provisions of this chapter 510</p> <p>Bank, etc., to have certificate of authority posted 511</p> <p>Certificate issued by commissioner to bank, etc., approved by board; form. 512</p> <p>Commissioner shall close banks when disapproved, etc., by board; procedure. 513</p> <p>Secretary of state, issuing charter, to deliver to commissioner; duty of latter 514</p> <p>Advertisements and designations of banks, etc., regulated. 515</p> <p>If certain articles of this chapter held unconstitutional, etc., remainder unaffected 516</p> <p>Provisions of certain chapters and articles cumulative 517</p>

Article 445. What banking, etc., corporations may protect depositors under provisions of this chapter.—Each and every corporation which may hereafter

be incorporated under the laws of this state, with banking and discounting privileges, and each banking and trust company in this state heretofore incorporated under the provisions of Chapter 10 of the Acts of the first called session of the Twenty-ninth Legislature, and known as the state banking law, or hereafter incorporated under the provisions of this title, shall, at its option, protect its depositors in the manner hereinafter prescribed, either by availing itself of the depositors' guaranty fund herein provided for, or by the depositors bond security system hereinafter set forth. [Acts 1909, 2 S. S., p. 406, sec. 1.]

Art. 446. State banking board created, powers, etc.—A state banking board is hereby created, which board shall be composed of the attorney general, commissioner of insurance and banking and the treasurer of this state. Said board shall have the control and management of the depositors guaranty fund hereinafter provided for, and shall have the power to adopt all necessary rules and regulations in harmony with this chapter, for the management of said fund. Said board shall have the general supervision and control of the depositors bond security system provided for in this chapter, and shall have the power of the regulation, control and supervision of all state banking corporations and trust companies as hereinafter provided in this title. [Id. sec. 2.]

Art. 447. Such bank, etc., to have option of methods of securing deposits, must adopt one, when, etc.—Each and every bank and trust company, mentioned in article 445, shall have the right and privilege, at its option, to secure its depositors by the manner, method, and under the terms, provisions and regulations, as set forth in this title for the depositors guaranty fund or the bond security system; provided, that all such banks and trust companies shall secure their deposits by one of said plans on January 1, 1910; provided, further, that such option shall be exercised on or before October 1, 1909; and provided, that such option shall be exercised by the holders of the majority of the stock; and the president or cashier of such bank shall notify the commissioner of insurance and banking by registered mail of such action. [Id. sec. 3.]

Art. 448. Bank, etc., electing guaranty fund method, to pay what and when for creation of fund.—Any such bank or trust company which shall elect to secure its deposits under the depositors guaranty fund, provided for by this chapter, shall pay to said banking board, provided its application is approved by said board as prescribed in article 451, on January 1, 1910, one per cent of its daily average deposits, for the preceding year ending November 1, 1909, not including United States, state or other public funds, if otherwise secured, for the purpose of creating a depositors guaranty fund. Annually after the first payment to said fund, each bank and trust company subject to the provisions of the guaranty fund plan of this chapter, shall pay to said board one-fourth of one per cent of its daily average deposits for the year ending November 1 of the preceding year, as above defined, which amount shall be added to said guaranty fund; provided, that when the amount available in said guaranty fund shall reach the sum of two million dollars, the bank commissioner shall notify all banks and trust companies subject to this chapter, at least thirty days before the next annual payment; and thereafter the banks and trust companies participating shall not pay any further amount into said fund until said fund be depleted. In the event of the depletion of said fund from any cause so that it falls below two million dollars, or below the amount of the guaranty fund on January 1, preceding, or in the event of necessity to meet an emergency at any time, said board shall have authority to require the payment for the current year of two per cent of such average deposits, or such part thereof as may be necessary to restore said fund to the maximum above named, or to its amount as of January 1, preceding, or to meet the emergency; but no bank or trust company coming under the provisions of this chapter

shall ever be required to pay more than two per cent of said average daily deposits for any one year; provided, further, that first payment herein provided for shall be made to said board without reference to said maximum sum. [Id. sec. 4.]

Art. 449. Fund paid to whom, and how; how paid out; no diversion; not state fund; duty of board.—The fund provided for in this chapter shall be paid to the state banking board as follows: Twenty-five per cent of each payment required of each such bank or banking and trust company shall be paid to said board in cash, and shall be by it deposited for safe keeping only with the state treasurer, as bailee for the state banking board, and shall be paid out by the state treasurer on warrants drawn by the order of said board; and said fund shall never be diverted from the purpose specified in this chapter, nor shall it ever be considered state funds. The remaining seventy-five per cent of each payment required shall be paid by each such bank or banking and trust company crediting the state banking board with such amount as a demand deposit subject to check upon the order of said board. It shall be the duty of said board to keep, at all times, twenty-five per cent of the amount of said fund deposited with the state treasurer in cash as provided herein. [Id. sec. 5.]

Art. 450. Certain bank and trust companies to pay what; credit fund.—State bank and trust companies, organized less than one year prior to the taking effect of this law, or hereafter organized, on approval of their applications, as provided for in article 451, shall pay into said guaranty fund three per cent of the amount of their capital stock and surplus, which amount shall constitute a credit fund, subject to adjustment on the basis of their deposits as provided for other banks now existing, at the end of one year; provided, however, that said payment shall not be required of banks and trust companies formed by the reorganization or consolidation of banks that have previously complied with the terms of this chapter. [Id. sec. 6.]

Art. 451. Board to admit, etc., only such banks, etc., as they deem solvent, etc.; applications; grounds of refusal to be stated.—The state banking board shall admit to the benefits and protection of this chapter only such banks and trust companies as, in their opinion, are solvent and properly officered and conducted, and shall prescribe the form of application and statement which shall be made by each and every bank and trust company, and which shall be sworn to by two of the chief officers of the bank, blank copies of which application and statement shall be mailed to each state bank and trust company in this state at least ten days before this chapter requires the initial payment, and which shall be filled out, signed and sworn to and returned promptly to said board; and such copies shall be mailed to any other bank within this state on request. Should said board decline the application of any bank and trust company, it shall state the ground of such declination to such institution, and whether the objection can be removed, and the condition thereof. [Id., sec. 7.]

Art. 452. National banks may avail of protection of guaranty fund; may withdraw when.—Any national bank in this state may voluntarily avail its depositors of the protection of the depositors guaranty fund, upon the same terms, payments, conditions and in the same manner as herein provided for state banks; provided, that in the event national banks should be required by federal enactment to pay assessments to any bank guaranty fund of the federal government, and thereby the deposits in national banks in this state should be guaranteed by virtue of federal laws, that the national banks having availed themselves of the benefits of this chapter, may withdraw therefrom and have returned to them the unused portion of all assessments levied upon and paid by said banks. [Id. sec. 8.]

Art. 453. Commissioner may wind up affairs of bank, by receiver, or, etc.; bond; notice.—Whenever any state bank or trust company shall become in-

solvent and shall voluntarily, or by law, or in any manner as provided in this title, come into the hands of the commissioner of insurance and banking, he may proceed to wind up its affairs, either through a receiver or through some competent person, who shall give bond as may be required by the board, payable to the board, for the faithful performance of all duties imposed upon him. Said bond may be recovered upon for the benefit of said guaranty fund, or any party at interest. On taking possession of the property and business of any such state bank, the commissioner shall forthwith give notice of such fact to any and all banks, trust companies, associations and individuals holding or in possession of any assets of any such state bank. [Id. sec. 9.]

Art. 454. No bank, etc., notified shall have a lien or charge against assets for payment, etc., thereafter.—No bank, trust company, association, or individual, knowing of such taking possession by the commissioner, or notified as aforesaid, shall have a lien or charge for any payment, advance of clearance thereafter made, or liability thereafter incurred against any of the assets of the state bank of whose property and business the commissioner shall have taken possession as aforesaid. [Id. sec. 9.]

Art. 455. Bank, etc., may resume business with the consent of board, when, etc.—Such state bank may, with the consent of the state banking board, resume business upon such condition as may be approved by such board, which permission shall be evidenced by a written statement to that effect from the commissioner. [Id. sec. 9.]

Art. 456. General powers and duties of commissioner.—Upon taking possession of the property and business of such state bank, the commissioner is authorized to collect moneys due to such corporation, and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as provided in this chapter. [Id. sec. 9.]

Art. 457. Shall collect debts, etc.—The commissioner shall collect all debts due and claims belonging to such state bank. [Id. sec. 9.]

Art. 458. On order of court, etc., may sell, etc., bad debts, or real or personal property.—Upon the order of the district court, if in session, or the judge thereof, if in vacation, of the county in which such state bank was located and transacting business, the commissioner may sell or compound all bad or doubtful debts, and, on like order, may sell the real or personal property of such state bank, on such terms as the court shall direct. [Id. sec. 9.]

Art. 459. May enforce liability of stockholders; if, etc.—The commissioner may, if necessary to pay the debts of such state bank, enforce the individual liability of the stockholders. [Id. sec. 9.]

Art. 460. May appoint agents, etc., and give what authority.—The commissioner may, under his hand and official seal, appoint one or more special agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner, and a certified copy in the office of the clerk of the county court in which such state bank was located and transacted business. The commissioner may, from time to time, authorize a special agent to perform such duties connected with such liquidation and distribution as the said commissioner may deem proper. [Id. sec. 9.]

Art. 461. May employ counsel and expert assistance, etc.—The commissioner may employ such counsel and procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such state bank, and may retain such of the officers or employes of such state bank as he may deem necessary. [Id. sec. 9.]

Art. 462. May require security from agents, etc.—The commissioner shall require from a special agent, and from such assistants, such security for the faithful discharge of their duties as he may deem proper. [Id. sec. 9.]

Art. 463. Notices to claimants and creditors; statement therein.—The commissioner shall cause notice to be given, by advertisement in such newspapers

as he may direct, weekly, for three consecutive months, calling on all persons who may have claims against such state bank to present the same to the commissioner, and make legal proof thereof, at a place and within a time not earlier than the last day of publication, to be therein specified, which notice shall contain a statement, in larger type than that in which the body of such notice is printed, specifically stating that all such claims of guaranteed depositors must be presented and legal proof thereof made at the place designated within forty-five days after the date when the property and business of such state bank was taken possession of by the commissioner, and that all claims of guaranteed depositors presented after expiration of forty-five days shall not be entitled to payment of any portion thereof out of the depositors guaranty fund. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the state bank. [Id. sec. 9.]

Art. 464. May reject claim if, etc., notice, etc., action on.—If the commissioner doubts the justice and validity of any claim, he may reject the same, and serve notice of such rejection upon the claimants, either by mail or by written notice personally served. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. The action upon the claim so rejected must be brought within six months after such service. [Id. sec. 9.]

Art. 465. Claims presented after expiration of time; rights of.—Claims presented after the expiration of the time fixed in the notice to the creditors shall be entitled to share in the distribution only to the extent of the assets in the hands of the commissioner equitably applicable thereto. [Id. sec. 9.]

Art. 466. Inventory of assets of bank; and list of claims; requisites; filing; open to inspection.—Upon taking possession of the property and assets of such state bank, the commissioner shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner, and one in the office of the clerk of the county court of the county in which such state bank was located and transacting business; upon the expiration of the time fixed for the presentation of claims, the commissioner shall make a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, and showing fully all claims and amounts paid to guaranteed depositors out of the depositors guaranty fund, and the amount to which said fund is entitled by reason of its subrogation to the rights of such guaranteed depositors so paid, and all amounts held by him on account of claims of guaranteed depositors, which have been rejected or are in dispute, one to be filed in the office of the clerk of the county court of the county in which such state bank was located and transacted business. Such inventory and list of claims shall be open at all reasonable times to inspection. [Id. sec. 9.]

Art. 467. Compensation of agents, etc.; expenses.—All compensation of special agents, counsel and other employes and assistants, and all expenses of supervision and liquidation, shall be fixed by the commissioner, subject to the approval of the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacting business, on notice to such state bank; provided, that the compensation of such special agents shall always be the same as is provided by law for state bank examiners, and shall, upon the certificate of the commissioner, be paid out of the fund of such state banks in the hands of the commissioner. [Id. sec. 9.]

Art. 468. Disposition of moneys collected by commissioner.—The moneys collected by the commissioner shall be, from time to time, deposited in one or

more state banks, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits. [Id. sec. 9.]

Art. 469. Dividends may be declared when, and how.—At any time after the expiration of the date fixed for the presentation of claims, the commissioner may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and, after the expiration of one year from the first publication of a notice to creditors, he may declare a final dividend, such dividends to be paid to such person and in such manner and upon such notice as may be directed by the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacted business. [Id. sec. 9.]

Art. 470. Guaranty fund to receive its portion of dividends with interest; how paid.—In the declaration and payment of all such dividends, the depositors guaranty fund shall be entitled to receive, as its dividend, such portions of the amounts due and payable to guaranteed depositors as shall have been paid to them out of the depositors guaranty fund, together with six per cent interest thereon from the date or dates upon which checks were drawn upon all state banks, as hereinafter provided for the payment of the guaranteed deposits of such state banks; and the commissioner shall forthwith distribute such dividends to state banks, upon which checks were drawn for such payment of guaranteed deposits, in proportion to the amounts of such checks, respectively. [Id. sec. 9.]

Art. 471. Objections to allowed claims.—Objections to any claim not rejected by the commissioner may be made by any party interested, by filing a copy of such objections with the commissioner, who shall present the same to the district court, if in session, or the judge thereof, if in vacation, at the time of the next application to declare a dividend. [Id. sec. 9.]

Art. 472. Provision by court for unproved or unclaimed deposit.—The court may make proper provision for unproved or unclaimed deposits. [Id. sec. 9.]

Art. 473. Bank aggrieved may enjoin proceedings by commissioner.—Whenever any such state bank, of whose property and business the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time, apply to the district court, if in session, or to the judge thereof, if in vacation, of the district in which such bank is located and transacting business, to enjoin further proceedings; and said court, if in session, or the judge thereof, if in vacation, after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application, or enjoin the commissioner from further proceedings and direct him to surrender such business and property to such state bank. [Id. sec. 9.]

Art. 474. Continued liquidation by commissioner decided by stockholders.—Whenever the commissioner shall have paid to each and every depositor and creditor of such state bank (not including stockholders, except for the amount of their deposits over and above their liability under the law as stockholders), whose claim or claims as such creditor or depositor shall have been duly proven and allowed, the full amount of such claims, and shall have repaid to the depositors guaranty fund all amounts paid out of it to guaranteed depositors of such state bank, together with six per cent interest thereon, from the date when the checks to provide for such payment were drawn, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the commissioner shall call a meeting of the stockholders of such state bank, by giving notice thereof for thirty days in one or more newspapers in the county where such state bank was located and transacted business. At such meeting, the stockholders shall

determine whether the commissioner shall be continued as liquidator, and shall wind up the affairs of such state bank, or whether an agent or agents shall be elected for that purpose, and, in so determining, the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote; and a majority of the stock shall be necessary to a determination. [Id. sec. 9.]

Art 475. Continued liquidation by commissioner.—In case it is determined to continue the liquidation under the commissioner, he shall complete the liquidation of such corporation, and, after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock, in such manner and upon such notice as may be directed by the district court. [Id. sec. 9.]

Art. 476. Continued liquidation by agent of stockholders; selection; bond.—In case it is determined to appoint an agent or agents to liquidate, the stockholders shall, thereupon, select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary for a choice. Such agent or agents shall execute and file with the commissioner a bond, in such amount, with such sureties, and in such form, as shall be approved by the commissioner, conditioned for the faithful performance of all the duties of his or their trust. [Id. sec. 9.]

Art. 477. Transfer, etc., by commissioner; and his discharge from liability.—Upon the filing and approval of such bond, the commissioner shall transfer and deliver to such agent or agents all the undivided and unclaimed or other assets of such state bank then remaining in his hands; and, upon such transfer and delivery, the said commissioner shall be discharged from any further liability to such state bank and its creditors and stockholders. [Id. sec. 9.]

Art. 478. Duties of agent continuing liquidation.—Such agent or agents shall convert the assets coming into his or their possession into cash, and shall account for, and make distribution of, the property of said state bank, as herein provided in the case of distribution by the commissioner, except that the expenses thereof shall be subject to the direction and control of the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacted business. [Id. sec. 9.]

Art. 479. On death, etc., of agent, successor selected; powers, etc.—In case of the death, removal, or refusal to act, of such agent or agents, the stockholders, on the same notice to be given by the commissioner, upon proof of such death, removal, or refusal to act, being filed with him, and by the same vote herein provided, may select a successor who shall have the same power and be subject to the same liabilities and duties as the agent originally elected. [Id. sec. 9.]

Art. 480. Dividends and unclaimed deposits unpaid, disposition of.—Dividends and unclaimed deposits remaining unpaid in the hands of the commissioner for six months after the order for final distribution shall be by him deposited in some state bank to be designated by the state banking board, to the credit of the commissioner in his name of office, in trust for the several depositors with, and creditors of, the liquidated state bank from which they were received, who are entitled thereto. [Id. sec. 9.]

Art. 481. Commissioner's report to show what.—The commissioner shall show in his official report the names of the state banks so taken possession of and liquidated, and the amounts of unclaimed and unpaid deposits or dividends, with respect to each of them, respectively. [Id. sec. 9.]

Art. 482. Commissioner to pay over moneys on order of board, etc., order of court, if, etc.—The commissioner shall pay over the moneys so held by him to the persons respectively entitled thereto, upon the order of the state banking board, who shall direct such payment to such persons, upon being fur-

nished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, the state banking board may require an order of the district court, if in session, or the judge thereof, if in vacation, authorizing and directing the payment thereof. [Id. sec. 9.]

Art. 483. Interest on such moneys how applied; report to include amount.—The state banking board may apply the interest earned by the moneys held by the commissioner, or may authorize him to apply the same, toward defraying the expenses incurred in payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same, and the commissioner shall include in his official report a statement of the amount of interest earned by such unclaimed dividends. [Id. sec. 9.]

Art. 484. Bank may place affairs under commissioner, how, etc.—Any state bank may, at any time, place its affairs and assets under the control of the commissioner, by posting a notice on its front door, as follows: "This institution is in the hands of the commissioner of insurance and banking of the state of Texas." [Id. sec. 9.]

Art. 485. Effect of posting notices by commissioner; bars attachment, etc.—The posting of this notice, or of the same notice by the commissioner or any state bank examiner, at any time when he shall have taken possession of the property and business of a state bank, shall be sufficient to place all its assets and property, of whatever nature, in the possession of the commissioner, and shall operate as a bar to any attachment proceedings whatever. [Id. sec. 9.]

Art. 486. Depositors paid in full out of guaranty fund, etc., excepting interest bearing and secured deposits, paid pro rata from assets.—In the event the commissioner of insurance and banking shall take possession of any bank or trust company, subject to the depositors guaranty fund plan of this chapter, as herein provided, the depositors of said bank or trust company, as specified in article 448, shall be paid in full out of the cash in said bank or trust company that can be made immediately available from such bank; and the remainder shall be paid out of the depositors guaranty fund through the said board, in the event the cash available in said institution shall be insufficient; provided, that deposits upon which interest is being paid, or contracted to be paid, directly or indirectly by said bank, its officers or stockholders, to the depositor and deposits otherwise secured, shall not be insured under this chapter, but shall only receive the pro rata amount which may be realized from the assets, resources and collections of and from such banks and trust companies, its stockholders or directors. [Id. sec. 10.]

Art. 487. State to have first lien on assets, for benefit of guaranty fund; deposits not insured, etc., share in dividends of assets, etc.—The state shall have, for the benefit of the depositors guaranty fund, a first lien upon all assets of such bank or trust company and all liabilities owing or accruing to such bank or trust company in the event of the closing, as provided by law, of any such state bank or trust company, operating under the depositors guaranty fund plan; which lien shall attach and be in force from the time such bank or trust company is legally closed, upon all the property and assets then in possession of such bank or trust company; provided, however, that any deposits on which said bank was paying interest and any other deposits or debts not insured under this chapter, and which are entitled to share in the assets, shall share in the dividends and proceeds of such assets and collections pro rata or as may be provided by law. [Id. sec. 11.]

Art. 488. National bank receiver to refund amounts paid depositors out of guaranty fund.—In the event the depositors guaranty fund, or any part thereof, shall be used by said banking board to pay off the depositors of a national bank which has accepted the provisions of this law, then said banking board shall receive from the receiver, or other officer in charge of said bank, the pro rata share of the proceeds of the assets and collections which would

be due to said depositors to the amount so paid by the banking board. [Id. sec. 12.]

Art. 489. Savings department deposits not included in estimate of payment into guaranty fund.—In computing the aggregate amount of average annual deposits of any bank or banking and trust company, for the purpose of determining the amount required to be paid into the depositors guaranty fund, as provided in this chapter, the deposits of its savings department as provided in chapter 4 of this title shall not be included. [Id. sec. 13.]

Art. 490. When depositors paid in full, pro rata of guaranty fund returned.—In the event of the voluntary liquidation of any bank or trust company, operating under the provisions of the depositors guaranty fund, when it shall be made to appear to the state banking board that all depositors have been paid in full, said board shall return to such bank or trust company the pro rata part paid by it into such fund when unused. [Id. sec. 14.]

Art. 491. Banks, etc., electing bond security to file bond, when and where; requirements; approval.—Each and every state bank or trust company now or hereafter incorporated under the laws of this state, which shall elect to come under the provisions of the bond security system of this chapter shall, on January 1, 1910, and annually thereafter, file with the commissioner of insurance and banking, and his successors in office, for and on behalf of the lawful depositors of such bank, a bond, policy of insurance, or other guaranty of indemnity in an amount equal to the amount of its capital stock, which said bond, policy of insurance or other guaranty of indemnity, shall be for and inure to the benefit of all depositors. Such instrument and the security thereby provided shall be approved by the county judge of the county in which such business is domiciled, and shall take effect and be in force from and after it is approved and filed in the office of the commissioner of insurance and banking. Every such corporation shall comply with the provisions of this chapter, as herein provided; and every such corporation that may hereafter be incorporated shall comply with the provisions of this chapter as to the depositors guaranty fund plan, or the bond security system, on filing its charter, before it shall be permitted to receive deposits. [Id. sec. 15.]

Art. 492. Bond to secure depositors at time of filing and for twelve months thereafter.—Every such bond or policy of insurance or other guaranty of indemnity, filed as provided for in this chapter, shall secure depositors at the time said bond is filed and approved, and all deposits made during the period of twelve months thereafter. [Id. sec. 15.]

Art. 493. Requirements in case of personal security.—In case the bond herein provided for shall be executed by personal obligation or security, then in no event shall such bond be deemed adequate and sufficient, unless and until it shall have been executed by at least three different persons or individuals of financial responsibility and solvency, satisfactory to the authorities herein authorized by this chapter, to approve such bond. [Id. sec. 15.]

Art. 494. Who may make bonds, etc., and who not.—The bond or other form of guaranty provided for in this chapter may be made by any person, firm, or corporation, authorized to execute the same, and any and all corporations incorporated under the provisions of articles 380 and 381, shall be and they are hereby authorized and empowered to execute such bonds or guaranties, either singly or collectively, subject to approval as herein provided for; provided, that any such corporation which is at the time operating under the guaranty fund system provided for by this chapter shall not be accepted as a surety on any such bond. [Id. sec. 15.]

Art. 495. Who may take advantage of bond security system; shall file bond; requirements; approval; certificate.—Any person, firm or corporation, other than as described in article 445, transacting lawfully a banking business in this state, or lawfully receiving funds on deposit, shall be authorized

to take advantage of the provisions of the bond security system of this chapter and to file with the commissioner of insurance and banking a bond, or policy, or other guaranty of indemnity. Any such corporation shall, in such event, file a bond, or policy of insurance, or other guaranty of indemnity, in like manner as it would be required to file if incorporated under the laws of Texas.

Any such person or firm transacting the business of a private bank shall, in such event, file a bond, or policy of insurance, or other guaranty of indemnity, in any amount to be fixed by the commissioner of insurance, which amount shall in no case be less than one-half the amount of the average of the daily deposits with such person or firm for the preceding period of twelve months; provided, that no person or firm shall be permitted to take the benefit of this article, unless such person or firm shall have been engaged in such business in the state of Texas for the period of at least twelve months; provided, that any such person, firm or corporation shall submit to the commissioner of insurance and banking such reports and statements concerning its deposits and concerning the solvency of such bond, or policy of insurance, or other guaranty of indemnity, as he may require, in order to enable him to determine the sufficiency of such bond, or policy of insurance, or other guaranty of indemnity, and shall pay all such reasonable expenses as may be incurred by him in the making of an examination thereof; provided, further, that such bond, policy of insurance, or other guaranty, shall be approved by the county judge and filed with the commissioner of insurance and banking as provided for in article 491.

Upon the filing of such bond or other form of guaranty, it shall be the duty of the commissioner to furnish a certificate of such fact. [Id. sec. 16.]

Art. 496. On default by bond, etc., secured bank, duty of commissioner, etc. In the event of default by any person, firm or corporation transacting such business or receiving deposits, which shall make, execute or file the bond, or policy of insurance, or other guaranty of indemnity, provided for herein, in the payment of a deposit lawfully demanded, it shall be the duty of the commissioner of insurance and banking, when such default shall be made known to him, to at once make an examination of such bank, and, if in his judgment the bank is insolvent, he shall take charge of such bank, as provided by law for the liquidation of state banks. Upon taking charge of a bank, as above provided, the commissioner of insurance and banking shall at once give notice thereof to each and all persons who may be obligated by reason of such default, and of the conditions of such bond, or policy of insurance, or other guaranty of indemnity, and upon such notice the full amount of the same shall thereby become due and payable within sixty days. [Id. sec. 17.]

Art. 497. Sureties, etc., to pay commissioner full amount of bond, or, etc., in trust for depositors; to be paid pro rata to depositors, etc.—When any bond or policy of insurance, or other guaranty of indemnity, provided for herein, shall become due and payable in accordance with the provisions of this chapter, it shall be the duty of the makers and signers thereof to pay over the full amount of the same to the commissioner of insurance and banking, or such part thereof as he may demand, to be held by him in trust for the depositors, with the person, firm or corporation furnishing such bond, or policy of insurance, or other guaranty of indemnity. All proceeds thus arising, either from voluntary payment or otherwise, shall be payable to the commissioner of insurance and banking, and shall be by him promptly paid over pro rata to unpaid depositors upon presentation to him of satisfactory proofs

of their claims, which proofs shall be received and filed before payment thereof shall be approved by him. [Id. sec. 17.]

Art. 498. Texas corporation surety, etc., refusing, etc., to pay, etc.; charter subject to forfeiture, etc.; attorney general's duty.—In the event any maker or signer as surety of such bond, or policy of indemnity, shall be a corporation incorporated under the laws of Texas, and it shall refuse or fail to pay over, within sixty days, as herein provided, the full amount due by it upon such bond, or policy of insurance, or other guaranty of indemnity, its charter shall thereby become subject to forfeiture; and it shall be the duty of the attorney general, upon receiving notice thereof from the commissioner of insurance and banking, to bring suit in the district court of Travis county, Texas, within thirty days, to forfeit such charter, and, upon hearing thereof, decree and judgment may be rendered, annulling and forfeiting the charter of such corporation. [Id. sec. 17.]

Art. 499. Foreign corporation surety, etc., refusing, etc., to pay, permit subject to forfeiture; duty of secretary of state.—In the event any maker or signer as surety of such bond, or policy of insurance, or other guaranty of indemnity, shall be a corporation incorporated elsewhere than in the state of Texas, and transacting business in this state under a permit from the state, and it shall refuse or fail to pay over, within sixty days after demand shall have been made therefor by the commissioner of insurance and banking, as herein provided, the full amount of its liabilities upon such bond, or policy of insurance, or other guaranty of indemnity, it shall thereupon be the duty of the commissioner of insurance and banking to notify the secretary of state of said facts; and it shall be the duty of the secretary of state and the commissioner of insurance and banking thereafter to refuse any permit to said corporation to transact business in the state, until it shall show to the satisfaction of such officers that it has fully discharged its liabilities upon such bond, or policy of insurance, or other guaranty of indemnity, upon which default was thus made. [Id. sec. 17.]

Art. 500. Suit by attorney general, etc., in case of default on bond, etc.—In the event such person, firm or corporation shall default in the payment of a lawful demand, and shall so continue for the period of ninety days from the beginning thereof, and the obligation of such bond of insurance, or other guaranty of indemnity, is not discharged, it shall be the duty of the attorney general, or any district or county attorney, acting at his instance, to bring suit upon such bond, or policy of insurance, or other guaranty of indemnity, in the name of the governor, and for the benefit of all persons who may be beneficiaries thereof by reason of its terms and conditions. [Id. sec. 17.]

Art. 501. Venue of suit on bond, etc.; limitation.—Such suit shall be instituted in the district court of the county where the person, firm or corporation furnishing such bond, policy of insurance, or other guaranty of indemnity, transacted such business at the time of the filing thereof, or in any county immediately adjacent thereto, at the option of the attorney general. Any action upon such bond, or policy of insurance, or other guaranty of indemnity, shall be brought within twelve months of the date therein fixed for the termination thereof. [Id. sec. 17.]

Art. 502. Surety, etc., paying, subrogated to rights of depositors.—Whenever any maker or signer of any bond, or policy of insurance, or other guaranty of indemnity, other than the principal therein, shall be required under the provisions of this chapter to pay over for the benefit of the depositors, with any person or corporation, any sum or sums of money, such maker or signer making or participating in such payment, shall thereby become subrogated to the rights of a depositor to the extent of the payments so made, and entitled to assert such right in accordance with the laws of the state, secondary

and subject to the rights of all depositors secured by such bond, or policy of insurance, or other guaranty of indemnity. [Id. sec. 18.]

Art. 503. Fees for examination of bank with view to bond.—The commissioner of insurance and banking, when in his judgment it is necessary to make an examination of a bank in order to determine whether or not it is authorized to make bond under this chapter, or to determine the amount of such bond, shall charge a fee of not to exceed twenty dollars against each corporation incorporated under the laws of the state to do a banking business, or to receive funds on deposit, for the examination of the bond, or policy of insurance, or other guaranty of indemnity, provided for in article 491, and the examination of the solvency thereof, and for the filing of the same, and shall be authorized to charge an examination fee sufficient to cover the actual expenses thereof, against any other person, firm or corporation permitted to file such bond, or policy of insurance, or other guaranty of indemnity, under the provisions of this chapter. [Id. sec. 19.]

Art. 504. Form of guaranty bond.—The bond, or policy of insurance, or other guaranty of indemnity, herein provided for, shall contain substantially the following provisions:

“State of Texas,
County of.....

Know all men by these presents: That we,.....
as principal, andand.....
as sureties, are held and firmly bound unto the governor of the state of Texas, and his successors in office, in trust for the benefit of depositors having funds deposited with.....in the sum of.....
.....dollars, payable as provided by the laws of Texas, at the time of the execution hereof, conditioned that the above bound.....
will pay, upon demand, or in accordance with the certificate of deposit, to the persons entitled thereto, all deposits in said bank at the date of said bond, and all other deposits made therein during the period of one year from the date hereof. Upon payment of any sum or sums made obligatory by reason of the terms hereof, any surety herein making or participating in such payment, shall thereby be subrogated to the rights of a depositor and entitled to assert such rights in accordance with the laws of the state, secondary and subject to the rights of all depositors secured by the terms hereof.” [Id. sec. 20.]

Art. 505. Security may be divided into two or more bonds, etc.—The security for the benefit of depositors provided for by this chapter may be divided into two or more bonds, policies of insurance, or other guaranties of indemnity, or any part thereof may be given in either of such forms of guaranty of indemnity; provided, that the aggregate thereof shall be equal to the total amount of the security required in accordance with the provisions of this chapter. [Id. sec. 21.]

Art. 506. Additional security where deposits excessive; penalty.—Whenever the deposits of any corporation incorporated under the laws of Texas, which shall have filed a bond, or policy of insurance or other guaranty of indemnity, with the commissioner of insurance and banking, in accordance with the provisions of this chapter, shall exceed six times the amount of its capital and surplus, it shall be its duty to furnish, in addition to the security theretofore so given, additional security for the protection of its depositors, which additional security shall consist of one or more bonds, or policies of insurance, or other guaranties of indemnity, as herein provided, in a sum or sums, which shall, in the aggregate, be equal to the total amount of such excess of deposits above six times the amount of the capital and surplus of such corporation. In the event any such corporation shall refuse or fail to comply with

the provisions of this article, after demand by the commissioner of insurance and banking, it shall be his duty to report the facts to the attorney general, who shall thereupon institute suit in the district court of Travis county to forfeit the charter of such corporation; and such court shall, upon hearing and proof thereof, enter a decree and judgment therein, forfeiting and annulling the charter of such corporation. [Id. sec. 22.]

Art. 507. Upon failure to give bond, etc., or avail of guaranty fund, suit to forfeit charter.—If any corporation organized under the general laws of this state to do a banking business or to receive funds on deposit shall fail or refuse to file the bond, or policy of insurance, or other guaranty of indemnity, provided for in articles 491, 492, 493, 494 hereof, in accordance herewith, or avail itself of the depositors guaranty fund plan as provided in this chapter, it shall be the duty of the commissioner of insurance and banking to promptly report such failure to the attorney general, who shall thereupon institute suit in the district court of Travis county to forfeit the charter of such corporation; and such court shall, upon hearing and proof thereof, enter decree and judgment therein, forfeiting and annulling the charter of such corporation. [Id. sec. 23.]

Art. 508. New or additional security may be required, when; penalty for failure to give; powers of commissioner and attorney general.—If at any time it shall appear to the state banking board that any bond, or policy of insurance, or other guaranty of indemnity, filed as provided for herein, by any corporation organized under the laws of Texas, is insufficient, they shall have the authority, and it shall be their duty, to require such corporation to file new or additional security in an amount sufficient to protect its depositors, in accordance with this chapter. In the event such corporation shall refuse or fail to comply with such requirements, they shall communicate the facts to the attorney general, who shall thereupon institute such proceedings and take such steps as the nature of the case may require. The commissioner of insurance and banking and the attorney general shall, in such event, have and exercise, for the protection of depositors, all the authority conferred upon them by article 523, and all authority conferred by the provisions of this title. [Id. sec. 24.]

Art. 509. National bank may avail depositors of protection of bond security system.—Any national bank in this state may voluntarily avail its depositors of the protection of the bond security system herein provided for state banks. [Id. sec. 32.]

Art. 510. Certain banks and trust companies created by special acts, may avail of provisions of this chapter.—Any bank or trust company created by virtue of a special act of the legislature of the state of Texas, now or hereafter engaged in the general banking business in Texas, and which at the time has only one place of business, and which has heretofore accepted or may hereafter accept one or more of the provisions of this title, thereby submitting itself to the jurisdiction of the state banking department, may, with the approval of the state banking board, avail itself of the provisions of this chapter, either as a bond security bank, or as a guaranty fund bank, by vote, as prescribed for state banks. [Id. sec. 30.]

Art. 511. Bank, etc., to have certificate of authority posted.—All state banks transacting business in this state shall be required, on or after the first day of January, 1910, to hold a certificate of authority to transact a banking business issued by the commissioner, in compliance with the provisions of this chapter, and to keep same conspicuously posted at all times in the banking house where such business is transacted. [Id. sec. 25.]

Art. 512. Certificate issued by commissioner to bank, etc., approved by board; form.—It shall be the duty of the commissioner of insurance and banking to issue to each state bank which the state banking board shall have ap-

proved and certified to him, as provided in this chapter, as being entitled to transact a banking business, a certificate of authority in such form as the state banking board shall approve, to be signed by him under his official seal, certifying that such state bank is authorized, under the laws of this state, to engage in the banking business. Such certificate of authority, when issued to guaranty fund banks, shall contain the following statement on the face thereof in bold type: "The non-interest bearing and unsecured deposits of this bank are protected by the state bank guaranty fund." And, when issued to bond security banks, shall contain the following statement on the face thereof, in bold type: "All deposits of this bank are protected by security bond under the laws of the state of Texas." And, when issued to the state banks other than guaranty fund banks and bond security banks, it shall contain neither of these, nor any similar statement. [Id. sec. 25.]

Art. 513. Commissioner shall close banks when disapproved by board; procedure.—The commissioner of insurance and banking shall close all state banks which the state banking board shall disapprove and determine not entitled, under the laws of this state, to transact a banking business, and shall proceed in such cases in the manner provided by law, with respect to insolvent banks, unless such banks shall go into voluntary liquidation. [Id. sec. 25.]

Art. 514. Secretary of state, issuing charter to deliver to commissioner, duty of latter.—The secretary of state shall, on issuance of any charter to any bank or banking and trust company, deliver the same to the commissioner of insurance and banking, who shall deliver such charter to such corporation, together with the certificate herein provided for, upon such corporation showing to the satisfaction of the state banking board that it has complied with the state banking laws. [Id. sec. 25.]

Art. 515. Advertisements and designations of banks, etc., regulated.—All guaranty fund banks provided for in this chapter are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The non-interest bearing and unsecured deposits of this bank are protected by the depositors guaranty fund of the state of Texas." All bond guaranty banks, provided for in this chapter, are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The deposits of this bank are protected by guaranty bond under the laws of this State." Said banks are authorized to use the terms "guaranty fund bank," or, "guaranty bond bank," as the case may be, but they are hereby prohibited from describing said forms of guaranty by any other terms or words than herein named. [Id. sec. 31.]

Art. 516. If certain articles of this title held unconstitutional, etc., remainder unaffected.—Should the courts declare any section of chapter 15 of the Acts of 1909, second called session, as embodied in this title (being chapters 4 and 5, and articles 521, 522, 530, 548 and 564 to 574, inclusive) unconstitutional or unauthorized by law, or in conflict with any other section or provision of said chapter 15, then such decision shall affect only the section or provision so declared to be unconstitutional, and shall not affect any other section or part of said chapter, as embodied in this title. [Id. sec. 40.]

Art. 517. Provisions of certain chapters and articles cumulative.—The provisions of the articles and chapters mentioned in the preceding article shall be held to be cumulative of all laws now in force applicable to state banks or banking and trust companies, incorporated under the laws of Texas, not in conflict therewith. [Id. sec. 47.]

CHAPTER SIX.

GENERAL PROVISIONS.

Article.	Article.		
Commissioner of insurance and banking; bond; seal; not to be interested, etc., salary	518	Company complying with provisions of article [540] not to exercise certain powers, unless	546
Commissioner may employ examiners	519	Bank, etc., not to employ its moneys in trade, commerce, or industrial plants, provided, etc.	546
Examiners; qualifications; oath; bond; right of action on bond for false report; indictment, effect of,	520	Power to own real estate limited	547
Appointment and compensation, etc., of examiners; accounts	521	Restrictions as to withdrawal of capital and dividends; liability of officers, etc.	548
Commissioner to examine banks quarterly, etc., power of commissioner and examiners to administer oaths; examination fees, how paid; proportion, etc.; when collected to be paid into treasury to credit general revenue fund; payments for salaries and expenses of examination, etc., in enforcing certain provisions of law, made how	522	Dividends, regulation of; liability of directors for violation, provided, etc.	548
Duties of commissioner in cases of certain derelictions, etc., of banks, etc.; duties of attorney general	523	Dividends regulated—surplus fund	550
Refusal to submit to inspection, etc., to be reported to attorney general; his duty	524	Bank, etc., shall not make voluntary general assignment, etc.; duty in failing condition; duty of commissioner; no attachment, etc.	551
Directors to furnish statement under oath, etc., when required by commissioner, etc.	525	Stockholders' liability for debts of bank, etc., defined	552
Form of statement	526	Responsibility of directors for certain losses	553
Commissioner to demand statement at least twice a year, or oftener, etc., penalty	527	Receipt of deposits or creation of debts after knowledge of insolvency, etc., liability of officers, etc., for	554
Publication of statement, etc., and posting	528	Suit for recovery of deposits or debts received or created after insolvency, prima facie evidence	555
Books and records to be open for inspection of persons interested	529	Who liable where stock held by executor, etc., or as security	556
Directors may appoint and remove officers, etc., authority of officers, etc.; acts without authority void	530	No incorporated bank, etc., to do business, etc., otherwise in state, except, etc.; forfeitures for violations	557
Reduction of capital stock permitted and regulated	531	Private individuals or firms in banking business, requirements as to	558
Increase of capital stock permitted and regulated	532	No foreign corporation, except national banks, shall do banking and discount business in this state	559
Power to increase or diminish stock, and extend business	533	Corporations created, etc., charged with public use; banks, etc., created, etc., subject to state control and regulation by legislature	560
Notice of meeting to avail of privileges of this title, increase or diminish stock, etc.	534	Business of solvent corporation may be closed, how	561
Vote of majority of stock necessary to increase stock, etc.	535	Who may accept provisions of this chapter, and how	562
How to proceed at each meeting; statement to be made, etc., and recorded with secretary of state; certificate; effect	536	Who may accept privileges of this chapter, and how	563
Executor, etc., and pledgor to represent and vote stock	537	Increase of stock for excessive ratio of deposits to stock and surplus, required; penalty	564
Directors may invest money, on what securities	538	Bank purchasing assets of another bank, must first increase stock as above	565
Loans limited	539	Savings department deposits not included in estimate for increase of stock	566
Company may qualify as guardian, executor, etc., or be sole guarantor or surety on bonds, upon what conditions; evidence of compliance	540	No bank, etc., to own over ten per cent of stock of another, or loan on its stock if, etc., unless, etc.	567
Deposit primarily liable for said obligations, and solely until, etc.	541	Bank, etc., may loan or discount on security of cotton and cotton seed products, as national banks	568
Statutes applicable	542	Bank may not loan on security of its own stock unless etc.; penalty	569
Substitution of securities, when	543	Restrictions, etc., upon pledge of securities of bank, etc.	570
Who else may enjoy privileges conferred by articles, and how	544	No bank, etc., to loan to commissioner, etc.; penalty	571
		Neither commissioner, clerks, employes, nor examiners, shall be interested in bank, etc., or indebted to same; penalty	572
		Board may change form of statements required of banks	573
		Bonds of cashier and treasurer	574

Article 518. **Commissioner of insurance and banking; bond; seal; not to be interested, etc.; salary.**—The commissioner of insurance and banking shall, in addition to his duties as now prescribed by law, be superintendent and inspector of all corporations incorporated under the provisions of this title, availing themselves of its provisions, under the title and designation of commissioner of insurance and banking. He shall give, in addition to the bond now required of him by law, a bond in the penal sum of ten thousand dollars, payable to the state of Texas, with two or more securities, to be approved by the governor and filed in the office of the secretary of state, conditioned for the faith-

ful discharge of his duties as commissioner. The secretary of state shall provide the commissioner of insurance and banking with an official seal with which he shall authenticate all instruments of writing executed by him under this title. The commissioner of insurance and banking shall not be, either directly or indirectly, interested in any such corporation, and shall receive as compensation or salary, for his services under this act, the sum of five hundred dollars per annum, in addition to his compensation as now fixed by law. [Acts 1905, S. S., p. 501, sec. 38.]

Art. 519. Commissioner may employ examiners.—Such commissioner shall employ, from time to time, such clerks and examiners as he may need to discharge, in a proper manner, the duties imposed upon him by law, who shall perform such duties as he shall assign to them. [Id. sec. 38.]

Art. 520. Examiners; qualifications; oath; bond; right of action on bond for false report.—Every examiner appointed by the commissioner shall be an expert bookkeeper and bank accountant, and, before entering upon the duties of his appointment, take and file in the office of the secretary of state an oath to support the constitution of the state, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept, as presents or emoluments, any pay, directly or indirectly, for the discharge of any act in the line of his duty other than the remuneration fixed and accorded him by law, and that he will not reveal the condition of any bank or trust company examined by him, or any information secured in the course of any examination of any bank or trust company, to any one, except the commissioner. No such examiner shall be appointed who has not had practical experience in the banking business for at least five years. No such examiner shall be appointed who is an officer or stockholder in any bank organized under this act. No such examiner shall be appointed receiver of any bank whose books, papers and affairs he shall have examined pursuant to his appointment; and every such examiner shall enter into a bond, payable to the state, in the sum of ten thousand dollars, to be approved by the commissioner and deposited in the office of the state comptroller, conditioned that he will faithfully perform his duties as such examiner; and, in case any such examiner shall knowingly report any such financial company, bank or trust company, in an insolvent condition, or in case he shall report any such financial company, bank or trust company, to be solvent, knowing the same to be otherwise, and any person be injured thereby, such person shall have a right of action on such bond for his injuries. Such action shall be brought in the name of the state on the relation of the injured party. [Id. sec. 43.]

Indictment disqualifies, until, etc.—Upon indictment of any such examiner for any violation of the provisions of chapters 5 and 6 of this title, he shall be disqualified from further discharging the duties of such office, until such indictment is fully disposed of. [Id. sec. 68.]

Art. 521. Appointment and compensation, etc., of examiners; accounts.—The commissioner of insurance and banking, from time to time, shall appoint such number of state bank examiners as may be necessary to make the examination of banking corporations required by law, which number shall at no time exceed one for each forty banking corporations then subject to examination under the laws of this state. As full compensation for the performance of the duties of examiners, each person so appointed shall be entitled to receive a salary of two thousand dollars per annum, besides necessary traveling expenses. An itemized account of such expenses shall be rendered monthly, under oath, by each examiner and shall be approved by the commissioner. [Acts 1905, S. S., p. 505. Acts 1909, 2 S. S., p. 424, sec. 33.]

Art. 522. Commissioner to examine banks quarterly, etc.; power of commissioner and examiners to administer oaths; examination fees how paid, proportioned, etc.; when collected, to be paid into treasury to credit general

revenue fund; payments for salaries and expenses of examinations, etc., in enforcing certain provisions of law, made how.—It shall be the duty of the commissioner of insurance and banking, at least once in each quarter of each calendar year, to cause each banking corporation, heretofore or hereafter incorporated under the general laws of the state of Texas, subject by law to examination, to be thoroughly and fully examined, and any such corporations may be examined whenever such commissioner may deem it necessary or expedient. Such commissioner and all state bank examiners shall have the power to administer oaths to any person whose testimony may be desired for the purpose of any such examinations. The expense of every general and special examination shall be paid by the corporation examined in such amount as the commissioner of insurance and banking shall certify to be just and reasonable. Provided, such expenses shall be paid in proportion to the amount of capital stock of the various corporations as follows: Those with a capital stock of ten thousand dollars shall not pay more than twelve and one-half dollars; those with a capital stock of more than ten thousand dollars and not exceeding twenty-five thousand dollars shall not pay more than fifteen dollars; those with a capital stock of more than twenty-five thousand dollars and not exceeding fifty thousand dollars shall not pay more than twenty dollars; those with a capital stock of more than fifty thousand dollars and not exceeding one hundred thousand dollars shall not pay more than thirty dollars; those with a capital stock of more than one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars shall not pay more than thirty-seven and one-half dollars; those with a capital stock of more than two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars shall not pay more than seventy-five dollars; those with a capital stock of more than five hundred thousand dollars and not exceeding one million dollars shall not pay more than one hundred and twenty-five dollars; those with a capital stock of more than one million dollars and not exceeding two million dollars shall not pay more than one hundred and fifty dollars; those with a capital stock of more than two million dollars and not exceeding four million dollars shall not pay more than two hundred dollars; and those with a capital stock exceeding four million dollars shall not pay more than three hundred dollars. The permanent surplus of any such corporation shall be reckoned in ascertaining the fees for examination as a part of its capital stock. All sums collected as examination fees shall be paid by the commissioner of insurance and banking directly into the state treasury, to the credit of the general revenue fund. Payments for salaries and expenses of examinations and for expenses of the commissioner of insurance and banking in enforcing this title shall be made upon the certificate of the commissioner of insurance and banking by warrant of the comptroller upon the state treasurer. [Acts 1905, S. S., p. 501, 1909, 2 S. S., p. 422, sec. 26.]

Art. 523. Duties of commissioner in cases of certain derelictions, etc., of banks, etc.; duties of attorney general.—Whenever the commissioner shall have reason to believe that the capital stock of any corporation, subject to the provisions of this title, is reduced, by impairment or otherwise, below the amount required by law, or by its certificates or articles of association, he shall require such corporation to make good the deficiency. Whenever it shall appear to the commissioner, from any examination made by him or his examiners, that any such bank or trust company is conducting its business in an unsafe, unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal and unsafe and unauthorized practices, and strict conformity with the requirements of the law, and with safety and security in its transactions; and, if wrong entries or unlawful uses of the funds of such corporation have been made, he or they shall require that

such entries shall be corrected and such sums unlawfully paid out shall be restored by the person or persons responsible for the wrongful or illegal payment thereof; and, whenever any corporation shall refuse or neglect to make any such report, as is hereinbefore required, or to comply with any such orders as aforesaid, or whenever it shall appear to the commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interest of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or malversation in his official position, injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the attorney general, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order of officers or members of the board of directors [or] for any other remedy suggested by the conditions disclosed to the court; and the court, or judge thereof, in vacation, before whom such proceedings shall be instituted, shall have power forthwith to grant such orders, and, in its or his discretion, from time to time, to modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved, shall seem to require. If, from an examination made by the commissioner, or by one of his examiners, it shall be discovered that any bank or trust company organized under this act is insolvent, or that its continuance in business will seriously jeopardize the safety of its depositors or other creditors, and, if the action is taken from an examination by an examiner, such examiner shall recommend the closing of the bank, then it shall be the duty of the commissioner, if he approves such recommendation, by himself or one of his examiners, immediately to close said bank or trust company, and take charge of all the property and effects thereof. Upon taking charge of any bank or trust company, the commissioner shall, as soon as practicable, ascertain, by a thorough examination into the affairs, its actual financial condition; and, whenever he shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the satisfaction of all its creditors, he shall report the fact of its insolvency to the attorney general, who shall, immediately upon the receipt of such notice, institute proper proceedings in the proper court for the purpose of having a receiver appointed to take charge of such bank or trust company and to wind up the affairs and business thereof, for the benefit of its depositors, creditors and stockholders; and it is made the duty of the court, or the judge thereof, in vacation, summarily to appoint said receiver to take possession of the property and assets of said bank, for the purpose of winding up the business thereof, any complaint or opposition of the bank or trust company, or its officers, subsequently to be heard in open court. The commissioner may appoint a special agent to take charge of the affairs of insolvent banks or trust companies temporarily, until a receiver is appointed, such agent to qualify, give bond and receive compensation the same as a regularly appointed bank examiner, such compensation to be paid by the bank, or allowed by the court, as costs in case of the appointment of a receiver; provided, that in no case shall any bank continue in charge of such special agent for a longer period than sixty days. Any incorporated bank or trust company doing business in this state, under the laws cited in this title, may place its affairs and assets under the control of the commissioner, by posting a notice on its front door as follows: "This institution is in the hands of the commissioner of insurance and banking of the state of Texas." The post of this notice, or of a notice by the commissioner, that he has taken possession of any bank, shall be sufficient to place all its assets and property, of whatever nature, in the possession of the commissioner, and shall operate

as a bar to any attachment proceedings whatever. [Acts 1905, S. S., p. 502, sec. 40.]

Art. 524. Refusal to submit to inspection, etc., to be reported to attorney general, his duty.—If any corporation, subject to the provisions of this title, shall refuse to submit its books, papers and concerns to the inspection of the commissioner, or any of his examiners, or if any officer or director thereof shall refuse to submit to be examined on oath touching the concerns of said corporation, or if it shall be found to have violated its charter, or any law of the state binding upon it, the commissioner shall report the fact to the attorney general, who shall institute such action or proceedings against such corporation as is authorized in article 523 against insolvent banks. [Id. sec. 42.]

Art. 525. Directors to furnish statement under oath, etc., when required by commissioner, etc.—The board of directors of any such bank, savings bank, or trust company, whenever required thereto by the commissioner, shall furnish a statement, to be filed in his office, under oath before a notary public, by the president, cashier or secretary, and attested by three of the directors, of the actual condition of the affairs of such bank or trust company at the close of business on the day designated, and which day shall be prior to such call; such statement to be upon the form prescribed by the commissioner. [Id. sec. 45.]

Art. 526. Form of statement.—The statement required by article 525 shall be in the following form, to wit:

“Official statement of the financial condition of the.....
 [here insert name of bank], at....., state of Texas, at
 the close of business on the day of, 19....,
 published in the, a newspaper printed and published
 at, state of Texas, on the day of
, 19.....

RESOURCES.

Loans and discounts, undoubtedly good on personal or col- lateral	\$.....
Loans, real estate	\$.....
Overdrafts	\$.....
Bonds and stocks	\$.....
Real estate (banking house).....	\$.....
Other real estate	\$.....
Furniture and fixtures.....	\$.....
Due from other banks and bankers, subject to check.....	\$.....
Cash items	\$.....
Currency	\$.....
Specie	\$.....
Other resources as follows:	
.....	\$.....
.....	\$.....
Total	\$.....

indictment or information, before a competent tribunal, he shall be punished by removal from office and by a fine as provided by the Penal Code. [Id. sec. 49.]

Art. 528. Publication of statement, etc., and posting.—Publication of the statement shall be made by banking corporations in one or more newspapers published in the town, city or county where it is located, if there is one so published; provided, if said banking corporation is located in a town or city having a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper, if such is published in such city; but, if such corporation is located in a town or city having a population of ten thousand inhabitants or less, then said publication may be in either a daily or weekly newspaper published in said city or town as aforesaid; and in all cases, a copy of the said statement shall be posted in the banking house, accessible to all. [Id. sec. 47.]

Art. 529. Books and records to be open for inspection of persons interested.—The books and all records of the proceedings of such corporation shall be kept open for inspection of all persons interested. [Id. sec. 62.]

Art. 530. Directors may appoint and remove officers, etc.; authority of officers, etc.; acts without authority void.—The directors of any bank or trust company organized under this title may appoint and remove any officer or other employe at pleasure. The officer or employe shall have no power to endorse, sell, pledge, or hypothecate any note, bond or other obligation received by such corporation for money loaned, until such power and authority shall have been given such officer or employe by the board of directors in a regular meeting of the board, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all acts of endorsing, selling, pledging or hypothecating, done by said cashier, or other officer or employe of any such bank or trust company, without the authority of the board of directors given as here provided, shall be null and void. [Acts 1905, S. S., p. 510. Acts 1909, 2 S. S., p. 425, sec. 34.]

Art 531. Reduction of capital stock permitted and regulated.—Every corporation doing a banking business in this state may, at any time, reduce its capital stock to any sum not less than ten thousand dollars, and every trust company may reduce its capital to not less than one hundred thousand dollars, in accordance with the provisions of this act; the capital stock of any corporation doing banking business in this state shall not be reduced below the amount provided for in article 375, said amount regulated by the population of towns and cities in this state. The capital stock of every trust company so reduced must conform to the provisions of article 384. The capital stock of savings banks shall not be reduced contrary to the provisions of article 392; provided, that no reduction of such stock shall be made except upon the written consent of the owners of not less than two-thirds of the stock of such corporation. Notice of the intention to so reduce the capital stock shall be published for thirty days, in some daily newspaper in the city or county where such bank is located, or in a weekly paper, for four insertions before the time when such reduction shall be effected, and the last insertion of such notice shall be at least ten days before the date of the reduction; provided, that a statement of such reduction of capital stock, acknowledged by the officers of the corporation, shall be recorded and filed in the same manner as provided in articles 372 and 382 for the original articles of agreement. [Acts 1905, S. S., p. 508, sec. 51.]

Art. 532. Increase of capital stock permitted and regulated.—Any bank or trust company doing business in this state may, at any time, increase its capital stock to any amount not exceeding ten million dollars, in accordance with the provisions of this chapter, with the consent of the persons holding a majority of the stock of such corporation, which shall be obtained at a meet-

ing of the shareholders, called for that purpose. Upon the presentation of a petition signed by the owner or owners of a majority of the stock, asking for such increase, the board of directors shall call a meeting for the purpose of voting on such proposition, sixty days notice of which said meeting shall be published in some daily or weekly newspaper printed and published in the city or town in which the corporation is located, the last insertion to be not more than five days before the day fixed for such meeting, giving the time, place and the amount of the proposed increase. If, upon a canvass of the votes at such meeting, it is ascertained that the proposition has carried, it shall be so declared by the president of the meeting, and the proceedings entered of record. When the full amount of said proposed increase has been bona fide subscribed and paid in cash to the board of directors of said corporation, then a statement of the proceedings, showing a compliance with the provisions of this chapter, the increase of capital, actually subscribed and paid up, shall be made out, signed and verified by the affidavit of the president and countersigned by the secretary, and such statement shall be acknowledged by the president and received in the office of the recorder of deeds for the county or city in which such corporation is located; and a certified copy of such recorded instrument shall be filed in the office of the secretary of state. Upon the filing of such certified copy, the secretary of state shall issue a certificate that such corporation has complied with the law made and provided for the increase of capital stock, and the amount to which said capital stock has been increased. Thereupon the capital stock of such corporation shall be increased to the amount specified, and such certificate or certified copies thereof shall be taken in all the courts of the state as evidence of such increase. [Id. sec. 52.]

Art. 533. Power to increase or diminish stock, and extend business.—Any corporation which may hereafter be formed for any of the purposes contemplated by this title may increase or diminish its capital stock by complying with the provisions of this chapter, in any amount within the limits of this chapter, and may also extend its business to any other purposes authorized by this title, subject to the provisions and liabilities thereof. [Id. sec. 63.]

Art. 534. Notice of meeting to avail of privileges of this title; increase or diminish stock, etc.—Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of availing itself of the privileges and provisions of this title, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper of the county, if any shall be published therein, at least sixty days, and to deposit a written or printed copy thereof in the postoffice, postage prepaid, addressed to each stockholder at his usual place of residence, at least sixty days previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be extended or changed. The notice provided for in this article shall be published at least once a week, and the first publication must be at least sixty days before the day of such meeting. [Id. sec. 64.]

Art. 535. Vote of majority of stock necessary to increase stock, etc.—An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business as aforesaid, or to enable a corporation to avail itself of the provisions of this title. [Id. sec. 64.]

Art. 536. How to proceed at each meeting; statement to be made, etc., and recorded with secretary of state; certificate; effect.—If, at any time and place specified in the notice provided for in article 534, stockholders shall appear in person or by proxy, in number representing not less than a majority of all the shares of stock of the corporation, they shall organize, by choosing one

of the directors chairman of the meeting, and a suitable person for the secretary, and proceed to a vote of those present, in person or by proxy; and if, on canvassing the vote, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this title, a statement of the proceedings, showing a compliance with the provisions of this title, the amount of capital actually paid in, the business to which it is extended or changed, the amount of assets and liabilities of the corporation and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such statement shall be acknowledged by the chairman and recorded, as provided in articles 372, 382 and 389; and a certified copy of such recorded instrument shall be filed in the office of the secretary of state, who shall thereupon issue a certificate that such corporation has complied with the law made and provided for the increase or decrease of capital stock, as the case may be, and the amount to which said capital stock is increased or decreased; and such a certificate shall be taken in all courts of this state as evidence of such increase or decrease of stock; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the corporation shall be entitled to the privileges and provisions and be subject to the liabilities of this title. [Id. sec. 65.]

Art. 537. **Executor, etc., and pledgor to represent and vote stock.**—Every such executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote accordingly as a shareholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder. [Id. sec. 61.]

Art. 538. **Directors may invest money on what securities.**—The directors of banks and trust companies created under this title shall have power of investing the moneys placed in their charge, in loans secured by real estate or other sufficient collateral security, in public bonds of the United States or of this state, in the bonds of any incorporated city, or county, or independent school district in this state. [Id. sec. 58.]

Art. 539. **Loans limited.**—No incorporated bank nor trust company in this state, organized under this title, shall loan its money to any individual, corporation or company, directly or indirectly, or permit any individual, corporation or company, to become, at any time, indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in, or permit a line of loans or credits to any greater amount to any individual or corporation; a permanent surplus, the setting apart of which shall have been certified to the secretary of state, and which cannot be diverted without due notice to said officer, may be taken and considered as a part of the capital stock for the purposes of this article; provided, such surplus is equal to, or in excess of, fifty per cent of the capital stock of said bank; provided, that the provisions in this section [article] shall not be construed as in anywise to interfere with the rules and regulations of any clearing association in this state in reference to the daily balances between banks; provided, that this section [article] shall not apply to balances due from correspondents subject to draft; and provided, further, that the discount of the following classes of paper shall not be considered as money borrowed within the meaning of this article, viz.

1. The discount of bills of exchange, drawn in good faith, against actually existing values.

2. The discount of paper upon the collateral security of warehouse receipts, covering agricultural and manufactured products in store in elevators and

warehouses, under the following conditions: First, that the actual market value of the property held in store and covered by such receipts shall, at all times, exceed by at least twenty-five per cent the amount loaned upon the same. Second, that the full amount of the loans shall at all times be covered by policies of fire insurance issued by the companies admitted to do business in this state, to the extent of their ability to cover such loans, and then by companies having sufficient paid up capital to be so admitted, and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts. [Id. sec. 53.]

Art. 540. Company may qualify as guardian, executor, etc., or be sole guarantor or surety on bonds, upon what conditions; evidence of compliance.—Any company, which may hereafter be organized under the provisions of this title to do business in this state, which shall make the state treasurer a deposit of fifty thousand dollars, consisting of cash, treasury notes of the United States, or government, state, county, municipal or other bond, or bonds, notes or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unincumbered real estate in this state, worth at least double the amount loaned thereon, or such other first class securities as the said commissioner may approve, said bonds or securities not to be received or held at a rate above par, but if their market value is less than par, they shall not be held above their actual market value, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depository of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required to be given under the laws of this state, any other statute to the contrary notwithstanding; and, whenever any such company shall exhibit to the court, judge, clerk or other officer making such appointment, or whose duty it is to approve such bond, the certificate of the commissioner of banking of the state that such company has complied with the provisions of this chapter with respect to said deposit, and proof of solvency, the court or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to such office or trust, and permit it to qualify as such without giving bond, and permit such company to become sole guarantor or surety upon any bond required to be given under the laws of this state, without requiring any other surety therefor. Provided, said company maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums on all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run, and further that they be required to file with the insurance department, within sixty days after the first of January of each year, a report sworn to by president and secretary, or by two of its principal officers, as to the surety and bond business done by the same, and that they shall pay taxes thereon as required of other surety companies. [Id. sec. 66.]

Art. 541. Deposit primarily liable for said obligation, and solely until, etc.—The funds so deposited with the state treasurer shall be primarily liable for the obligation of such company as guardian, curator, executor, administrator, assignee, executor trustee by appointment of the court, or under will, depository of money in court, guarantor or surety in or upon any bond required to be given under the laws of this state, or other fiduciary capacity, under appointment of any court, and shall not be liable for any other debt or

obligation of the company until all trust liabilities aforesaid of such company have been discharged. [Id. sec. 66.]

Art. 542. **Statutes applicable.**—All articles of the statutes, so far as the same are applicable and not inconsistent with the provisions of this title, shall apply to all companies doing business under article 540. [Id. sec. 66.]

Art. 543. **Substitution of securities when.**—And, in case the interest on any security deposited with the state treasurer under articles 540 and 541, shall not be paid at maturity, and shall remain unpaid for six months thereafter, it shall be his duty to require the company which deposited the same to remove them and deposit there in their place other securities, equal in amount to those removed, upon which the interest has not been defaulted. [Id. sec. 66.]

Art. 544. **Who else may enjoy privileges conferred by article 540, and how.**—Any person or association of persons, or any other corporation, organized under the laws of this state, doing the business specified in article 540, shall enjoy the privileges conferred by said article by complying with the provisions thereof. And any corporation, organized under the laws of any other State, may do the business specified in said article by complying with the laws of this State relating to insurance other than life. [Id. sec. 66.]

Art. 545. **Company complying with provisions of article 540, not to exercise certain powers; unless.**—Any company that complies with the provisions of article 540 shall not exercise any other of the powers enumerated in article 385, except such as are mentioned in said article 540, unless such company shall have, at the time of making such deposit, a paid up capital or surplus of at least one hundred thousand dollars in addition to said deposit of fifty thousand dollars. [Id. sec. 66.]

Art. 546. **Bank, etc., not to employ its moneys in trade, commerce or industrial plants, provided, etc.**—No corporation organized under this title shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants; provided, that it may sell all kinds of property which may come into its possession as security for loans, or in the ordinary collection of debts. [Id. sec. 54.]

Art. 547. **Power to own real estate limited.**—Banks and trust companies, created under this title, shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts or liabilities due to them, which lands so acquired by any such corporation shall be alienated by it, within five years after its acquisition, to some one not interested, directly or indirectly, in said company. [Id. sec. 58.]

Art. 548. **Restrictions as to withdrawal of capital and dividends; liability of officers, etc.**—No bank and no bank or trust company, or any member of either, shall, during the time it shall continue in banking or banking and trust operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by a bank or bank and trust company while it continues its banking and trust operations to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any state bank, on which interest is past due and unpaid for a period of six months, unless the same are well secured or in process of collection, shall be considered bad debts within the meaning of this article. The board of directors of any bank or trust company, organized under this title, may declare a semi-annual or quarterly dividend, if such dividend has been earned, provided the corporation be fully solvent, without such earnings proposed to be divided. But they shall not declare a dividend at any time when the capital of such corpora-

tion shall have become impaired to such an extent that it is not worth in good resources the full amount paid in after the payment of all liabilities; and any officer or director of such corporation, who shall assent to declaring and paying dividends where the capital stock is so impaired, shall be personally liable to the creditors of the corporation to the amount of his proportion of the proposed dividend, if any loss occur by reason of the payment of such dividend. [Acts 1905, S. S., p. 507. Acts 1909, 2 S. S. p. 426, sec. 38.]

Art. 549. Dividends, regulation of; liability of directors for violations provided, etc.—Dividends of the profits of the corporation may be declared by the trustees or directors thereof, every six months or oftener, as the directors may elect; but no such dividend shall be made and paid to the stockholders while such corporation is in an insolvent condition, nor shall any dividend be declared which would render such corporation insolvent; and, if the directors of any such corporation shall knowingly declare and pay any dividends, when the corporation is insolvent, or of any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all debts of the corporation then existing, and for all that shall thereafter be contracted while they shall respectively continue in office; provided, that if any of the directors shall object to the declaring of such dividend; or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the clerk of the corporation, and with the county clerk of the county, they shall be exempt from the said liability. [Acts 1905, S. S. p. 511, sec. 58.]

Art. 550. Dividends regulated; surplus fund.—The board of directors of any bank or trust company in this state organized under this title, when it shall declare a dividend, shall first set apart to the surplus fund ten per cent of the net profits of the bank for the period covered by the dividend until the same shall amount to fifty per cent of its capital stock; and said surplus shall not be diminished, except for the payment of any losses which may occur; provided, if there are undivided profits, these shall first be used in payment of such losses. [Id. sec. 55.]

Art. 551. Bank, etc., shall not make voluntary general assignment, etc.; duty in failing condition; duty of commissioner, no attachment, etc.—It shall be unlawful in this state for a bank, savings bank or trust company, organized under this title, to make a voluntary general assignment of its business and affairs. In case it shall find itself to be in a failing condition, it shall immediately place itself in the hands of the commissioner. Any deed of voluntary general assignment, executed by any such bank or trust company, shall be null and void; and, in case the officers or directors of any such institution shall endeavor to make any voluntary general assignment of its assets, the commissioner shall immediately take possession thereof and proceed as heretofore provided in the case of insolvent banks in this state, for the appointment of a receiver by court. All transfers of the notes, bonds, bills of exchange or other evidence of debt, owing to any bank or trust company organized under this title, or of deposits to its credit, all assignments of mortgages, securities on real estate, or of judgment or decrees in its favor, all deposits of money, bullion or other valuable thing for its use, or for the use of any of its shareholders or creditors, and all payments of money to it made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this title, or with a view to the preference of one creditor to another, shall be utterly null and void. No attachment, injunction or execution shall be issued against such bank or trust company, or its property, before final judgment in any suit, action or proceeding in any court. [Id. sec. 41.]

Art. 552. Stockholder's liability for debts of bank, etc., defined.—If default shall be made in the payment of any debt or liability contracted by any

bank, trust company, surety and guaranty company, [or] savings bank, each stockholder of such corporation, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such transfer, or at the date of such default, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred. [Id. sec. 59.]

Art. 553. **Responsibility of directors for certain losses.**—For any losses of money which the capital stock shall not be sufficient to satisfy, the directors of corporations shall be responsible in the same manner and to the same extent that directors are now responsible in law or equity. [Id. sec. 59.]

Art. 554. **Receipt of deposits or creation of debts after knowledge of insolvency, etc., liability of officers, etc., for.**—No president, director, manager, cashier, or other officer or agent, of any bank or banking institution organized and doing business under the provisions of this title, shall receive [or] assent to the reception of deposits, or create and assent to the creation of any debts by such bank or banking institution, after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this article shall be individually responsible for such deposits so received, and all debts so contracted; provided, any director who may have paid more than his share of the liabilities mentioned in this article may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities; and provided, further, that in case of the insolvency of one or more of such officers, agents or managers, the same shall be paid, for the time being, by those who are solvent, in equal proportion. [Id. sec. 67.]

Art. 555. **Suit for recovery of deposits or debts received or created after insolvency; prima facie evidence.**—In all suits brought for the recovery of the amount of any deposits received or debts created, all officers, agents or managers of any bank, savings bank, or trust company, charged with having so assented to the reception of such deposits, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been received, or the creation of the debt charged to have been created, shall be prima facie evidence of such knowledge and assent to such deposit, or creation of such debt on the part of such officer, agent or manager so charged therewith. [Id. sec. 48.]

Art. 556. **Who liable where stock held by executor, etc., or as security.**—No person holding stock in the corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. And the estate and funds in the hands of such executors, administrators, guardians or trustees, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. [Id. sec. 60.]

Art. 557. **No incorporated bank, etc., to do business, etc., otherwise in state, except, etc.; forfeitures for violation.**—It shall not be lawful after ninety days from the time this bill takes effect for any incorporated bank other than corporations chartered by the United States, or trust company, savings bank, or any corporations save and except such as are organized under the provisions of this act [title], or which take advantage of this title, as provided in article 563, or corporations created by virtue of the acts of the legislature passed prior to the adoption of the constitution of 1876, and now

authorized to do business in this state, to advertise or put forth any sign as a bank, trust company or savings bank, or in any way solicit or receive business as such or as any such, or to use as their name, or part of their name, or any sign, advertising or letterhead or envelope, the word "bank," "banker," "banking," "trust," "trust company," "savings bank," "savings," or any other term which may be confused with the name of corporations organized under this title; provided, that corporations heretofore organized under the general laws of the state, and foreign corporations heretofore or hereafter authorized to do business in this state, authorized by their charters to use such name or parts of names, as are hereby prohibited, may continue to use the same by using thereafter the words "without banking privileges." Any such corporation violating the provisions of this article shall forfeit its charter, or, if a foreign corporation, its permit to do business within this state, and the attorney general shall, upon information lodged with him to that effect, bring an action against such corporation to wind up its affairs, as now provided by law for insolvent corporations, and, in addition thereto, any corporation or officer or agent thereof, who shall offend against those provisions, shall forfeit and pay for every such offense the sum of one hundred dollars per day for every day such offense shall be continued, to be sued for and recovered in the name of the state, by prosecuting attorneys of the several counties, in any court of cognizance thereof, for the use of the school fund in the county in which such offense shall be committed.

This title shall not apply to corporations chartered by the acts of the legislature before the adoption of the present constitution, and now authorized to do business in this state; but such corporations may accept any one or more of the provisions of this title, by complying as to such provisions with article 563, and shall, as to the provisions so accepted, be subject to the terms of this law as to reports and examinations. [Id. sec. 76.]

Art. 558. Private individuals or firms in banking business, requirements as to.—It shall be the duty of private individuals or firms, engaging in the banking business, to use after the name under which the business is conducted the word in parenthesis "unincorporated," and failure to comply with this article shall subject the offender to a penalty of one hundred dollars, to be collected in the manner provided in article 557. [Id. sec. 76.]

Art. 559. No foreign corporation, except national banks, shall do banking and discount business in this state.—No foreign corporation other than the national banks of the United States shall be permitted to do a business of banking and discount in this state. [Id. sec. 79.]

Art. 560. Corporations created, etc., charged with public use; banks, etc., created etc., subject to state control and regulation by legislature.—Corporations created for the purposes mentioned in this title are hereby declared to be charged with the public use, and all banks or trust companies or corporations created under this title shall be under state control and be subject to such legislation as the legislature may enact for the government and regulation of such banks and trust companies or corporations in this state. The right, privileges and powers conferred by the terms of this title to corporations taking advantage thereof or incorporating hereunder are to be held subject to the right of the legislature to amend, alter or reform the same. [Id. sec. 80.]

Art. 561. Business of solvent corporation may be closed, how.—Whenever the board of directors of any solvent corporation, organized under, or subject to, the provisions of this title, shall deem it necessary, expedient or desirable, to close the business of the corporation, they shall call a meeting of the stockholders to vote upon the proposition to close the business of the corporation, first having given sixty days notice thereof, by publication once every week, in a newspaper published in the county or city in which such corpora-

tion is located, also by mailing notices, at least sixty days prior to the day fixed for such meeting, addressed to the stockholders at their usual place of business or residence. The vote upon such proposition shall be taken by ballot, and the resolution and vote thereon shall be recorded in the minutes of the board of directors. If, at such meeting, at least two-thirds of the shares of the corporation are voted in favor of such proposition, the board of directors shall proceed to wind up the business of such corporation, as in this article provided; a copy of such proceedings, to be certified by the president and secretary of such corporation, shall be filed with the secretary of state. The board of directors shall thereupon give notice to all depositors, creditors and stockholders of the adoption of such resolution, by publication once a week thereof, in a daily or weekly newspaper, for three months thereafter, and by a written or printed notice, personally served upon, or mailed to, every depositor, creditor or stockholder of such corporation, at last known residence, postage fully paid. Within six months after the filing of such certificate in the office of the secretary of state, the corporation shall pay all sums due depositors and creditors, whom they can discover, and who claim the moneys due them, and, upon the expiration of six months after the filing of such certificate, it shall be the duty of the corporation to make a statement from the books of said corporation, certified by the president and secretary, of the names of all depositors and creditors who have not claimed, or have not received the balances to their credit, or due them respectively, and to file the same with the state treasurer, and to pay the said state treasurer all such unclaimed deposits, moneys and credits, for the use and benefit of such depositors and creditors. Whenever all the depositors and creditors have been paid in full, or the amounts due those who can not be found, or who have not claimed same, have been deposited with the treasurer of the state, for their use and benefit, the board of directors shall divide the capital stock, guaranty and indemnity fund, and all other assets, or the proceeds thereof, securities or real estate in which same may have been invested, among the stockholders ratably. The board of directors shall thereupon, after having divided the remaining property among the shareholders, as herein provided, file in the office of the secretary of state a certificate surrendering the corporate franchise. [Id. sec. 77.]

Art. 562. Who may accept provisions of this title, and how.—Any bank, trust company, or savings bank organized under the general or any special laws of this state, whose capital is fully paid up and unimpaired, may, with the consent of a majority of the stockholders, accept the provisions of this title, by filing with the secretary of state a certificate of such acceptance, signed by its president and secretary. The consent of the stockholders of such acceptance may be in writing, or by a vote of the stockholders, at any meeting at which all of the stockholders have due notice, and vote in favor of such acceptance. Upon the filing of such certificate of acceptance, such corporation shall thereupon become subject in all respects to the provisions of this title, and to the general laws of this state relating to corporations with like effect, as if it had been originally incorporated under the provisions of this title; and it shall take such action as may be necessary to make its corporate organization conform in all respects to the provisions of this title. And when any existing corporation shall determine to avail itself of the provisions of this title, and shall do so by amending its charter or filing a certificate as hereinbefore provided, and it shall not thereafter transact any corporate business until it has fully complied with the provisions of this title; provided, that when an existing corporation accepts the benefit of this title, such corporation shall be deemed and held to have abandoned, waived and surrendered

all of its charter powers granted under charters heretofore issued, and shall derive their sole powers under the terms of this title. [Id. sec. 75.]

Art. 563. Who may accept privileges of this chapter, and how.—Any private corporation now incorporated under the laws of Texas, possessing banking powers or privileges, or any of the powers or privileges by this title conferred upon savings banks or upon trust companies, may, by a vote of the majority of its capital stock, accept the provisions of this title, and amend its charter, and shall have thereafter such powers as are hereby conferred upon other "banks," "savings banks," or "trust companies." The vote authorizing such amendment shall be certified to the superintendent of banking [commissioner of insurance and banking] together with an application as provided herein; and, upon compliance with all the other requirements of this title, for the organization of corporations hereunder, the superintendent of banking [commissioner of insurance and banking] shall issue his certificate as provided herein, authorizing such amendments, and thereafter such corporation shall be authorized to do business under and subject to the terms of this title, with succession from the date of said amendment of its charter for the term herein specified for corporations organized under this title. Corporations amending their charter as herein provided shall have the right to continue business under their corporate names, as designated by the charter amended, or by any name to which it may have been changed by amendments made under and by virtue of the existing general laws of the state of Texas. [Id. sec. 78.]

Art. 564. Increase of stock for excessive ratio of deposits to stock and surplus, required; penalty.—If, from the sworn statement of the average daily deposits of any bank, for the year ending on the first day of November, 1909, or of any subsequent year, filed with the commissioner as provided in this title, it shall appear that such average daily deposits for such year amounted to more than five times the capital stock and surplus of such bank on November 1 of each year, if the capital stock of such bank is not more than ten thousand dollars, or more than six times such capital stock and surplus, if the capital stock is more than ten thousand dollars and less than twenty thousand dollars, or seven times such capital stock and surplus, if the capital stock is twenty thousand dollars or more and less than forty thousand dollars, or eight times such capital stock and surplus, if the capital stock is forty thousand dollars or more and less than seventy-five thousand dollars, or nine times such capital stock and surplus, if the capital stock is seventy-five thousand dollars or more and less than one hundred thousand dollars, or ten times such capital stock and surplus, if such capital stock is one hundred thousand dollars or more, then, in any such case, it shall be the duty of the state banking board to require that such state bank shall, within sixty days thereafter, increase its capital by twenty-five per cent thereof; and it shall be the duty of the commissioner to immediately furnish such state bank with a certified copy of the order making such requirement; and, upon receipt of such requisition, the directors of such state bank shall, within the time required, cause such increase to be made in its capital stock; and, if the same is not done within such time, it shall be unlawful for such bank to thereafter receive any deposits at any time when its total demand and time deposits shall in the aggregate amount to more than the limitation herein placed upon deposits. [Acts 1909, 2 S. S., p. 423, sec. 27.]

Art. 565. Bank purchasing assets of another bank must first increase stock as above.—Any state bank which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the

bank the assets of which it has purchased, as defined and required in the last preceding article. [Id. sec. 27.]

Art. 566. Savings department deposits not included in estimate for increase of stock.—In computing the aggregate amount of average annual deposits of any bank or banking and trust company, for the purpose of ascertaining whether or not it shall be required to increase its capital stock, as provided in this chapter, or for the purpose of determining the amount required to be paid into the depositors guaranty fund, as provided in chapter five of this title, the deposits of its savings department as provided in chapter four of this title shall not be included. [Id. sec. 13.]

Art. 567. No bank, etc., to own over ten per cent of stock of another, or loan on its stock, if, etc., unless, etc.—It shall be unlawful for any state bank or trust company to own more than ten per cent of the capital stock of any other banking corporation, or to make a loan secured by the stock of any other banking corporation, if, by the making of such loan, the total stock of such other banking corporation held by it as collateral will exceed in the aggregate ten per cent of the capital stock of such other banking corporation, unless the ownership or the taking of a greater percentage of such capital stock as collateral shall be necessary to prevent loss upon a debt previously contracted in good faith; and any such excess so taken as collateral or owned by such state bank shall not be held as collateral nor owned by it for a longer period than six months. [Id. sec. 28.]

Art. 568. Bank, etc., may loan or discount on security of cotton and cotton seed products, as national banks.—All state banks and trust companies shall be permitted to loan upon or discount commercial or business paper secured by lien upon cotton and cotton seed products, to the same extent and upon the same conditions as is now or may be provided for national banks under the laws of the United States. [Id. sec. 29.]

Art. 569. Bank may not loan on security of its own stock, unless, etc.; penalty.—No state bank shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, such state bank shall be considered to have its capital stock impaired to the extent of the par value of such shares. [Id. sec. 36.]

Art. 570. Restrictions, etc., upon pledge of securities of bank, etc.—It shall be unlawful for any such bank to hypothecate or pledge as collateral security, for money borrowed upon bills payable or certificates of deposit, or otherwise, its securities to an amount more than fifty per cent greater than the amount borrowed thereon, or for any state bank to issue or execute any bills or other evidences of indebtedness secured, or to be secured, by the pledge or hypothecation of any of its securities, which shall not contain a provision that in the event such state bank shall, for any cause, have its property and business taken possession of by the commissioner, at any time before such pledge or hypothecation shall have been actually foreclosed, a grace of thirty days after the date of such taking possession shall be allowed in which such bank or commissioner shall be permitted to redeem such securities so hypothecated or pledged, by the payment of the amount due as principal and interest on such indebtedness. [Id. sec. 37.]

Art. 571. No bank, etc., to loan to commissioner, etc.; penalty.—It shall be unlawful for any state bank or banking and trust company in this state to, directly or indirectly, loan to the commissioner of insurance and banking, or any other person interested in or employed by the department of insurance and banking, and it is hereby expressly provided that a violation of this ar-

title shall render such corporation liable to a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered for the benefit of the state. [Id. sec. 48.]

Art. 572. Neither commissioner, clerks, employes, nor examiners, shall be interested in bank, etc., or indebted to same; penalty.—Neither the commissioner of insurance and banking, nor any regularly appointed clerks or employes of the department of insurance and banking, nor any state bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any state bank or banking and trust company subject to the supervision of the department of insurance and banking, or knowingly be or become indebted, either directly or indirectly, to any such state bank or banking and trust company. The violation of the provisions of this article by any officer or employe named therein shall work a forfeiture of the office or position held by him. [Id. sec. 44.]

Art. 573. Board may change form of statements required of banks.—The state banking board shall have the power, from time to time, to make such changes in the form of the statements required of each banking corporation as it may deem advisable, and to require any additional statements which it may deem necessary as to average daily deposits, capital stock, surplus, character of deposits and such other matters as it may deem necessary to the enforcement of this title. [Id. sec. 39.]

Art. 574. Bonds of cashier and treasurer.—Every officer of every state bank, upon whom the powers of a cashier or treasurer may be imposed by the board of directors, shall, before entering or being permitted to enter upon the exercise of such powers, or the duties of his office, give a good and sufficient bond in such sum and with such surety or sureties as the board of directors may approve, and in such form as may be prescribed by the commissioner of insurance and banking, conditioned to pay the bank such pecuniary loss as the bank may sustain of money or other valuable securities embezzled, wrongly abstracted or wilfully misapplied by said officer, in the course of his employment as such, and in the course of his employment in any other position in the bank to which he may be appointed, reappointed, elected, re-elected, or temporarily assigned. Such bond shall be approved by the board of directors in writing on the minutes of the corporation; and no member of the board of directors or officers of such state bank shall become surety thereon; and the same shall be deposited in some safe place, inaccessible to the maker thereof or the sureties thereupon, to be prescribed by the board of directors and shown upon the minutes of the corporation. [Id. sec. 35.]

TITLE 15.

BEES.

Bees affected with foul brood or other contagious disease to be reported to state entomologist; powers of.....	Article 575	Upon failure of owner, etc., to carry out instructions of the state entomologist.	Article 577
State entomologist to prescribe rules, etc., duties in case of refusal to comply	576	Duty of latter and of county attorney.	577
		Disposition of moneys recovered.....	578

Article 757. Bees affected with foul brood or other contagious disease to be reported to state entomologist; powers of.—If any owner of, or any person having control or possession of, any honey bees in this state knows that any bees so owned or controlled are affected with foul brood, or any other contagious disease, it shall be, and is hereby made, his duty to at once report said fact to the state entomologist, setting out in his said report all the facts known with reference to said infection. The state entomologist shall have full power in his discretion to order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer, the state entomologist may destroy, or order destroyed, such hives, together with the honey, comb, frames and bees contained therein, without recompense to the owner, lessee or agent thereof. [Acts 1903, p. 196, sec. 1.]

Art. 576. State entomologist to prescribe rules, etc.; duties in case of refusal to comply.—The state entomologist shall prescribe such rules and regulations as may in his judgment seem necessary for the eradication of all contagious diseases of bees; and, if at any time the entomologist finds, or has reason to believe, that the owner or keeper of any bees, or the owner of any apiary has refused, or is refusing, to comply with all of any such rules and regulations, then and in that event, the state entomologist is hereby authorized to inspect said bees, and, if necessary, burn diseased colonies, appliances and honey, and do any and all things necessary in the premises to eradicate foul blood [brood] or any other infectious disease of bees. [Id. sec. 2.]

Art. 577. Upon failure of owner, etc., to carry out instructions of state entomologist; duty of latter and of county attorney.—When any owner or possessor of bees shall fail to carry out the instructions of the state entomologist, as provided in articles 575 and 576, the state entomologist, or his assistant, shall carry out such destruction or treatment, and shall present to the owner of said bees a bill for the actual cost of such destruction or treatment. In the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant or agent, or within thirty days after mailing same to his usual postoffice address, the state entomologist shall certify to the county attorney of the county wherein such bees are located, the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. [Id. sec. 3.]

Art. 578. Disposition of moneys recovered.—All moneys recovered by the county attorney for such destruction or treatment shall be paid into the hands of the county treasurer, to become a part of the fund for carrying out the provisions of this title. [Id. sec. 3.]

TITLE 16.

BILLS, NOTES AND OTHER WRITTEN INSTRUMENTS.

[See Evidence, Art. 3710.]

	Article.		Article.
Liability of drawer, etc., how fixed by suit in district or county court.....	579	Assignor liable to assignee.....	586
How fixed by suit in justice's court....	580	Assignor, indorser, etc., may be sued, alone, when	587
Drawer of bill liable on non-acceptance.	581	Assignments, execution of, put in issue, how	588
Assignee of negotiable instrument may sue in his own name.....	582	Consideration, want or failure of, a defense, when	589
Non-negotiable instrument may be assigned	583	Liability of drawer and indorser of bills and notes, may be fixed by protest.....	590
Assignee of non-negotiable instrument may sue in his own name.....	584	Protest, how made and evidence of.....	591
Waiver of diligence not to be shown by parol evidence	585	Damages on protested bills, recoverable, when	592
		Days of grace allowed on bills and notes.	593

Article 579. [304] [262] **Liability of drawer, etc., how fixed by suit in district or county court.**—The holder of any bill of exchange or promissory note, assignable or negotiable by law, may secure and fix the liability of any drawer or indorser of such bill of exchange, and every indorser of such promissory note, without protest or notice, by instituting suit against the acceptor of such bill of exchange, or against the maker of such promissory note, before the first term of the district or county court to which suit can be brought, after the right of action shall accrue; or by instituting suit before the second term of said court, after the right of action shall accrue, and showing good cause why suit was not instituted before the first term next after the right of action accrued. [Act May 20, 1848, p. 187, sec. 1. P. D. 229.]

Art. 580. [305] [263] **How fixed by suit in justice's court.**—Whenever the amount of such bill of exchange or promissory note shall be within the jurisdiction of a justice of the peace, the holder thereof may secure and fix the liability of any drawer or indorser by instituting suit against the acceptor or maker within sixty days next after the right of action shall accrue. [Id. sec. 2. P. D. 230.]

Art. 581. [306] [264] **Drawer of bill liable on non-acceptance.**—The drawer of any bill of exchange which shall not be accepted when presented for acceptance shall be immediately liable for the payment thereof; and the holder of such bill may secure and fix the liability of any indorser thereof by instituting suit against such drawer, within the time and in the manner prescribed by this title. [Id. sec. 3. P. D. 231.]

Art. 582. [307] [265] **Assignee may sue in his own name.**—Any person to whom any of the said negotiable instruments may have been assigned may maintain any action in his own name which the original obligee or payee might have brought; but he shall not only allow all just discounts against himself, but, if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant; but, should he obtain such instrument before its maturity, by giving for it a valuable consideration, and without notice of any discount or defense against it, then he shall be compelled to allow only the just discounts against himself. [Act June 25, 1840, p. 144, sec. 2. P. D. 221.]

Art. 583. [308] [266] **Non-negotiable instruments may be assigned.**—The obligee, or assignee, of any written instrument not negotiable by the law merchant may transfer to another, by assignment, all the interest he may have in the same. [Id. sec. 3. P. D. 222.]

Art. 584. [309] [267] **Assignee of non-negotiable instrument may sue in his own name.**—The assignee of any instrument mentioned in the preceding article may maintain an action thereon in his own name, but he shall

allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant; and in order to hold the assignor as surety for the payment of the instrument, the assignee shall use due diligence to collect the same. [Id.]

Art. 585. [310] [268] **Waiver of diligence is not to be shown by parol.**—Parol testimony shall be inadmissible to prove that the assignor, drawer, or indorser of any of the aforesaid instruments has released the holder thereof from his obligation to use due diligence to collect the same. [Act Jan. 25, 1840, p. 144, sec. 7. P. D. 225.]

Art. 586. [311] [269] **Assignor liable to assignee.**—The assignee of any instrument not negotiable by the law merchant shall be entitled to recover from any previous assignor thereof; but, in any suit brought against a remote assignor of such instrument, he shall be subject only to such recovery and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee. [Id. sec. 4. P. D. 223.]

Art. 587. [312] [270] **Assignor, indorser, etc., may be sued alone, when.**—Assignors, indorsers and other parties not primarily liable upon any of the instruments named in this title may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in articles 1842 and 1843. [Id. sec. 6. P. D. 225. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 588. [313] [271] **Assignment, how put in issue.**—When a suit shall be instituted by an assignee or indorsee of any written instrument, the assignment or indorsement thereof shall be regarded as fully proved, unless the defendant shall deny in his plea that the same is genuine, and moreover shall file, with the papers in the cause, an affidavit stating that he has good cause to believe, and verily does believe, that such assignment or indorsement is forged. [Id. sec. 5. P. D. 224.]

Art. 589. [314] [272] **Consideration, failure of, when it constitutes a defense.**—The defendant in any action that may be instituted upon any written instrument may plead a want or failure, or partial failure, of consideration, where such written instrument shall remain in the possession of the original payee or obligee, or when it shall have been transferred or assigned after the maturity thereof, or when the defendant may prove a knowledge of such want or failure of consideration on the part of the holder prior to such transfer. [Id. sec. 7. P. D. 227.]

Art. 590. [315] [273] **Liability of drawer, etc., fixed by protest.**—The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note, for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by a notary public for nonacceptance or nonpayment, and giving notice of such protest to such drawer or indorser, according to the usage and custom of merchants. [Act. March 20, 1848, p. 187, sec. 4. P. D. 232.]

Art. 591. [316] [274] **Protest, how made, and evidence of.**—It shall be the duty of any notary public who shall protest any bill of exchange or promissory note, for nonacceptance or nonpayment, to set forth in his protest and in his notarial record a full and true statement of what shall have been done by him in relation thereto, according to the facts, by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made. It shall also be his duty to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable, and when any such notice shall be served by him, he shall

note in his protest and notarial record on whom and when such notice was served; and when such notice shall be deposited in the postoffice by him he shall specify when and where mailed, and to whom and where directed; and such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in all the courts of this state as evidence of the facts therein set forth. [Id. sec. 5. P. D. 233.]

Art. 592. [317] [275] **Damages on protested bill recoverable, when.**—The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this state upon his agent or factor living beyond the limits of this state, shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent on the amount of such draft or bill as damages, together with interest and costs of suit thereon accruing. [Act Dec. 24, 1851, p. 23, sec. 1. P. D. 236.]

Art. 593. [318] [276] **Days of grace allowed on all bills and notes.**—Three days of grace shall be allowed on all bills of exchange and promissory notes assignable or negotiable by law. [Act. Jan. 11, 1862, p. 43, sec. 1. P. D. 234.]

TITLE 17.

BLACKLISTING.

	Article		Article
Discrimination defined	594	On application of attorney general, justice of peace to have witness examined.	600
Discrimination prohibited, etc.....	595	Witness sworn and examined, how; statement in writing, and disposition of....	601
Foreign corporation to forfeit permit for violating provisions; duty of attorney general	596	Failure of witness to appear, contempt, etc.....	602
Every person or corporation violating provisions liable to forfeiture; suit; venue; duty of attorney general; fees.	597	Immunity of witness, if, etc.....	603
Fees of prosecuting attorney.....	598	Written statement of cause of discharge not to be used as cause of action, civil or criminal	604
Prima facie evidence of agency.....	599		

Article 594. **Discrimination.**—Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employe, or any employe who may have voluntarily left said corporation's service, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employe, the reason why such employe was discharged, or why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver shall, by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement thereof if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employe of such corporation or receiver, shall have discharged an employe, and such employe demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employe thereof fails to furnish a true statement of the same to such discharged employe, within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation or receiver, shall fail, within ten days after written demand for the same, to furnish to any employe voluntarily leaving the service of such corporation or receiver, a statement in writing that such employe did leave such service voluntarily, or where any corporation or receiver of the same, doing business within this state, shall fail to show in any statement under the provision of this title the number of years and months during which such employe was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail within ten days after written demand for the same to furnish to any such employe a true copy of the statement originally given to such employe for his use in case he shall have lost or is otherwise deprived of the use of the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing, or calculated to prevent, the employment of a person

seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employe, shall have failed to give such employe a true statement of the causes of his discharge, within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employe.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver, shall discriminate against any person seeking employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall give any information or communication in regard to a person seeking employment having participated in any strike, unless such person violated the law during his participation on such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of this article. [Acts 1907 p. 142. Acts 1909, p. 160, sec. 1.]

Art. 595. **Discrimination prohibited, etc.**—Any and all discriminations against persons seeking employment as defined in this title are hereby prohibited and are declared to be illegal. [Acts 1907, p. 142, sec. 2.]

Art. 596. **Foreign corporations to forfeit permit for violating provisions; duty of attorney general.**—Every foreign corporation violating any of the provisions of this title is hereby denied the right, and is prohibited from doing any business within this state, and it shall be the duty of the attorney general to enforce this provision, by injunction or other proceeding in the district court of Travis county, in the name of the state of Texas. [Id. sec. 3.]

Art. 597. **Every person or corporation violating provisions liable to forfeiture; suit; venue; duty of attorney general; fees.**—Each and every person, company or corporation, who shall in any manner violate any of the provisions of this title shall, for each and every offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the state of Texas, in any county where the offense was committed, or where the offender resides, or in Travis county; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to sue for the recovery of the same. [Id. sec. 4.]

Art. 598. **Fees of prosecuting attorney.**—The fees of the prosecuting attorney for representing the state in proceedings under this title shall be over and above the fees allowed him under the general fee bill. [Id. sec. 4.]

Art. 599. **Prima facie evidence of agency.**—In prosecutions for the violation of any of the provisions of this title, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id. sec. 6.]

Art. 600. **On application of attorney general, justice of peace to have witness examined.**—Upon the application of the attorney general, or of any district or county attorney, made to any justice of the peace in this state, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of

any of the provisions of this title, it shall be the duty of the justice of the peace to whom such application is made to have summoned and to have examined such witness in relation to violations of any of the provisions of this title. [Id. sec. 7.]

Art. 601. **Witness sworn and examined, how; statement in writing and disposition of.**—Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the attorney general, district or county attorney, upon whose application the witness was summoned. [Id. sec. 7.]

Art. 602. **Failure of witness to appear, contempt, etc.**—Should the witness summoned as aforesaid fail to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. [Id. sec. 7.]

Art. 603. **Immunity of witness, if, etc.**—Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this title about which he may testify fully and without reserve. [Id. sec. 7.]

Art. 604. **Written statement of cause of discharge, not to be used as cause of action, civil or criminal.**—Said written statement of cause of discharge, if true, when so made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same. [Id. sec. 8.]

TITLE 18.

BONDS—COUNTY, MUNICIPAL, ETC.

Chapter.

1. General Provisions and Regulations as to the Issue of Bonds.
2. Particular Provisions and Regulations as to Issue of Bonds.

Chapter.

3. Funding, Refunding, and Compromise of Indebtedness.
4. Sinking Fund—Investments, Reports, Regulations, and Penalties.

CHAPTER ONE.

GENERAL PROVISIONS AND REGULATIONS AS TO THE ISSUE OF BONDS.

	Article		Article
Election on bonds required.....	605	Rate of interest; terms of sale.....	617
Proposition submitted, how.....	606	No bond to run longer than forty years....	618
Time and place of election determined, how.....	607	Conditions precedent to the issuance of bonds; examination by attorney gen- eral, etc.....	619
Do not apply in what cases.....	608	Bonds to be registered by comptroller....	620
Sections of special charters in conflict herewith, repealed.....	609	Comptroller's endorsement on bonds and certificate.....	621
Courthouse, jail and bridge bonds, au- thorized.....	610	Certificate of attorney general recorded..	622
To run not exceeding forty years; re- deemable when.....	611	Funding or refunding bonds not regis- tered until old bonds presented for can- cellation.....	623
Interest on such bonds.....	612	Old bonds cancelled and new bonds deliv- ered; provided, etc.....	624
Bonds to be based on and limited by tax- able values.....	613	Certificate of attorney general and regis- tration prima facie evidence of valid- ity.....	625
Interest and sinking fund provided.....	614	Law not applicable in certain cases.....	626
Bonds to be signed, countersigned, reg- istered and sold at not less than par, etc.....	615		
Annual tax to meet interest and sinking fund.....	616		

Article 605. **Election on bonds required.**—It shall be unlawful for the commissioners' court of any county, or the city or town council of any incorporated town or city in this state, to issue the bonds of said county, or town or city, for any purpose authorized by law, unless a proposition for the issuance of such bonds shall have been first submitted to a vote of the qualified voters, who are property taxpayers of said county, town or city; and unless a majority of the said qualified property taxpayers, voting at said election, be in favor of the proposition for the issuance of bonds, then the said bonds shall not be issued. If the proposition for the issuance of bonds be sustained by a majority of such property taxpayers, voting at such election, then such bonds shall be authorized and shall be issued by such commissioners' court, or city or town council; provided, that this article shall not be construed to authorize and render valid bonds without being first submitted to the attorney general, and certified to by him, as now required by law. [Acts 1899, pp. 103 and 258.]

Art. 606. **Proposition submitted, how.**—The proposition to be submitted for the issuance of bonds shall distinctly specify the purpose for which the bonds are to be issued, the amount thereof, the time in which they are payable, and the rate of interest; and all voters desiring to support the proposition to issue bonds shall have written or printed upon their ballots the words, "For the issuance of bonds," and those opposed shall have printed upon their ballots the words, "Against the issuance of bonds." [Acts 1899, p. 258, sec. 2.]

Art. 607. **Time and place of election determined how.**—The commissioners' court, or city or town council of such incorporated town or city, shall determine the time and place or places of holding said election; and the manner of

holding the same shall be governed by the laws of the state regulating general elections. [Id. sec. 3.]

Art. 608. **Do not apply in what cases.**—The preceding articles of this chapter shall not apply to funding bonds issued, or to be issued, for the funding of any valid outstanding bonds of such county, town or city; nor to any bond issue for a sum less than two thousand dollars, when issued for the purpose of repairing buildings or structures for the building of which bonds are allowed to be issued. [Id. sec. 4.]

Art. 609. **Sections of special charters in conflict herewith repealed.**—All sections of any special charter of any city or town in conflict with the terms of the preceding articles of this chapter are expressly repealed. [Id. sec. 5.]

Art. 610. [877] **Courthouse, jail and bridge bonds, authorized.**—The county commissioners' court of any county in this state is hereby authorized and empowered to issue the bonds of said county for the following purposes:

1. For the erection of a county courthouse and jail, or either.

2. For purchasing or constructing bridges for public purposes, within the county or across a stream that constitutes a boundary line of the county, or for the purpose of improving and maintaining the public roads in the county; provided, that this article shall not be construed as authorizing the commissioners' court to issue bonds for any of the said purposes without submitting the same to a vote of the people of said county as provided in the preceding articles of this chapter; provided, further, that when the commissioners' court deem it advisable to issue bonds for both the purchase or construction of bridges, and the improvement and maintenance of the public roads, both questions may be submitted and voted on as one proposition. [Acts 1893, p. 112. Acts 1903, 1 S. S., p. 9.]

Art. 611. [878] **To run not exceeding forty years; redeemable when.**—All bonds issued under this chapter shall run not exceeding forty years, and shall be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners' court. [Acts 1893, p. 112.]

Art. 612. [879] **Interest on such bonds.**—Said bonds shall draw interest at a rate not exceeding six per cent per annum, payable on the tenth day of April; or interest may, in the discretion of the commissioners' court, be made payable semi-annually, on the tenth day of April and the tenth day of October, respectively. Interest shall be evidenced by attached coupons. [Id.]

Art. 613. [880] **Bonds to be based on and limited by taxable values.**—The issue of bonds under this chapter shall be based upon the taxable values of the county according to the last approved assessment, and shall be limited as follows: Courthouse and jail bonds shall be limited to an amount not exceeding two per cent of said taxable values; bridge bonds shall be limited to an amount not exceeding one per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any county shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values. [Id.]

Art. 614. [881] **Interest and sinking fund provided.**—The commissioners' court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which said taxes shall not exceed, for courthouse and jail bonds, one-fourth of one per cent; for bridge bonds, fifteen cents on each one hundred dollars. [Id.]

Art. 615. [882] **Bonds to be signed, countersigned, registered and sold at not less than par, etc.**—The bonds shall be signed by the county judge

and countersigned by the county clerk and registered by the county treasurer before delivery. The county treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions. [Id.]

Art. 616. [918a] **Annual tax to meet interest and sinking fund.**—Hereafter any county, city, or town, acting through its commissioners' court, city council, or board of aldermen, as the case may be, in authorizing the execution of any bonds in pursuance of law, shall, at the time, provide for the levy and collection of a tax annually of sufficient amount with which to pay the annual interest and a sinking fund with which to pay such bonded indebtedness at maturity. [Acts 1895, p. 184.]

Art. 617. [918b] **Rate of interest; terms of sale.**—Hereafter no bonds executed by any county, city, or town shall bear a higher rate of interest than six per cent per annum, and shall not be sold at less than its par value and accumulated interest, exclusive of commissions. [Id.]

Art. 618. [918c] **No bond to run longer than forty years.**—Hereafter no county, city, or town shall execute a bond to mature later than forty years from the date of its execution. [Id.]

Art. 619. [918d] **Conditions precedent to the issuance of bonds; examination by attorney general, etc.**—Any county, city, or town in the state of Texas, desiring to issue bonds as authorized by the constitution and laws of this state, shall, before such bonds are offered for sale, forward to the attorney general the bonds to be issued, a certified copy of the order, or ordinance, levying the tax to pay interest and provide a sinking fund, with a statement of the total bonded indebtedness of such county, city, or town, including the series of bonds proposed, and the assessed value of property for purposes of taxation, as shown by the last official assessment, of such county, city or town, together with such other information as the attorney general may require; whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such county, city, or town, by which they are executed, he shall so officially certify. [Id.]

620. [918e] **Bonds to be registered by comptroller.**—When said bonds have been examined by the attorney general, and his certificate attached thereto, they shall be registered by the comptroller, in a book to be kept for that purpose. [Acts 1895, p. 184. Acts 1901, p. 16.]

Art. 621. [469] [423] **Comptroller's indorsement on bond and certificate.**—In case of city bonds, the comptroller shall indorse on each bond so registered his certificate of registration, and give, at the request of the mayor, his certificate certifying to the amount of bonds so registered in his office up to date. [Acts 1875, p. 113, sec. 79.]

Art. 622. [918e] **Certificate of attorney general recorded.**—The certificate of the attorney general to the validity of such bonds shall be preserved of record, for use in the event of litigation. [Acts 1895, p. 184. Acts 1901, p. 16.]

Art. 623. [918e] **Funding or refunding bonds not registered until old bonds presented for cancellation.**—In the case of funding or refunding bonds, the comptroller shall not register the same until the old bonds, in lieu of which such funding or refunding bonds are issued, are presented to him for cancellation. [Acts 1895, p. 184. Id.]

Art. 624. [918e] **Old bonds canceled and new bonds delivered; provided, etc.**—After registration of the new bonds, the comptroller shall cancel the old, and deliver such new bonds to the proper party or parties; provided,

further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as herein provided. [Acts 1895, p. 184. Id.]

Art. 625. [918f] **Certificate of attorney general and registration prima facie evidence of validity.**—Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office, as provided herein, shall thereafter be held, in every action, suit, or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. And in every action brought to enforce collection of such bonds, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached; provided, the only defense which can be offered against the validity of said bonds shall be for forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. [Acts 1895, p. 184.]

Art. 626. [918g] **Law not applicable in certain cases.**—Nothing in this law shall be construed to apply to the issuance of any bonds in cases where provisions for their issuance have been made, in whole or in part, before the passage of this law. [Id.]

CHAPTER TWO.

PARTICULAR PROVISIONS AND REGULATIONS AS TO THE ISSUE OF BONDS.

Article	Article
<p>1. For Public Roads—Construction and Maintenance of.</p> <p>Power to issue road, etc., bonds and levy tax for interest and sinking fund..... 627</p> <p>Election for; propositions, restrictions and requirements 628</p> <p>Notice of election..... 629</p> <p>Time, place and manner of holding election 630</p> <p>If election carried by two-thirds vote, bonds to be issued..... 631</p> <p>Bonds, term, interest, examination, registry, custody; sale; disposition of proceeds; disbursement, regulation of.... 632</p> <p>General laws applicable..... 633</p> <p>Tax for interest and sinking fund; levy, assessment and collection; treasurer to be custodian, and to deposit with depository 634</p> <p>Treasurer to pay interest and sinking fund 635</p> <p>Numbering of districts and bonds to correspond, etc., designation of bonds..... 636</p> <p>Provisions not applicable to bonds of whole county; designation of latter.... 636</p> <p>District accepting provisions to be body corporate; powers 637</p> <p>Road district not liable for torts..... 638</p> <p>County commissioner to be ex officio road superintendent; powers 639</p> <p>Bids to be taken on contract work; contract to be let to lowest and best bidder; right to reject..... 640</p> <p>County operating under special road tax law may take advantage of provisions. 641</p>	<p>2. For Causeways, Viaducts, Bridges, etc., Construction and Maintenance, and Use of.</p> <p>Elections in certain counties to authorize bonds for causeways, viaducts, bridges, etc. 642</p> <p>Preliminary surveys and estimates; order for election to prescribe amount and terms of bonds..... 643</p> <p>Resolution for election to be recorded, and submitted to vote, how..... 644</p> <p>General law to govern election, etc.; proclamation posted; publication..... 645</p> <p>Qualifications for voting..... 646</p> <p>Ballot, form, etc., restrictions..... 647</p> <p>If election carried by majority, etc., bonds to be prepared and executed, how, terms, regulations, etc..... 648</p> <p>Levy of tax annually for interest and sinking fund 649</p> <p>Commissioners may contract for privilege of using causeways, etc., or constructing, etc., tracks, telegraph lines, etc., no exclusive, etc., contracts, previous notice, etc..... 650</p> <p>Revenue to be appropriated to maintenance and repair of structures; excess to road and bridge fund of county 651</p> <p>Commissioners may make regulations, etc., for use of structures..... 652</p> <p>Power of condemnation, etc..... 653</p> <p>Use, etc., of streets, etc., may be granted for purposes of causeway, etc..... 654</p> <p>May condemn land of railroads, etc..... 655</p>

1. PUBLIC ROADS—CONSTRUCTION AND MAINTENANCE OF.

Article 627. **Power to issue road, etc., bonds and levy tax for interest and sinking fund.**—Any county in this state, or any political subdivision or de-

fined district, now or hereafter to be described and defined, of a county, is hereby authorized and empowered to issue bonds, or otherwise lend its credit, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, or political subdivision, or defined district thereof, and to levy and collect such taxes to pay the interest upon such bonds and provide a sinking fund for the redemption thereof, for the purpose of constructing and maintaining and operating macadamized, graveled or paved roads and turn-pikes, or in aid thereof. [Acts 1909, p. 186. Acts 1907, p. 251. Acts 1909, S. S., p. 271.]

Art. 628. Election for; propositions, restrictions and requirements.—Upon the petition of fifty, or a majority, of resident property taxpaying voters of any county, or political subdivision or defined district of any county in this state, to the county commissioners' court of such county, such court shall have the power, and it is hereby made its duty, at any regular or special session thereof, to order an election to be held in such county, political subdivision or defined district thereof, to determine whether or not the bonds of such county, or political subdivision or defined district thereof, shall be issued in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, or political subdivision, or defined district, for the purpose of constructing, maintaining or operating of macadamized, graveled or paved roads and turn-pikes, or in aid thereof; and, at such election, there shall also be submitted to such resident property taxpaying voters the question as to whether or not a tax shall be levied upon the property of said county, or political subdivision or defined district thereof, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof. The amount of bonds proposed to be issued, with rate of interest thereon and date of maturity, shall be stated in the order ordering said election, and in the notice therefor. [Id. sec. 2.]

Art. 629. Notice of election.—Notice of said election shall be given by publication, in a newspaper published in the county for four successive weeks, and in addition thereto by posting notices at three public places in the county, one of which shall be at the courthouse door, for three weeks prior to said election, if said proposed issue of bonds and levy of taxes is for the entire county. If said proposed issue of bonds and levy of taxes is for any political subdivision or defined district of the county, notice of such election shall be given by publishing, in a newspaper published in the political subdivision or defined district in which such bond is proposed, and, if no newspaper is published in such political subdivision or defined district, then in some newspaper published in the county, for four successive weeks, and by posting in at least three public places in such political subdivision or defined district of the county, for three successive weeks prior to said election. [Id. sec. 3.]

Art. 630. Time, place and manner of holding election.—The commissioners' court of the county shall determine the time and place or places of holding such election; provided, no such election shall be held at any time less than thirty days from the time of making of the order ordering the election. The manner of holding said election shall be governed by the general laws of the state when not in conflict with the provisions of this subdivision of this chapter, and the returns of said election shall be made as now provided by law for making returns of elections held for the purpose of determining whether or not county bonds shall be issued. [Id. sec. 4.]

Art. 631. If election carried by two-thirds vote, bonds to be issued.—If, after the result of said election is known, it shall appear to the commissioners' court of the county in which said election was held, that a two-thirds majority of the vote cast at such election were in favor of the issuance of

bonds, it shall be the duty of said commissioners' court, as soon thereafter as practicable, to issue said bonds on the faith and credit of said county, or of said political subdivision or defined district now or hereafter to be described and defined, within the state of Texas, and which may or may not include towns, villages, or municipal corporations of the county, as the case may be. [Id. sec. 5.]

Art. 632. **Bonds, term, interest, examination, registry, custody; sale; disposition of proceeds; disbursement, regulation of.**—Such bonds shall run not less than twenty nor more than forty years, with such option of redemption as may be fixed by the commissioners' court; and such bonds shall bear not more than five and one-half per cent interest per annum, and which bonds shall be examined by the attorney general of Texas, and registered by the comptroller of public accounts of Texas. Such bonds, when so issued, shall continue in the custody of, and under the control of the commissioners' court of the county in which they were issued, and shall be by said court sold to the highest and best bidder, for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or defined district of such county, as the case may be. Such funds shall be paid out by the county treasurer upon warrants drawn on such funds issued by the county clerk of the county, countersigned by the county judge, upon certified accounts approved by the commissioners' court of the county, when such funds belong to the entire county; and, when such funds belong to a political subdivision or defined district of a county, such funds shall be paid out by the county treasurer upon warrants issued by the county clerk, upon certified accounts of the road superintendent of such road district, and approved by the commissioners' court of the county. [Id. sec. 5.]

Art. 633. **General laws applicable.**—The general laws of Texas relative to county bonds, not in conflict with the provisions of this subdivision of this chapter shall apply to the issuance, approval, registration, sale and payment of the bonds provided for in said provisions. [Id. sec. 5.]

Art. 634. **Tax for interest and sinking fund; levy, assessment and collection; treasurer to be custodian, and to deposit with depository.**—Before said road bonds shall be put on the market, the county commissioners' court of the county in which such election was held shall levy a tax sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity; provided, that said tax herein authorized shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other road taxes, if for a whole county, and, if for a political subdivision or other defined district of a county, then it shall be assessed and collected as is now provided by law for the assessment and collection of common school district special local taxes. And it is hereby made the duty of such commissioners' court to levy such tax, and it is hereby made the duty of the tax collector and assessor of such county wherein such taxes have been levied to assess and collect the same in the same manner and at the same time as other taxes. And said taxes, when so collected by such collector, shall be by him paid over to the county treasurer of such county, as and when other taxes are paid to the county treasurer. And the county treasurer of said county shall be custodian of all funds collected by virtue of this law, and shall deposit the same with the county depository as county funds. [Id. sec. 6.]

Art. 635. **Treasurer to pay interest and sinking fund.**—The treasurer shall pay the interest and principal as it becomes due on such bonds out of

the funds so collected, in the same manner as the law directs in case of county courthouse bond funds. [Id. sec. 6.]

Art. 636. Numbering of districts and bonds to correspond, etc.; designation of bonds. Provision not applicable to bonds of whole county, designation of latter.—For the purpose of operating and being known under the provisions of this subdivision of this chapter, each political subdivision or defined district now or hereafter to be described and defined for the employment of said subdivision, in any county in this state shall be known as "Road District No. of county, Texas," and the bonds herein provided for in such political subdivision or defined district in any county, shall be known as "Road Bonds of Road District No. . . . of county, Texas," being definitely numbered and bearing the name of the county in which it is located. This article shall apply only to districts composing less than a county, and shall not apply to bonds issued hereunder by a whole county, which county bonds shall be known as " County Special Road Bonds," taking the name of the county issuing the same. [Id. sec. 7.]

Art. 637. District accepting provisions to be body corporate; powers.—For the purpose of this subdivision of this chapter, any political subdivision of a county or defined district, now or hereafter to be described and defined, accepting the provisions of said subdivision, by voting such tax, is hereby made and created a body corporate, which may sue and be sued in like manner as counties. [Id. sec. 7.]

Art. 638. Road district not liable for torts.—No road district created under the provisions of said subdivision shall ever be held liable for torts. [Id. sec. 7.]

Art. 639. County commissioner to be ex officio road superintendent, powers.—The county commissioner, in whose commissioner's precinct such political subdivision or defined district, now or hereafter to be described and defined, is located, shall be ex officio road superintendent of said road district, with power to contract for and in behalf of such road district; provided, such contract shall not exceed the sum of fifty dollars, which shall be approved by the commissioners' court, and all contracts exceeding the sum of fifty dollars shall be awarded by the entire court, which contracts shall be binding on said county, political subdivision or defined district. [Id. sec. 7.]

Art. 640. Bids to be taken on contract work; contract to be let to lowest and best bidder. Rights to reject.—When work is done by contract in any county, political subdivision or defined district, bids shall be invited by publishing an advertisement in a newspaper or newspapers published in such county, and in a paper or papers outside of the county, when the commissioners' court may deem it advisable to do so, and the contract shall be awarded to the lowest and best bidder; provided, however, that the commissioners' court shall have the right to reject any and all bids. [Id. sec. 7.]

Art. 641. County operating under special road tax law may take advantage of provisions.—Any county operating under a special road tax law may take advantage of any of the provisions of this subdivision. [Id. sec. 9.]

2. CAUSEWAYS, VIADUCTS, BRIDGES, ETC., CONSTRUCTION AND MAINTENANCE AND USE OF.

Art. 642. Elections in certain counties to authorize bonds for causeways, viaducts, bridges, etc.—Whenever the county commissioners of any county in the state of Texas, having a population in excess of fifty thousand inhabitants, according to the last preceding census taken by the United States, deem it expedient so to do, they may order an election, to ascertain the will

of the qualified voters of such county, to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges, and approaches, across any river and bottoms within the limits of such county, irrespective of any municipal boundaries. [Acts 1909, p. 46.]

Art. 643. Preliminary surveys and estimates; order for election to prescribe amount and terms of bonds.—The commissioners' court of such county shall, prior to ordering any such election as referred to in article 642, provide for preliminary surveys and estimates for such work, and shall, in the order for such election, prescribe the amount and terms of such bond issue. [Id. sec. 2.]

Art. 644. Resolution for election to be recorded, and submitted to vote, how.—Whenever the commissioners' court of such county deem it necessary or expedient to order such election, the resolution therefor shall be recorded in the minutes of the commissioners' court, and the resolution shall be submitted to the property owning qualified voters of said county, at any regular or special election which may be ordered by said court for that purpose, and if, at such election, a majority of the votes cast thereon shall be for such resolution, the same shall be deemed to be adopted, but if a majority of the votes cast thereon at such election shall be against said resolution, it shall be deemed to be rejected. [Id. sec. 3.]

Art. 645. General laws to govern election, etc., proclamation posted; publication.—Said election shall be governed in all respects by the law governing elections in this state, and the returns shall be made and canvassed in the same manner, and the results declared by proclamation of the county judge of said county; which proclamation shall be posted in at least three public places in said county, and, at the option of said county judge, published in some newspaper in said county. [Id. sec. 3.]

Art. 646. Qualifications for voting.—No person shall be permitted to vote at any election provided for in article 644, unless he is a property owner and taxpayer and qualified voter of said county. [Id. sec. 4.]

Art. 647. Ballot, form, etc., restrictions.—Those desiring to vote for the resolution shall have written or printed on their tickets the words, "For the Resolution to Issue Bonds to" [here insert purpose of the proposed bond issue as set forth in said resolution], and those desiring to vote against the resolution shall have written or printed on their tickets the words, "Against the Resolution to Issue Bonds to" [here insert such purpose of the proposed bond issue, as set forth in said resolution]. Such tickets shall be written or printed on plain white paper, with black ink or pencil, and shall contain no distinguishing mark or device, except as above provided, and, if printed, shall be in type of uniform size and face. [Id. sec. 4.]

Art. 648. If election carried by majority, etc., bonds to be prepared and executed, how, terms, regulations, etc.—If, at the election herein provided for, a majority of the qualified voters voting thereon at such election shall vote in favor of the resolution provided for in article 644, and after the commissioners' court has canvassed said vote and declared the result, and after the proclamation of said county judge, declaring the result, it shall be the duty of said court, under the supervision and direction of the comptroller of this state, to prepare and execute the bonds of the county for such sums as may be deemed advisable by said county, not exceeding the amount stipulated in said resolution, said bonds to bear not exceeding five per cent interest, payable annually, and which shall be redeemable in not less than five years and not more than forty years from the date thereof, the time of maturity to be expressed on the face of the bonds, and shall have such bonds registered or enrolled as in case of other county bonds, and the same shall not be sold nor negotiated at less than their par value; provided, that in

no case shall said court issue bonds under this subdivision of this chapter for a greater sum or amount than that a levy for this purpose of five cents on the one hundred dollars property valuation of said county will yield sufficient revenue to pay such interest, as it accrues, and will at the same time create a sinking fund sufficient to pay the principal of such bonds at maturity. [Id. sec. 5.]

Art. 649. **Levy of tax annually for interest and sinking fund.**—When the bonds of the county are issued and sold, under the provisions of this subdivision of this chapter, it shall be the duty of said commissioners' court to levy an annual ad valorem tax on all property of the county; which tax, when collected, shall be used only for the purpose of paying interest on said bonds and creating a sinking fund to pay the principal of same. [Id. sec. 6.]

Art. 650. **Commissioners may contract for privilege of using causeways, etc., or constructing, etc., tracks, telegraph lines, etc., no exclusive, etc., contracts; previous notice, etc.**—The commissioners' court of such county is authorized to contract with individuals, firms or corporations, for the privilege of using such causeways, viaducts, bridges and approaches, or constructing and maintaining and using tracks, telegraph lines, or other such privileges as said commissioners may deem expedient, but shall make no exclusive nor preferential contracts, and before executing any such contracts shall give notice by posting at the courthouse door and in three other public places in said county the full terms and nature of such proposed contracts before execution of same. [Id. sec. 7.]

Art. 651. **Revenues to be appropriated to maintenance and repair of structures; excess to road and bridge fund of county.**—Any revenues that may accrue from any contract or contracts made in accordance with the provisions of the preceding article may be appropriated by the commissioners' court to the maintenance and repair of such structure or structures; and such court shall have the authority to make adequate provision for such maintenance and repair, as in the case of any other structure under its control. In the event the revenues accruing from the use of any such structure shall exceed the expenditures for its maintenance and repair, any such excess shall be applied to the road and bridge fund of the county. [Id. sec. 8.]

Art. 652. **Commissioners may make regulations, etc., for use of structures.**—The commissioners' court shall have authority to make rules and regulations for the use of any structure erected under the provisions of this subdivision of this chapter, and to provide for the enforcement thereof. [Id. sec. 9.]

Art. 653. **Power of condemnation, etc.**—Said county, acting through its commissioners' court, shall have the power, and is hereby authorized to take and appropriate such lands and other property, situated within or without the limits of any city or town, as may be deemed necessary for the establishment, location, construction, maintenance, repair or security of said causeways, viaducts, bridges and approaches, and to define the area of land needed not to exceed two hundred feet in width, and to acquire, take, hold and enjoy the same, for the purposes aforesaid, and shall have the right to exercise the power of eminent domain, and to condemn lands for the uses and purposes aforesaid; said condemnation proceedings to be instituted in the name of the county before the judge of the court having jurisdiction by law to act in condemnation proceedings for rights of way for railroad companies; and all laws in reference to applications and proceedings for the condemnation of rights of way for railroad companies shall apply to condemnations under this subdivision of this chapter, the county occupying the position of the railroad company, except that in no case shall the county be required to give bond; provided, nevertheless, that said county, acting through its commissioners' court, shall be empowered to take the fee simple

estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this said subdivision; provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court shall, by order duly entered on its minutes, define and describe the lands needed and determine whether an easement or fee simple estate in said land shall be taken. [Acts 1910, 3 S. S., p. 22.]

Art. 654. Use, etc., of streets, etc., may be granted for purposes of causeway, etc.—And the county commissioners' court of any county, with the consent of any city, given by its duly authorized municipal authorities, or the municipal authorities of any city in which said causeway, viaduct, bridge, and approaches are to be constructed and maintained, shall have power, and are hereby authorized, to grant the use of, and impose such additional uses upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, construction and maintenance of said causeways, viaducts, bridges and approaches, and may authorize the construction of same across or upon any such street, alley, public highway or public grounds. [Id.]

Art. 655. May condemn land of railway, etc.—Said county, acting through its commissioners' court, is authorized to enter upon any lands owned by any railway, telegraph or telephone corporation, in fee or in any less estate, whether acquired by purchase or condemnation, or by virtue of any provision in the charter of such corporation, for the purposes of this subdivision of this chapter, and, from time to time, to define and appropriate so much of said lands as may be necessary for the establishment, location, construction and maintenance of said causeways, viaducts, bridges and approaches, and shall have the right of access to construct and maintain said causeways, viaducts, bridges and approaches, and when constructed to repair the same, and may proceed to obtain the right of way, and to condemn lands for the use of the county in the manner provided by law in the case of railway corporations. Said county shall have the right to cross and intersect the line of any such railway, telegraph or telephone corporation; and, in case any differences shall arise between the county and said railway, telegraph or telephone corporation, as to the manner or mode of any crossing or intersection made by said causeway, viaduct, bridge and approaches, their differences shall be adjusted by the special commissioners appointed hereunder to assess damages for the land condemned. [Id.]

CHAPTER THREE.

FUNDING, REFUNDING AND COMPROMISE OF INDEBTEDNESS.

Article	Article
1. General Powers of Funding, Refunding and Compromising Debts.	Bonds not to be sold, etc., for less than par value and accrued interest..... 676
Debts may be funded, when and how.... 656	Date of sale, etc., indorsed and certified and attested how, before delivery of bonds 677
Old bonds of legal issue may be substituted by new..... 657	3. Railroad, etc., Subsidy Bonds, etc. Compromise, Adjustment and Refunding of.
Debts may be compromised..... 658	Railroad subsidy bonds, how adjusted and paid 678
Sinking fund to be provided and tax levied 659	Bonds sold and exchanged, how..... 679
2. Storms, Floods, or Other Great Disasters—Funding, Refunding, and Compromise of Debts in Case of.	Authority for executing bonds and terms and conditions of same..... 680
Storms, etc., bonds, power to fund, refund and compromise..... 660	Bonds may be exchanged or sold..... 681
Bonds issued for said purposes, regulations as to..... 661	Levy of tax for interest and sinking fund 682
Order of commissioners court, prerequisite recitals, etc..... 662	Collector liable on bond for failure of duty; new collector appointed, when.. 683
Classification of bond issues..... 663	Bonds to be registered in comptroller's office, how and effect of..... 684
Apportionment of taxes, record..... 664	Assessment of taxes and compensation of assessor 685
Levy for interest and sinking fund proportioned how 665	Surplus fund, how applied..... 686
Constitutional limit not to be exceeded... 666	May compromise and fund indebtedness.. 687
Commissioners to prescribe form and class of bonds, and for issuance..... 667	Authority to compromise limited..... 688
Term of bonds, etc..... 668	Bonds exempt from taxation..... 689
Redemption of bonds..... 669	Issued and registered how..... 690
Interest rate 670	May be exchanged or sold..... 691
Bonds to conform to requirements of certain articles not in conflict with the provisions of this subdivision..... 671	Tax laws to be continued in force..... 692
Signature and attestation of bonds..... 672	Same subject 693
Registry by comptroller, after examination, etc., by attorney general..... 673	Collector liable for failing to collect tax, and when to be appointed by governor. 694
Registry without presentation and cancellation of old bonds..... 674	Compromise by vote of the people; notice of election, how given..... 695
Bonds delivered to county or city treasurer and registered by him..... 675	Counties and city authorities may adjust tax to conform to interest and sinking fund for bonded indebtedness..... 696
	How amount of levy determined and fees of collector 697

1. GENERAL POWERS OF FUNDING, REFUNDING AND COMPROMISING DEBTS.

Article 656. [890] **Debts may be funded, when and how.**—All counties, incorporated cities and towns in this state owing debts are hereby authorized to fund the same in bonds of said counties, cities and towns, in such sums and at such rate of interest as may seem best to the authorities of said counties, cities and towns; provided, that in no case shall the rate of interest be greater than six per cent per annum; and provided, further, that this article and articles 658 and 659 shall not apply to any indebtedness of any counties, cities or towns made and undertaken since the eighteenth day of April, 1876, and shall not apply to any bonds issued under an act entitled, "An act to authorize counties, cities and towns to aid in the construction of railroads and other works of internal improvements," approved April 12, 1871; provided, further, that no city shall issue bonds to a greater amount than is authorized by its charter, where a limit is placed on the issue of bonds in its charter. [Acts of 1879, p. 61.]

Art. 657. [883] **Old bonds of legal issue may be substituted by new.**—Where bonds have been legally issued, or may be hereafter issued, by any county for any of the purposes named in article 610, new bonds bearing the same or a lower rate of interest may be issued, in conformity with existing law, in lieu thereof. [Acts 1893, p. 112. Acts 1901, p. 16.]

Art. 658. [891] **Debts may be compromised.**—All the counties, incorporated cities and towns of this state are hereby authorized to scale their debts of every description, bonded or otherwise, by adjustment and compromise with their creditors, and may issue bonds, as provided for in article 656; in any sums and at any rate of interest not greater than six per cent per an-

num, in settlement or compromise with said creditors, or with any one or more of them. [Acts of 1879, p. 61.]

Art. 659. [892] Sinking fund to be provided and tax levied.—Said counties, cities and towns, in funding and scaling their said indebtedness made and undertaken before said eighteenth day of April, 1876, as herein provided, shall provide a suitable sinking fund of two per cent per annum, to be applied to the payment of the principal of the bonds issued under article 656, and shall annually levy and collect a sufficient tax on all the taxable property of said counties, cities and towns to pay the interest and sinking fund aforesaid; provided, that, should there be annually collected more than is necessary to pay the interest already due and the two per cent sinking fund, such excess and sinking fund may be used in the purchase and cancellation of the bonds for which said sinking fund is set aside. [Id.]

2. STORMS, FLOODS, OR OTHER GREAT DISASTERS—FUNDING, REFUNDING AND COMPROMISE OF DEBTS IN CASE OF.

Art. 660. Storms, etc., bonds, power to fund, refund and compromise.—Any county or city incorporated under the general laws of the state, in which there has been heretofore, or may be hereafter, great destruction or damage of property or depreciation of the value of taxable property, by reason of storms, floods, or other great disasters, is hereby authorized and empowered to fund or refund, compromise or settle its valid outstanding bonded and floating indebtedness in such manner as may be deemed to the best interest of such county or city. [Acts 1901, S. S., p. 18.]

Art. 661. Bonds issued for said purpose, regulations as to.—For the purpose of effecting the compromise or settlement, authorized by the preceding article, the said counties and cities are hereby severally authorized and empowered to issue bonds in denominations of not less than one hundred dollars nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or settlement, not to exceed the amount unpaid on the outstanding indebtedness; and the bonds hereby authorized may be exchanged for bonds, warrants, scrip, or other evidences of outstanding indebtedness of such county or city, or said bonds may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness; and said bonds may be issued without submitting the question of issuance to a vote of the taxpayers, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts; and said bonds may be issued, if deemed necessary, to an aggregate amount not exceeding six per cent of the taxable value of the remaining taxable property in such county or city. [Id.]

Art. 662. Order of commissioners' court, prerequisite, recitals, etc.—Before issuing any bonds, authorized by the two preceding articles, and not later than two years from and after the date of the storm or other disaster, the commissioners' court of the county, or the city council of the city, in which such storm or other disaster has occurred, shall, by an order or ordinance, as the case may be, duly entered on the minutes, recite the nature and date of such disaster, the taxable value of the remaining property subject to taxation in said city or county, as shown by the first approved assessment roll of such county or city made after such storm, flood, or other great disaster, and the amount of said bonds that will in the judgment of said commissioners' court, or the city council, be sufficient to fund, refund or compromise, or settle the outstanding valid bonded and floating indebtedness of such county or city, stating, also, the amount of said new bonds that will be required for refunding or settling each outstanding issue of bonds, and the amount of said

new bonds that will be required in funding or settling the outstanding indebtedness charged against each particular fund. [Id.]

Art. 663. **Classification of bond issues.**—Separate classes of bonds shall be issued to refund or settle, respectively, each separate issue of outstanding bonds, and to fund or settle, respectively, the indebtedness against each particular fund. [Id.]

Art. 664. **Apportionment of taxes, record.**—Said court or council shall determine and record in the minutes the proportion of the several annual ad valorem taxes authorized by law that can be applied, respectively, in payment of the interest and sinking funds of the several classes of bonds without depriving the city or county of the funds which, in the judgment of said court, or city council, will be required to meet the necessary current annual expenses of such county or city. [Id.]

Art. 665. **Levy for interest and sinking fund, proportioned, how.**—A levy in proportion to such excess or excesses beyond the amount required for current annual expenses may be made to pay the interest and sinking fund, respectively, of the said several classes of bonds. [Id.]

Art. 666. **Constitutional limit not to be exceeded.**—The constitutional limitation as to the rates and purposes of the several taxes shall not be exceeded or disregarded. [Id.]

Art. 667. **Commissioners to prescribe form and class of bonds, and for issuance.**—Said commissioners' court, or city council, shall, also, by said order, or ordinance, prescribe the form and the classes of said bonds, and provide for the issuance thereof, at such dates as may be expedient. [Id.]

Art. 668. **Term of bonds, etc.**—Said bonds may be made payable at any date deemed expedient by such commissioners' court, or city council, not later than forty years from the date of the execution. [Id.]

Art. 669. **Redemption of bonds.**—Provision may be made for the redemption of said bonds after five years, or after such longer period, as may be deemed expedient. [Id.]

Art. 670. **Interest rate.**—Said bonds shall bear interest as stipulated and specified in coupons attached thereto, not to exceed four per cent per annum. [Id.]

Art. 671. **Bonds to conform to requirements of certain articles not in conflict with the provisions of this subdivision.**—Said bonds shall be issued under and subject to all requirements of articles 616 to 620, inclusive, and articles 622 to 625, inclusive, of this title, which are not in conflict with the requirements and provisions of this subdivision of this chapter. [Id.]

Art. 672. **Signature and attestation of bonds.**—Said bonds shall be signed by the county judge, or mayor, and attested by the county or city clerk, as the case may be. [Id.]

Art. 673. **Registry by comptroller, after examination, etc., by attorney general.**—When examined and certified by the attorney general, in compliance with article 619, said bonds shall be registered by the comptroller. [Id.]

Art. 674. **Registry without presentation and cancellation of old bonds.**—The bonds shall be registered by the comptroller without requiring the old bonds, warrants or other evidence of indebtedness to be presented to him for cancellation. [Id.]

Art. 675. **Bonds delivered to county or city treasurer and registered by him.**—Said bonds shall be delivered to the county or city treasurer, as the case may be, and said officer shall register said bonds in a book kept for that purpose, and said bonds may thereafter be sold or exchanged as herein authorized. [Id.]

Art. 676. **Bonds not to be sold, etc., for less than par value and accrued interest.**—Said bonds shall never be sold or exchanged for less than their face value and accrued interest. [Id.]

Art. 677. Date of sale, etc., indorsed and certified and attested, how, before delivery of bonds.—Before delivery of the bonds issued hereunder, the date of sale or exchange of said bonds shall be indorsed and certified on such bonds by the county judge or mayor, whose signature shall be attested by the county or city clerk, as the case may be. [Id.]

3. RAILROAD, ETC., SUBSIDY BONDS, ETC.—COMPROMISE, ADJUSTMENT AND REFUNDING OF.

Art. 678. [909] Railroad, etc., subsidy bonds, how adjusted and paid.—Any county, city or town that has heretofore issued bonds to aid in the construction of railroads and other works of internal improvements are hereby authorized to compromise or adjust such indebtedness so created, in such manner as may be deemed to the best interest of such county, city or town; provided, that the amount of the debt and the rate of interest thereon shall not be thereby increased; and provided, further, that no debt which has become barred by the statute of limitation shall be thereby revived. For the purpose of carrying out the compromise or adjustment hereby authorized, the said counties, cities and towns are authorized to issue bonds, in denominations of not less than one hundred nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or adjustment, not to exceed the amount unpaid on the outstanding bonds. [Acts of 1887, p. 77.]

Art. 679. [910] Bonds sold and exchanged, how.—The bonds authorized by the preceding article may be exchanged for the bonds heretofore issued, or they may be sold and the proceeds used to buy up the old bonds as it may be necessary; provided, that the said bonds shall not be exchanged for the old bonds at a greater rate than par, except that the old bonds may be taken at a discount, and the new at the face value, according to agreement; and provided, that the new bonds issued hereunder shall not be sold for less than the amount for which the old bonds can be purchased. No such bonds shall be sold until there has been a contract by which the proceeds can be invested in the purchase of the old bonds. [Id.]

Art. 680. [911] Authority for executing bonds and terms and conditions of same.—If any county, city or town shall desire to avail itself of the provisions of articles 678 to 686, inclusive, and when arrangements shall have been made for the compromise or adjustment of any of the bonds, as hereinbefore mentioned, the commissioners' court of such county, or the city council of such town or city, shall enter an order, or adopt an ordinance, as the case may be, authorizing the issuance of bonds, which shall prescribe the amount to be issued, and shall cause blank bonds to be prepared for the purpose aforesaid. The bonds shall be made payable to bearer, and shall be payable such time after date as may be fixed and agreed upon, not to exceed fifty years, and shall bear such rate of interest as may be agreed upon, which shall not exceed the rate of interest that the old bonds now bear. The interest may be made payable annually, or semi-annually, and at such place as may be specified. Coupons shall be attached, representing each installment of interest as specified, which shall also include two per cent of the face of the bond as a sinking fund. The bonds issued by the county shall be signed by the county judge and attested by the county clerk, with the seal of the county, and the coupons shall be signed by the county judge. The bonds that may be issued by any city or town under the provisions hereof shall be signed by the mayor and attested by the city secretary or recorder,

with the seal of such city or town attached, and the coupons shall be signed by the mayor. [Id.]

Art. 681. [912] Bonds may be exchanged or sold.—The bonds as herein authorized to be issued may be exchanged or sold from time to time, and in such amounts as can be procured of the old bonds by purchase or exchange. [Id.]

Art. 682. [912] Levy of tax for interest and sinking fund.—Whenever any bonds shall be issued, the county commissioners' court, or council of such city or town shall levy upon the last assessment of the property for such city or town, as the case may be, a tax sufficient to pay the interest and sinking fund of not less than two per cent upon such bonds. The tax so levied shall remain as the levy for that purpose until a new levy may be made for that purpose; provided, that such commissioners' court or council may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property of the county or city or town and the amount to be collected; provided, further, that the amount shall not at any time be reduced so that it will not raise an amount sufficient to pay the annual interest and sinking fund on all the bonds sold or exchanged under the provisions hereof. [Id.]

Art. 683. [913] Collector liable on bond for failure of duty; new collector appointed, when.—If the tax collector, or any officer charged with the duty of collecting the tax levied to pay the interest and sinking fund upon said bond, shall refuse to collect the said tax at any time, he shall be liable upon his official bond to any person who may be injured thereby. If any collector shall refuse to collect said taxes, then, upon the complaint of any citizen or person interested, or upon their own motion, it shall be the duty of the commissioners' court of such county, or the city council of such city or town, to appoint some suitable person, who shall qualify as required of the collector aforesaid, and shall proceed to collect said tax until the next general election, and until a collector shall be elected and qualified who will collect the same. If the commissioners' court or council aforesaid shall fail or refuse to appoint some person as aforesaid, then the governor of the state shall make such appointment of some suitable person who shall collect said taxes until the next general election and until some collector shall be elected who will collect the same; and such person so appointed by the governor shall qualify as the regular collector is or may be required by law. [Id.]

Art. 684. [914] Bonds to be registered in comptroller's office, how and effect of.—Before the bonds that may be issued hereunder shall be delivered, they shall be registered in the office of the comptroller of the state, who shall indorse upon each bond the date of such registration; and, when so registered and delivered, the said bonds shall not be subject to any defense that existed prior to the delivery of them, and this shall be stated in the face of the bonds. [Id.]

Art. 685. [915] Assessment of taxes and compensation of assessor.—The taxes levied hereunder shall be assessed by the officer whose duty it is by law to make the assessment for such county, city or town, who shall receive for such assessment one per cent for making such assessment. The officer whose duty it is by law to collect the taxes for such county, city or town, shall collect the taxes levied hereunder, and shall receive as compensation therefor one per cent of the amount collected. [Id.]

Art. 686. [916] Surplus fund, how applied.—If after all the matured coupons upon any series of bonds that may be issued hereunder have been paid off there shall remain a surplus of the taxes so collected for the payment thereof, then the commissioners' court of such county, or the council of such city or town, may use the surplus so remaining to purchase any of the outstanding bonds at not more than par. If said bonds can not be purchased

at par, then the said surplus may be applied to the payment of the next maturing coupons upon their maturity, and the taxes for that year remitted to that extent. [Id.]

Art. 687. [893] **May compromise and fund indebtedness.**—The county commissioners' court of any county, or the mayor and board of aldermen of any city or town in this state, are hereby authorized and empowered to compromise and fund any existing bonded indebtedness by such county, city or town issued, and the coupons due thereon, to aid in the construction of railroads or other works of internal improvement, or other bonds issued by authority of law; and for this purpose they are hereby authorized and empowered to issue new bonds in denomination of not less than fifty nor more than one hundred dollars, in their discretion, with interest coupons payable annually at the office of the state treasurer; said new bonds to become due and payable in twenty years, and to bear such rate of interest, not exceeding eight per cent per annum, as in their discretion may best subserve the purpose intended. [Acts of April 18, 1879, p. 109.]

Art. 688. [894] **Authority to compromise limited.**—No compromises shall be made under the provisions of articles 687 to 695, inclusive, by which any debt barred by the statute of limitation, or which may be barred at the time of such compromise, shall be revived, nor shall such new bonds, to be used in funding the principal of such old bonds, be issued for any greater amount than three-fourths of the principal of the old bonds outstanding; provided, that when the rate of interest of such new bonds is not more than five per cent per annum, then new bonds may be issued to the full amount of the old bonds outstanding; and provided, further, that the amount of new bonds to be issued for the funding of the matured interest shall be left to the discretion of the county commissioners' court or the mayor and board of aldermen, as the case may be, but in no case to exceed the amount of such matured interest. [Id.]

Art. 689. [895] **Bonds exempt from taxation.**—The new bonds thus issued by any county shall be exempt from the payment of all county taxes, general and special, in the county by which they are issued; and the new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town. [Id.]

Art. 690. [896] **Issued and registered, how.**—The county commissioners' court or mayor and board of aldermen, as the case may be, shall cause to be prepared the necessary blank bonds to give effect to the provisions hereof, the cost of which shall be paid out of the treasury of such county, city or town; said bonds, when issued by any county, shall be signed by the county judge and attested by the county clerk of such county, with the seal of the county court affixed; and when issued by any city or town shall be signed by the mayor and attested by the city clerk or secretary, with the seal of such city or town affixed; and such new bonds, whether issued by any county, city or town, shall be registered in the office of the state comptroller. [Id.]

Art. 691. [897] **May be exchanged or sold.**—Such new bonds may be exchanged for the old bonds at the rate specified in article 688, or they may be sold and the proceeds applied to the purchase of such old bonds at the rate specified in said article; provided, that no delivery of such new bonds shall take place unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided, further, no bonds so issued shall be sold at less than par; each bond sold shall be made to bear the lowest rate of interest that will give it par value. [Id.]

Art. 692. [898] **Tax laws to be continued in force.**—All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds shall apply and be in force for the collection

of taxes for the payment of the principal and interest of such new bonds; provided, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value. [Id.]

Art. 693. [899] **Same subject.**—The object and intention of these provisions being to enable the counties, cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any bonded indebtedness whatever, to compromise the same and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith, either by the holder of the present bonds or by any person purchasing said new bonds as provided in the foregoing articles, that all laws in force or which may hereafter be in force for the assessment and collection of the state taxes, shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits which may be instituted to enforce the payment of said new bonds or coupons against any such county, city or town, no defense either in law or equity shall be admitted in any of the courts of this state, except such as originated upon or subsequent to the issuance of such new bonds. [Id.]

Art. 694. [900] **Collector liable for failing to collect tax, and when to be appointed by governor.**—Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond at the suit of any person or persons holding any of said bonds or coupons for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any county, city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the commissioners' court or the mayor or board of aldermen, as the case may be, shall appoint any person who shall fail, neglect or refuse to give said bond, or whenever they shall fail, neglect or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required herein or [by] any other law of this state relating to the collection of said taxes from the time of his said appointment until the next general election. [Id.]

Art. 695. [901] **Compromise by vote of the people; notice of election, how given.**—No compromise which may be agreed upon between the commissioners' court or the mayor and board of aldermen, as the case may be, and the bondholders or others, shall be binding upon the taxpayers of any county, city or town until the terms of said compromise shall have been submitted to a vote of the property taxpayers at an election held by order of the commissioners' court, or mayor and board of aldermen, as the case may be, and a majority of the said taxpayers shall vote in favor of and ratify the terms of said compromise; said election shall be held in accordance with the general law regulating elections; provided, that none but property taxpayers shall vote at any such election; provided, further, that notice of such election shall be published for thirty days in some newspaper published in the county, city or town, as the case may be; and in case there shall be no paper published in such county, city or town, then by posting in ten

public places in such county, city or town, as the case may be, for thirty days prior to any election hereunder. [Id.]

Art. 696. [917] **Counties and city authorities may adjust tax to conform to interest and sinking fund for bonded indebtedness.**—The county commissioners' court of any county, or the mayor and board of aldermen or city council of any city or town that have heretofore issued bonds to aid in the construction of railroads or other works of internal improvement, are hereby authorized and empowered to reduce the rate of taxation heretofore levied for the purpose of paying the interest and sinking fund on such bonds, so as to raise the amount necessary to pay the said interest and sinking fund which may become due annually according to the terms of the said bonds; and any county, city or town, by its said commissioners, or city council, or mayor and aldermen, may from time to time hereafter increase or diminish its rate of taxation according to the valuation of its taxable property, so as to raise the amount necessary for the payment of said interest and sinking fund annually; provided, that the taxes shall never be reduced below the rate that will raise the amount that is annually due upon such bonds. [Act of 1887, p. 29.]

Art. 697. [918] **How amount of levy determined and fees of collector.**—The levy of tax provided for in the preceding article shall be made upon the assessed valuation of the property of such county, city or town for the previous year, and shall remain in force from year to year until there has been a new levy, according to the provisions hereof. It shall be the duty of the officer who shall make the assessments annually for such county, city or town to make the levy of the taxes aforesaid upon the assessment of property made for general purposes, and to so return his rolls as to show the said tax due from each person the same as the other taxes are shown. No additional fees shall be allowed for said work. For collecting the said taxes, the tax collector of such county, city or town shall receive one and one-half per cent upon the amount collected. [Id.]

CHAPTER FOUR.

SINKING FUNDS—INVESTMENTS, REPORTS, REGULATIONS AND PENALTIES.

	Article		Article
Sinking fund of county, city, town, school district or school community, to be invested in United States, state, city, or town bonds, provided, etc.	698	Draft on sinking fund not to be honored by treasurer except for interest, redemption or investment.	700
Report, annual, of county or city treasurer to comptroller, requisites of.	699	Penalties for failure to report or for diversion or misapplication.	701
		Comptroller to notify attorney general, district or county attorney; suit to recover fund; payment into treasury.	702

Article 698. **Sinking fund of county, city, town, school district or school community to be invested in United States, state, city or town bonds, provided, etc.**—The commissioners' court of any county, the city council of any incorporated city or town, and the board of trustees of any independent school district, or of any other school district or school community, in the state of Texas, are authorized and empowered, whenever they may deem it advisable, to invest any sinking fund or sinking funds now on hand or hereafter acquired for the redemption and payment of any outstanding bonds of such county,

city or town, or independent school district, or any other school district or school community, in bonds of the United States, of the state of Texas, of any county of the state of Texas, or of any incorporated city or town; provided, that no such bonds shall be so purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created; and, provided, further, that in the event any commissioners' court, city council or board of trustees is unable to purchase any securities of the character above mentioned, which mature at a date prior to the time of maturity of the bonds for the payment of which such sinking fund was created, then they are authorized, in their discretion, to invest such funds in the bonds of any independent school district, or of any other school district or school community authorized to issue bonds, under the same restrictions as herein mentioned. [Acts 1905, p. 25, sec. 1.]

Art. 699. Report, annual, of county or city treasurer to comptroller, requisites of.—It shall be the duty of the treasurer of each county in this state and of each city, whether incorporated under the general law or by special charter, to make an annual report to the comptroller of public accounts of this state on the first day of August of each year, showing the condition of the interest and sinking fund for each set of bonds of said county or city outstanding on the thirtieth day of June of each year, which said report shall be made under oath, and shall show:

First. The outstanding bonded indebtedness of said city or county, giving date when issued, the amount of each set of bonds, the rate of interest they bear and when they mature.

Second. The tax levy in force to provide for the interest and sinking fund on each set of said bonds.

Third. The amount on hand to the credit of the interest and sinking fund of each set of said bonds, showing whether in cash or securities.

Fourth. The amount received by the said fund since last report, and from what source.

Fifth. The disbursements from said fund since last report, and for what purpose.

Sixth. The amount of said bonds redeemed since last report, and the amount still outstanding. [Acts 1899, p. 45.]

Art. 700. Draft on sinking fund not to be honored by treasurer except for interest, redemption or investment.—No city or county treasurer shall honor any draft upon the interest and sinking fund provided for any of the bonds of such city or county, nor pay out nor divert any of the same, except for the purpose of paying the interest on such bonds or for redeeming the same, or for investment in such securities as may be provided by law. [Id. sec. 2.]

Art. 701. Penalties for failure to report or for diversion or misapplication.—Any treasurer who shall fail to make the reports provided for in article 699, or who shall divert said fund or apply said fund for any other purpose than as permitted by article 700, shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars, to be recovered by the state, and, in addition thereto, shall be liable for the amount of such fund so diverted. [Id. sec. 3.]

Art. 702. Comptroller to notify attorney general, district or county attorney; suit to recover fund; payment into treasury.—It shall be the duty of the comptroller of public accounts, whenever the reports of any treasurer show that he has diverted said funds, or when he shall fail to make such reports, to notify the attorney general of the state, or the district attorney of the district in which such treasurer resides, or county attorney in counties in which there is no district attorney provided for by law, of the fact, who shall thereupon institute suit against such treasurer and his official bonds-

men for the amount of such penalty and of said fund so diverted; and the amount of such penalty so recovered shall be paid into the state treasury, and the amount of the diverted fund so recovered shall be paid into the county or city treasury to the credit of the fund from which it was so diverted. [Id. sec. 3.]

TITLE 19.

BRANDS, TRADE MARKS, ETC.

Trade marks of carbonated goods.....	Article 703	Infringements enjoined	Article 705
Disposition of penalty funds.....	704	Trade mark to be filed.....	706

Article 703. [318a] **Trade marks of carbonated goods, how established.**—All manufacturers or dealers in carbonated goods, mineral waters, soda water, wine, cider, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name, or device; for which services the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded. [Acts 1893, p. 125.]

Art. 704. [318b] **Disposition of penalty funds.**—All moneys collected as fines or penalty, under the provisions of this chapter, shall be returned by the justice of the peace into the county treasury, to become a part of the public road fund. [Id.]

Art. 705. [318c] **Infringement of trade mark may be enjoined.**—Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. [Act 1895, p. 108.]

Art. 706. [318d] **Trade mark to be filed, etc.**—Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the secretary of state by leaving two copies, counterparts or fac similes thereof, with the secretary of state, and said secretary shall deliver back to such person, association or union so filing the same one of said copies, counterparts or fac similes, along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar from such person, association or union. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design,

device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisements shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record; provided, that no person or associations shall be permitted to register as a label, trade mark, design, device, imprint or form of advertisement any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association without their consent; and provided, further, that all persons, institutions or associations now using a label, trade mark, design, device, imprint or form of advertisement shall have thirty days time after this law takes effect in which to file such label, trade mark, design, device, imprint or form of advertisement under the provisions of this law, before the same can be registered by others. [Id.]

TITLE 20.

CARRIERS.

Chapter.

1. Duties and Liabilities of Carriers.
2. Disposition of Unclaimed or Perishable Property by Carriers.

Chapter.

3. Connecting Lines of Common Carriers.
- (See Titles "Railroads," "Express Companies.")

CHAPTER ONE.

DUTIES AND LIABILITIES OF CARRIERS.

	Article		Article
Common law shall govern, except, etc.	707	Liability as warehousemen, etc.	711
Carriers can not limit their responsibilities	708	Diligence as to delivery	712
Bound to carry goods, when	709	Shall forward in good order, etc.	713
Must give bill of lading	716	Shall feed and water live stock, unless, etc.	714

Article 707. [319] [277] **Common law shall govern, except, etc.**—The duties and liabilities of carriers in this state shall be the same as are prescribed by the common law, and the remedies against them shall be the same, except where otherwise provided by this title.

Art. 708. [320] [278] **Carriers can not limit their responsibility.**—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this state, on land or in boats or vessels on the waters entirely within the body of this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid. [Act Dec. 4, 1863. P. D. 452.]

Art. 709. [321] [279] **Bound to carry goods, when.**—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to any common carrier whatever, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods, as above provided, taking in the same in the order presented, shall be liable to the party injured for damages sustained by reason of his refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done or where the common carrier resides; provided, this article shall not affect such corporations as are embraced in article 6554 of these statutes. [Id. sec. 453; amend., 1895, Sen. Jour., p. 478, sec. 14.]

Art. 710. [322] [280] **Must give bill of lading.**—Common carriers are required, when they receive goods for transportation, to give to the shipper, when it is demanded, a bill of lading or memorandum in writing, stating the quantity, character, order and condition of the goods; and such goods shall be delivered, in the manner provided by common law, in like order and condition to consignee, the unavoidable wear and tear and deterioration in due course of transportation only excepted; and in case such common carrier shall fail to deliver goods as above required, they shall be liable to the party injured for his damages, as at common law; and in case of their refusal to execute and deliver a bill of lading or memorandum in writing, as

above required, they shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article. [Act Feb. 4, 1860. Id. 454.]

Art. 711. [323] [281] **Liability as warehousemen, etc.**—Railroad companies and other common carriers having depots and warehouses for storing goods, shall be liable as warehousemen are at common law for goods and the care of the same stored in such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported; but shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. [Id. 455.]

Art. 712. [324] [282] **Diligence as to delivery.**—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. [Id.]

Art. 713. [325] [283] **Shall forward in good order, etc.**—Where common carriers receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another; and in case they shall fail to do so, they shall be liable, absolutely, for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay; provided, that the trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. [Id.]

Art. 714. [326] [284] **Shall feed and water live stock.**—It shall be the duty of a common carrier who conveys live stock of any kind to feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract; and any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any court having jurisdiction in any county where the wrong is done or where the common carrier resides.

CHAPTER TWO.

BILLS OF LADING CERTIFIED, ETC.

Article	Article
Certain common carriers, etc., to issue bills of lading and certify, etc., same when demanded by shipper, etc.	Carrier's liability in case of delivery of goods without taking up, etc., "order" bill of lading; exception.
715	720
Requisites, etc., of certificate, etc.	Same subject, where part of goods are delivered, etc., exception.
716	721
"Straight" and "order" bills of lading defined, and issuance of "order" bills of lading regulated	Procedure in case of loss of "order" bill of lading; carrier not relieved from liability to innocent purchaser, etc., proviso
717	722
Authority of agent to be posted in station, his signature attached.	Carriers not liable, etc., when
718	723
Bills of lading issued by authorized agent, to be held act of carrier, etc., liability thereon; effect of certificate, etc.	Duties and powers of railroad commission
719	724

Article 715. **Certain common carriers, etc., to issue bills of lading and certify, etc., same when demanded by shipper, etc.**—It shall be the duty of all railroad companies, steamship companies, and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation, to issue bills of lading therefor, and to authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. [Acts 1910, 4 S. S., p. 138, sec. 1.]

Art. 716. **Requisites, etc., of certificate, etc.**—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

- (a) The date of its issuance;
- (b) The name of the person from whom the goods have been received;
- (c) The place where the goods have been received;
- (d) The place to which the goods are to be transported;
- (e) A statement of whether the goods will be delivered to a specific person or the order of a specific person;
- (f) A description of the goods or the packages containing them, which may, however, be in terms such as may be approved by the railroad commission;
- (g) The signature of the carrier or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized Agent of" (stating the name of his principal), which shall appear below his signature.

(h) The carrier may insert in a bill of lading issued by him any other terms and conditions; provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the railroad commission; and provided, further, that no language shall be inserted in any bill of lading having the effect of limiting or avoiding any of the provisions of this chapter; provided, that when any form of bill of lading has been approved by the interstate commerce commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. [Id. sec. 2.]

Art. 717. **"Straight" and "order" bills of lading defined, and issuance of "order" bills of lading regulated.**—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading, and a bill of lading in which it is stated that the goods are con-

signed to the order of any person named in such bill of lading, is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided, such copy has written or printed across the face thereof: "Copy—Not Negotiable." [Id. sec. 3.]

Art. 718. Authority of agent to be posted in station, his signature attached.—It shall be the duty of the carriers affected by this chapter to keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id. sec. 5.]

Art. 719. Bill of lading issued by authorized agent, to be held act of carrier, etc., liability thereon; effect of certificate, etc.—Each and every bill of lading issued by the authorized agent of any carrier or receiver thereof, affected by the provisions of this chapter, shall be deemed and held to be the act and deed of such carrier or receiver thereof, and the principal shall be liable thereon in accordance with the terms thereof. When any such bill of lading shall be validated, authenticated or certified in accordance with the rules and regulations herein provided for, and as may be prescribed by the railroad commission in accordance with the provisions of this chapter, and in the hands of an innocent holder for value, it shall be incontestable as to the matters and things therein set forth. [Id. sec. 6.]

Art. 720. Carrier's liability in case of delivery of goods without taking up, etc., "order" bill of lading; exception.—If the carrier shall deliver goods for which an "order" bill of lading has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel said bill of lading, such carrier shall be liable for the failure to deliver the goods to any one who, for value, in good faith, purchases such bill of lading, whether the purchaser acquired title to the bill of lading before or after the delivery of the goods by the carrier, notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id. sec. 7.]

Art. 721. Same subject, where part of goods are delivered, etc., exception.—If a carrier delivers part of the goods for which an "order" bill of lading has been issued, and fails to take up and cancel the bill of lading, or to place plainly upon the bill of lading that a portion of the goods had been delivered, with a description which may be in general terms, either of the goods or packages that had been so delivered, or of the goods or packages which still remain in the carrier's possession, he shall be liable for the failure to deliver all of the goods specified in the bill of lading, to any one, who for value, and in good faith, purchases it, whether such purchaser acquires title to the bill of lading before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id. sec. 8.]

Art. 722. Procedure in case of loss of "order" bill of lading; carrier not relieved from liability to innocent purchaser, etc., proviso.—When an "order" bill of lading shall have been lost or destroyed, a court of competent jurisdiction, in term time or in vacation, may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond, with good and sufficient sureties, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill of lading remaining outstanding. The court may also, in its discretion, order the payment of the carrier's reason-

able costs and counsel fees; but the delivery of the goods under an order of court, as provided for in this article, shall not relieve the carrier from liability to a person to whom the order bill of lading has been or shall be negotiated for value, and without notice of the proceedings or the delivery of the goods; provided, that nothing herein shall prevent the carrier from delivering the property covered by such lost bill of lading to any party claiming the same, on such terms as such party and the carrier may agree upon. [Id. sec. 9.]

Art. 723. **Carriers not liable, etc., when.**—The carrier shall not be liable under the provisions of this chapter, where the property has been replevied or levied upon or taken from the possession of the carrier by other legal process, or has been lawfully sold to satisfy the carrier's lien, or in case of the sale or disposition of perishable, hazardous or unclaimed goods, in accordance with law. [Id. sec. 10.]

Art. 724. **Duties and powers of railroad commission.**—It shall be the duty of the railroad commission to adopt and prescribe forms, terms and conditions for the authentication, certification or validation of bills of lading issued by common carriers referred to in article 715, and to regulate the manner and method of their issuance, and to take such steps as it may deem necessary to carry into effect the provisions of this chapter; and it shall have authority to amend, alter and modify, from time to time, as may seem to it expedient, any regulations which may be adopted by it in accordance with the provisions of this chapter, after giving due notice thereof to all carriers interested and to the public. [Id. sec. 17.]

CHAPTER THREE.

DISPOSITION OF UNCLAIMED OR PERISHABLE PROPERTY BY CARRIERS.

	Article.		Article.
Unclaimed freight may be sold, when and how	725	Carrier may sell live stock, when	728
Notice of such sale	726	Carriers shall sell perishable property when	729
Carrier shall keep an account of sales, etc.	727	Disposition of unclaimed intoxicating liquor	730

Article 725. [327] [285] **Unclaimed freight may be sold, when and how.**—When any freight or baggage has been conveyed by a common carrier to any point in this state, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or unknown, fails within that time to claim such freight or baggage, or to pay the proper charges if any there be against it, then it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each box, bale, trunk, valise or other article separately as consigned or checked. [Act May 2, 1874, p. 203. P. D. 5884a.]

Art. 726. [328] [286] **Notice of such sale.**—Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted up in three public places in the county where the sale is to be made, and on the door of the depot or warehouse, if any, where the goods are, and shall also give notice in at least one newspaper in the county, if any be published therein, for thirty days before sale; and out of the proceeds of such sale the carrier shall deduct the proper charges on such freight or baggage, including costs of stor-

ing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. [Id. P. D. 5884b.]

Art. 727. [329] [287] **Carrier shall keep an account of sales, etc.**—The carrier shall keep an account of sales, copy of the notice, a copy of the sale bill, and the expense thereof proportioned to each article sold. [Id. P. D. 5884c.]

Art. 728. [330] [288] **Carrier may sell live stock, when.**—Should any live stock remain unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in article 726, and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided; and such carrier shall also keep an account of any such sale, copy of the notice, copy of the sale bill, and an account of all expenses. [Id. P. D., 5884d.]

Art. 729. [331] [289] **Carrier shall sell perishable property, when.**—Should any perishable property remain unclaimed after arrival at its place of destination until in danger of depreciation, it shall be the duty of the carrier to sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in article 726, and apply the proceeds as prescribed in said article, and keep an account of such sale, copy of the notice, copy of the sale bill, and an account of all expenses. [Id. P. D. 5884d.]

Art. 730. **Disposition of unclaimed intoxicating liquor.**—When any express company, railroad company or other common carrier, within this state, shall receive any package or parcel of whatsoever nature, whether from a point within or without this state, containing any intoxicating liquor, for transportation to any point within any county, justice precinct, school district, city or town, or subdivision of a county, where the sale of intoxicating liquors has been prohibited under the laws of this state, such express company, railroad company or other common carrier shall forthwith transport such intoxicating liquor to the place of its destination; and, upon the arrival of same at its place of destination, there shall be entered in a book to be kept for that purpose the names of the consignor and the consignee, the exact time of the arrival of such package or parcel at the place of its destination, the place from where shipped, the quantity and character of such intoxicating liquor, as shown on such package or parcel, the exact time delivered to the consignee, if delivered, and the signature of such consignee, who shall sign in person for same before delivery thereof; and such book shall be open at all reasonable hours for inspection by any officer of the law or any member of the grand jury. If such package or parcel be not called for and taken away by the consignee, and all charges thereon, if any, paid by such consignee, it shall be the duty of such express company, railroad company, or other common carrier, to start such package or parcel in transit back to the consignor thereof within seven days from the time of its arrival at the place of its destination; and the consignor shall be liable to such express company, railroad company, or other common carrier for the express or freight charges in transportation and returning same. Any express company, railroad company, or other common carrier, violating any of the provisions of this article or articles, shall be liable to a penalty of one hundred dollars for each infraction thereof, to be recovered in the name of the state of Texas in any court of competent jurisdiction, in any county where such express company, railroad company or other common carriers have an office or an agent or a

line of railway; and each day that such intoxicating liquor shall be kept at the place of its destination after the expiration of seven days from the time of its arrival shall be deemed a separate infraction. [Acts 1905, p. 379. Acts 1910, 3 S. S., p. 33.]

CHAPTER FOUR.

CONNECTING LINES OF COMMON CARRIERS.

Connecting lines of common carriers de- fined	Article 731	Liability of such connecting lines.....	Article 732
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Article 731. [331a] **Connecting lines of common carriers defined.**—All common carriers over whose transportation lines, or parts thereof, any freight, baggage or other property received by either of such carriers for through shipment or transportation by such carriers between points in this state on a contract for through carriage recognized, acquiesced in, or acted upon, by such carriers shall, in this state, with respect to the undertaking and matter of such transportation, be considered and construed to be connecting lines, and be deemed and held to be the agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy through transportation thereof from point of shipment to destination; and such contract as to the shipper, owner or consignee of such property shall be deemed and held to be the contract of each of such common carriers; and, in any of the courts of this state, any through bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for such through shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein defined and prescribed, notwithstanding any stipulations or attempted stipulations to the contrary by such carriers, or either of them. [Acts 1895, p. 186.]

Art. 732. [331b] **Liability of such connecting lines.**—For any damages for injury or damage to, or loss or delay of, any freight, baggage or other property, sustained anywhere in such through transportation over connecting lines, or either of them, as contemplated and defined in the next preceding article of this chapter, either of such connecting carriers which the person or persons sustaining such damages may first elect to sue in this state therefor shall be held liable to such person or persons; and such carrier so held liable to such person or persons shall be entitled in a proper action to recover the amount of any loss, damage or injury it may be required to pay such person or persons from the carrier through whose negligence the loss, damage or injury was sustained, together with costs of suit. [Id.]

TITLE 21.

CERTIORARI.

Chapter. 1. Certiorari to the County Court.	Chapter. 2. Certiorari to Justices' Courts.
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CHAPTER ONE.

CERTIORARI TO THE COUNTY COURT.

<table border="0"> <tr><td>Article.</td><td></td></tr> <tr><td>Certiorari to county court issued, when.</td><td>733</td></tr> <tr><td>Application for</td><td>734</td></tr> <tr><td>Shall be granted on execution of bond.</td><td>735</td></tr> <tr><td>Not to operate as supersedeas, unless</td><td></td></tr> <tr><td> bond given</td><td>736</td></tr> <tr><td>Writ to issue, to contain what.....</td><td>737</td></tr> </table>	Article.		Certiorari to county court issued, when.	733	Application for	734	Shall be granted on execution of bond.	735	Not to operate as supersedeas, unless		bond given	736	Writ to issue, to contain what.....	737	<table border="0"> <tr><td>Article.</td><td></td></tr> <tr><td>When supersedeas granted.....</td><td>738</td></tr> <tr><td>Citation as in ordinary cases.....</td><td>739</td></tr> <tr><td>Trial de novo, judgment to be certified</td><td></td></tr> <tr><td> below</td><td>740</td></tr> <tr><td>Appeals and writs of error allowed.....</td><td>741</td></tr> </table>	Article.		When supersedeas granted.....	738	Citation as in ordinary cases.....	739	Trial de novo, judgment to be certified		below	740	Appeals and writs of error allowed.....	741
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Article 733. [332] [290] **Certiorari to county court, issued when.**—Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward; provided, that persons non compos mentis, infants and femes covert shall have two years after the removal of their respective disabilities within which to apply for such revision and correction. [Act March 16, 1848, p. 106, secs. 7, 9. P. D. 480, 482.]

Art. 734. [333] [291] **Application for.**—All applications for the writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the names and residences of the parties adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised. [Id. P. D. 480.]

Art. 735. [334] [292] **Shall be granted on execution of bond.**—The writ of certiorari shall, in all cases, be granted upon the application of a party therefor, upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

Art. 736. [335] [293] **Not to operate as supersedeas, unless bond given.**—A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party, and conditioned for the performance of the judgment of the district court, in case such judgment shall be against the applicant.

Art. 737. [336] [294] **Writ to issue to contain what.**—The writ of certiorari shall be issued by the clerk of the district court upon the compliance of the party with the order of the district court or the judge thereof. It shall be directed to the sheriff or any constable of the proper county, and shall command him to cite the clerk of the county court to make out a certified transcript of the proceedings designated in the writ, and transmit the same to the district court to which the writ is returnable, on or before the return day of the next succeeding term thereof.

Art. 738. [337] [295] **When supersedeas granted.**—When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

Art. 739. [338] [296] **Citation as in ordinary cases.**—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation, as in

ordinary cases, for the party named in the application, as being adversely interested in the proceedings sought to be revised.

Art. 740. [339] [297] Trial de novo; judgment to be certified below.—The cause shall be tried de novo in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance. [Act May 13, 1846, p. 363, sec. 60. P. D. 1460.]

Art. 741. [340] [298] Appeals and writs of error allowed.—Appeals and writs of error to the supreme court, from the judgments of the district courts in cases of certiorari, shall be allowed, and shall be governed by the same rules as in other cases.

CHAPTER TWO.

CERTIORARI TO JUSTICES' COURTS.

Article	Article		
Certiorari to justices' courts.....	742	Citation as in other cases.....	752
On order of the county or district court	743	Cause to be docketed, and how.....	753
or judge.....	743	Motion to dismiss at first term.....	754
Requisites of the writ.....	744	No amendment of bond or oath.....	755
Affidavit of sufficient cause.....	745	Judgment of dismissal.....	756
What application for certiorari must		Pleadings same as in justice's court, ex-	
show.....	746	cept, etc.....	757
Within what time granted.....	747	Issues, made up under direction of the	
Bond with sureties required.....	748	court.....	758
Bond, affidavit and order to be filed....	749	New matter may be pleaded, etc.....	759
Writ to issue instanter.....	750	Trial de novo.....	760
Justice shall stay proceedings and make		Appeals and writs of error in certiorari	
return.....	751	cases.....	761

Article 742. [341] [299] Certiorari to justices' court.—After final judgment in a court of a justice of the peace, in any cause, except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the jurisdiction, civil or criminal, has been transferred from the county to the district court, then to the district court) in the manner hereinafter directed. [Acts of 1879, p. 125.]

Art. 743. [342] [300] On order of the county or district court or judge.—The writ of certiorari shall be issued by order of the county court or the judge thereof, (or district court or the judge thereof, if jurisdiction is transferred to said district court) as provided in the preceding article.

Art. 744. [343] [301] Requisites of the writ.—It shall command the justice of the peace to make and certify a copy of the entries in the cause on his docket, and transmit the same, with the papers in his possession, to the proper court on or before the first day of the next term thereof; but if there is not time for such transcript and papers to be filed at such term, then they shall be so filed at the next succeeding term of said court. [Act March 20, 1848, p. 163, sec. 67. P. D. 468.]

Art. 745. [344] [302] Affidavit of sufficient cause.—The writ shall not be granted unless the party applying for the same, or some person for him having knowledge of the facts, shall make affidavit in writing, setting forth sufficient cause to entitle him thereto. [Id.]

Art. 746. [345] [303] What application for certiorari must show.—In order to constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the

applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect. [Id.]

Art. 747. [346] [304] **Within what time granted.**—Such writ shall not be granted after ninety days from the final judgment of the justice of the peace. [Id.]

Art. 748. [347] [305] **Bond with sureties required.**—The writ shall not be issued unless the party applying therefor shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him. [Id.]

Art. 749. [348] [306] **Bond, affidavit and order to be filed.**—The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

Art. 750. [349] [307] **Writ to issue instant.**—As soon as such affidavit, order of the judge and bond shall have been filed, the clerk shall issue a writ of certiorari, as directed in article 744. [Act May 10, 1850, p. 60, sec. 2. P. D. 470.]

Art. 751. [350] [308] **Justice shall stay proceedings and make return.**—Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ; but if there be not time for the transcript and papers to be filed at such first term, then they shall be so filed at the next succeeding term of said court. [Id. sec. 67. P. D. 468.]

Art. 752. [351] [309] **Citation as in other cases.**—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation, as in ordinary cases, for the party adversely interested.

Art. 753. [352] [310] **Cause to be docketed, and how.**—The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

Art. 754. [353] [311] **Motion to dismiss at first term.**—At the first term of the court to which the certiorari is returnable, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond.

Art. 755. [354] [312] **No amendment of bond or oath.**—No amendment of the affidavit or bond shall be made in the county or district court, nor shall a new affidavit or bond be filed.

[Note—See article 2104.]

Art. 756. [355] [313] **Judgment of dismissal.**—If the certiorari be dismissed, the judgment shall direct the justice of the peace to proceed with the execution of the judgment below.

Art. 757. [356] [314] **Pleading same as in justice's court, except, etc.**—No pleading other than that required by law in the justice's court shall be necessary, except in cases of amendment, as hereinafter provided.

Art. 758. [357] [315] **Issues made up under direction of the court.**—When no pleadings have been filed in justices' courts, and none were necessary, the issues shall be made up under the direction of the court.

Art. 759. [358] [316] **New matter may be pleaded, etc.**—Either party may plead any new matter in the county or district court which was not presented in the court below; but no new cause of action shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below; and in all such cases the pleadings shall be in writing, and filed in the cause before the parties have announced themselves ready for trial.

Art. 760. [359] [317] **Trial de novo.**—The cause shall be tried de novo, in the county or district court; and judgment shall be rendered, as in cases

of an appeal from justices' courts. [Act to establish R. C. S., passed Feb. 21, 1879.]

Art. 761. [360] [318] **Appeals and writs of error in certiorari cases.**— Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justices' courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts

TITLE 22.

CITIES AND TOWNS.

<p>Chapter.</p> <ol style="list-style-type: none"> 1. General Provisions Relating to Cities. 2. Officers and Their Election. 3. Duties and Powers of Officers. 4. General Powers and Duties of the City Council. 5. Corporation Courts. 6. Taxation. 7. Assessment and Collection of Taxes. 8. Fire Department. 9. Sanitary Department. 	<p>Chapter.</p> <ol style="list-style-type: none"> 10. Streets and Alleys. 11. Street Improvements. 12. Public Utility Corporations, Rates and Charges—Regulation by Council, etc. 13. Public Utility Corporations, Rates and Charges—Regulation by Court. 14. Towns and Villages. 15. Commission Form of Government. 16. Abolition of Corporate Existence.
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CHAPTER ONE.

GENERAL PROVISIONS RELATING TO CITIES.

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Article 762. [381] [340] **Cities, towns and villages may accept provisions of this title.**—Any incorporated city, town or village in this state, containing one thousand inhabitants or over, including those incorporated under chapter fourteen of this title, or chapter eleven of title eighteen of the Revised Statutes of 1895, and other laws, general and special, may accept the provisions of this title relating to cities and towns, in lieu of any existing charter, by a two-thirds vote of the council of such city, town or village; which action by the council shall be had at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same, signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the clerk of the county court of the county in which such city, town or village is situated, and the provisions of this title shall be in force, and all acts theretofore passed incorporating said city, town or village which may be in force by virtue of any existing charter shall be repealed from and after the filing of said copy of their proceedings as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title relating to cities and towns and vested with all the rights, powers, privileges, immunities and franchises therein conferred. [Acts of 1881, p. 115. Acts of 1885, p. 57.]

Art. 763. [382] [341] **Provisions of this title do not apply until accepted.**—The provisions of this title shall not apply to any city, town or vil-

lage until such provisions have been accepted by the council in accordance with the preceding article. [Act. March 15, 1875, p. 256, sec. 157.]

Art. 764. [383] [342] **General powers of the corporation.**—All the inhabitants of each city, town or village so accepting the provisions of this title shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of this title, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of this title, and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of this title, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the constitution and laws of this state, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same name, shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Id. sec. 2.]

Art. 765. [573] [502] **Property, officers, etc., not affected by this title.**—All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation, in office at the date of its acceptance, shall continue in the same, until superseded in conformity with the provisions of this title, from and after it takes effect. [Acts of 1875, p. 256.]

Art. 766. [572] [501] **Rights, actions, etc., not affected by this title.**—All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created; and no suit pending shall be affected by the passage and acceptance of this title, but the same shall be prosecuted or defended, as the case may be, by the corporation hereby created. [Id. sec. 153.]

Art. 767. [571] [500] **Cemetery lots exempt from forced sale.**—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. [Id. sec. 152.]

Art. 768. [570] [499] **City exempt from giving bond in suits.**—It shall not be necessary in any action, suit or proceeding in which the city, accepting the provisions of this title, shall be a party, for any bond, undertaking or security to be executed in behalf of the city; but all such actions, suits and proceedings shall be conducted in the same manner as if such bond, undertaking or security had been given, and, for all the purposes of such actions, suits and proceedings, the city shall be liable in the same manner, and to the same extent, as if the bond, undertaking or security in ordinary cases had been duly given and executed. [Id. sec. 151.]

Art. 769. **Powers of city, etc., owning waterworks, sewers, gas and electric lights, to own land within or without limits.**—Any town or city in this state, which may have been or may hereafter be chartered or organized under the general laws of Texas, or by special act or charter, and which city or town owns or operates waterworks, sewers, gas or electric lights shall have the power and right to own land for such purposes, within or without the limits of such town or city. [Acts 1909, p. 159.]

Art. 770. **May purchase, construct and operate systems inside or outside limits, and regulate, etc.**—Such town or city may purchase, construct and operate water, sewer and gas and electric light systems, inside or outside of such town or city limits, and regulate and control same, in a manner to protect the interests of such town or city. [Id. sec. 1.]

Art. 771. **May sell water, etc., to persons outside, permit connections, etc.**—Such town or city shall have the power and right to sell water, gas, electric light or power and sewer privileges to any person or corporation outside of the limits of said town or city, and to permit them to connect therewith under contract with such town or city, under such terms and conditions as may appear to be for the best interests of such town or city. [Id. sec. 1.]

Art. 772. **May prescribe kind of mains and appliances, etc., inspect, etc., make regulations and prescribe penalties.**—Such town or city owning or operating such water or gas mains or sewer pipes and electric appliances shall have the right to prescribe the kind of water or gas mains or sewer pipes and electric appliances, within or beyond the limits of such town or city, and to inspect the same and require them to be kept in good order and condition at all times, and to make such rules and regulations, and prescribe penalties, concerning same, as shall be necessary and proper. [Id. sec. 2.]

[Note.—For other powers of, and restrictions upon, city councils, in reference to waterworks, see article 865; and for power of condemnation for waterworks purposes, public or private, see articles 1003 and 1004.]

Art. 773. [384] [343] **Limits of corporation to remain the same until extended, etc.**—The bounds and limits of said municipality shall be and remain the same as fixed and defined by the provisions of the act of incorporation, substituted by the provisions of this title; provided, that said limits of said corporation may be hereafter extended by adding additional territory to the same, whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation, in the manner provided in article 781 of this title. [Act March 15, 1875, p. 256, sec. 2.]

Art. 774. [385] **Cities, towns and villages may incorporate under.**—Any city or town containing one thousand inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner prescribed in chapter fourteen of this title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to read, and read, "cities and towns." When the entry by the county judge, provided in article 1041 in said chapter fourteen, is made with reference to a city or town of one thousand inhabitants and over, such city or town shall be invested with all the rights and privileges of such cities conferred by this title. [Acts of 1881, p. 63. Acts of 1881, p. 115.]

[Note.—See validating act of 1895, p. 45, remaining in force by virtue of section twenty of the final title.]

Art. 775. [386] [340c] **Validating incorporations.**—That all towns and cities of one thousand inhabitants or more which have heretofore attempted to accept the provisions of this title and to become incorporated cities of one thousand inhabitants or more, under the general laws of Texas, and have failed to comply with all the requirements of said general law, or which are not included within the literal meaning of those cities which are authorized to accept the provisions of said general law, and all towns and villages incorporated under chapter eleven of title eighteen of the Revised Civil Statutes of 1895, or by special charter, or otherwise, but which now have one

thousand inhabitants or more, and which have heretofore attempted to accept the provisions of this title in lieu of their said town or village charter and become incorporated cities of one thousand inhabitants or more, but which said cities have from and after the dates of their several attempted incorporations and their several efforts to accept the provisions of this title exercised the functions of cities of the class named, and were by the state of Texas recognized as such cities are hereby declared to be cities of one thousand inhabitants or more; and the several acts whereby they attempted to accept the provisions of said law are hereby, in all things, validated; and that all subsequent acts of said cities and towns done and performed as a city of one thousand inhabitants or more, after they had attempted to accept the provisions of said law as aforesaid are hereby validated and declared to be as binding as if said cities had been duly and legally incorporated; provided, that nothing herein shall be construed as validating any act of said cities, or the councils thereof, unless same were authorized by the general laws of the state under which they were attempting to act at the several dates when said acts were done; and provided, further, that the provisions of this article shall not validate the act of any town or city in unlawfully adding additional territory to such town or city, without the consent of such inhabitants so added to said town or city. [Acts of 1891, p. 26.]

Art. 776. **Validating incorporations.**—All cities or towns of one thousand inhabitants or over incorporated since March 30, 1895, which have heretofore attempted to accept the provisions of chapter one, title eighteen, of the Revised Civil Statutes of 1895, and which have attempted to be incorporated under the provisions of said general law, but which said attempted incorporation is invalid by reason of the failure of said cities or towns to comply with all the requirements of the law relating to the incorporation of towns or villages, but which said cities or towns have from and after the dates of their several efforts to accept the provisions of law relating to the incorporation of cities or towns of one thousand inhabitants or over exercised the functions of cities or towns of the class named and been recognized as such cities or towns are hereby declared to be cities of one thousand inhabitants or over; and their incorporation as such is hereby in all things validated; provided, that nothing in this act shall be held to validate the incorporation of cities or towns that had less than one thousand inhabitants at the time of their attempted incorporation as such cities or towns of one thousand inhabitants or over. [Acts 1897, p. 59.]

Art. 777. [386a] **Territorial boundaries of cities and towns, etc.**—No city or town in this state shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in title twenty-two of the Revised Civil Statutes of this state, with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles, when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. It shall be the duty of the mayor and board of aldermen, immediately after they qualify as such officers, to pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation, and the field-notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such town or city is situated. [Acts of 1895, p. 17.]

Art. 778. [386b] **Excessive territory to be relinquished.**—It shall be the duty of the mayor and the board of aldermen of any town or city in this state heretofore incorporated under title eighteen of the Revised Civil Statutes of 1895 of this state, and whose boundaries have been established so as

to include more territory than is specified in article 777, to immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in article 777; such resurvey to be made and the field-notes thereof to be recorded as provided in article 777. [Id.]

Art. 779. [386c] **Validating certain incorporations.**—All cities and towns in this state whose charters may be void by reason of a failure to properly define their limits, or that may have included in such limits more territory than was provided for in article 386a, Revised Civil Statutes of Texas, 1895, that shall have, within ninety days from the taking effect of an act of the twenty-eighth legislature, general laws of 1903, regular session, chapter 49, page 68, complied with article 386b, Revised Civil Statutes, 1895, are hereby declared to be valid; and such charters and incorporations are hereby in all things validated, the same as if such territorial limits had at first been properly established. [Acts 1903, p. 68.]

Art. 780. [386d] **Discontinuing territory.**—Whenever there exists within the corporate limits of any city or town organized under the general laws within this state territory to the extent of at least ten acres, contiguous, uninhabited, and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed discontinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council; and, from and after the entry of such order, said territory shall cease to be a part of said city or town. [Act of 1895, p. 178.]

Art. 781. [574] [503] **Adjoining inhabitants may become part of city, how.**—Whenever a majority of the inhabitants qualified to vote for members of the state legislature of any territory adjoining the limits of any city incorporated under, or accepting the provisions of, this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact, to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may, by ordinance, receive them as part of said city; from thenceforth the territory so received shall be a part of said city; and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto, and passed in pursuance of this title. [Acts of 1875, p. 256, sec. 155.]

Art. 782. [575] [503a] **Segregating territory from city.**—Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city, praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, it shall be the duty of the mayor thereof to order an election within thirty days thereafter, to be holden at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town, the mayor of said city shall declare such territory no longer a part of said city, and shall enter an order to that effect on the minutes or records of the city council; and from and after the date of such order, said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits. [Acts of 1883, p. 99.]

Art. 783. [576] [503b] **Liable for debts, etc.**—Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said city council to continue to levy an ad

valorem tax each year on the property of said territory of the same rate as is levied upon other property of such city, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city. [Id.]

CHAPTER TWO.

OFFICERS AND THEIR ELECTION.

	Article		Article
Municipal government to consist of certain officers to be elected, etc.	781	None but resident voters eligible to office	794
Manner of electing officers, etc.	785	Resignation of officers	795
Election and term of office of mayor and aldermen	786	Power of city council to remove officers	796
Time of holding election, and returns thereof	787	Vacancy, how filled	797
Who are qualified voters for city officers.	788	Election to fill vacancy ordered by commissioners' court, when	798
Managers of election shall be sworn; their powers and duties	789	Election, etc., in such case, how conducted	799
Proceedings when vote challenged in cities and towns of 10,000 inhabitants and over	790	Outgoing officer shall deliver books, etc., to his successor	800
Proceedings in case of a tie vote	791	City council composed of mayor and aldermen, etc.	801
Who are eligible to the offices of mayor and alderman	792	Wards of city to remain unchanged until, etc.	802
Member of city council ineligible to other office, and shall not be contractor, surety, etc.	793		

Article 784. [387] [344] **Municipal government consists of what.**—The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless herein otherwise specified; provided, that where the city or town shall not be divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to the whole city or town. The other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal and city engineer, and such other officers and agents as the city council may from time to time direct; provided, that the office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance of the city or town council; and the powers and duties herein prescribed for such officers may be conferred by said council upon other officers. The above named officers shall be elected by the qualified electors of said city, as hereinafter provided for, and shall hold their offices for two years, and until the election and qualification of their successors. [Acts of 1881, p. 115.]

Art. 785. [388] [345] **Manner of electing officers, etc.**—An election shall be held in each of the wards of said city, on the first Tuesday in April, next after the acceptance of the provisions of this title, and annually thereafter, at such place or places as the city council may direct, and of which thirty days' previous notice shall be given. Such election shall be ordered and notice thereof shall be given, and election officers and supervisors appointed,

as provided by article 2934. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and, by ordinance, regulate and define their powers and duties. [Id. Acts 1905, S. S., p. 533, sec. 56.]

Art. 786. [389] [346] **Election, etc., of mayor and aldermen.**—At the first election under this title, there shall be elected by the qualified voters of said city, voting by ballot, a mayor, who shall hold his office for two years from the date of his election, and until his successor shall be elected and qualified; and at the first election held under this title there shall be elected by the qualified voters of said city two aldermen from each ward in said city, one of whom shall hold his office for one year, and the other for two years, from the date of their election; and the term for which each shall hold office shall be determined at the first regular meeting after said election by lot; provided, that there shall be one alderman for the long term and one for the short term from each of said wards respectively; and provided, further, that at each annual election thereafter there shall be elected one alderman from each ward, who shall hold his office for two years, and until his successor is duly elected and qualified; and provided, further, that where the city or town shall not be divided into wards, the city council may determine by proper ordinance what number of aldermen shall go out of office in one year, and the mode and manner of deciding which members shall hold for the long term and which for the short term. [Acts of 1895, p. 8.]

Art. 787. [390] [347] **Time of holding election, and returns thereof.**—At all elections under this title, the ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock a. m. until six o'clock p. m., with the privilege of a recess of one hour from twelve o'clock to one o'clock. Should the polls not be promptly opened for the reception of votes by eight o'clock a. m., the time thus lost shall be extended beyond the hour of six p. m., so as to secure the full period of nine hours for voting purposes. On closing the polls, the managers of election shall immediately proceed to count and cast up the votes for each candidate and certify and sign the returns in duplicate, one of which shall be sealed up and returned by the presiding officer for future use as a reference in case of a contested election; the other copy shall be sealed up with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability, by one of the judges or clerks, delivered in open session to the city council the next day or as soon thereafter as practicable. The officer so delivering the same shall make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed, as aforesaid. As received, the city council shall immediately open the returns from each ward, casting up the votes of the wards for mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer and secretary, and for aldermen of the several wards as hereinbefore provided for; and the persons receiving the highest number of votes for the offices of mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer, secretary, and aldermen shall be declared elected to their respective offices; provided, that at the first election held under this statute the two persons from the same ward receiving the highest number of votes in the city for aldermen of the wards for which they are candidates shall be declared elected aldermen of such wards respectively in which they were candidates; and at all subsequent elections held thereunder, only one alderman shall be elected from each ward by the qualified voters of such town or city. The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted; provided, that any officer may qualify at any time within thirty days after his election; otherwise the office shall be deemed vacant, and a new election held to fill the

same. It shall be the duty of the secretary to notify all persons elected or appointed to office of their election or appointment; and the city council-elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election, or as soon thereafter as possible, and be installed under the provisions of this title. [Id.]

Art. 788. [391] [348] **Who are qualified voters for city officers.**—Every person not disqualified by law who shall have attained the age of twenty-one years and is entitled to vote for members of the legislature of this state, and is duly registered, and shall have resided within the corporate limits of said city for six months next preceding the election, shall be entitled to vote for the officers of said city; provided, nevertheless, that no person belonging to the regular army of the United States shall be so entitled. [Act March 15, 1875, p. 256, sec. 7.]

Art. 789. [392] [349] **Managers of election shall be sworn; their powers and duties.**—The managers of election shall be sworn well and truly to conduct the election, without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding; which oath shall be administered by the mayor or any justice of the peace. The presiding officer and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. When any person offering a vote shall be objected to by any one qualified to vote at such election, the managers shall examine him on oath touching the points objected to; and, if he fail in establishing his qualification to their satisfaction, his vote shall be rejected. [Id. sec. 8.]

Art. 790. [393] [394a] **Proceedings where vote challenged.**—In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged, the following proceedings shall be had: The judges of election shall refuse to accept such vote of such elector, unless, in addition to his own oath, he proves by the oath of one well known resident of the ward that he is a qualified voter at such election and in such ward. When such vote is accepted, the judges shall cause the clerk of election to make a minute of the name of the elector and the party testifying under oath as to his qualifications; and such memoranda shall be kept by the clerk of the county court for six months after such election is held, subject to the order of the district judge. Whenever the right of an elector to vote is challenged, the word "challenged" shall be entered on the ballot, if accepted by the judges. Any elector voting at any election who does not possess the legal qualifications shall be punished as now provided by law for illegal voting; and any person swearing falsely as to his own qualifications or those of a challenged elector shall be punished as now provided by law for false swearing. [Acts of 1891, p. 47.]

Art. 791. [394] [350] **Proceedings in case of a tie vote, etc.**—Whenever it so happens in any election that there is a tie between two or more candidates for the same office all of whom cannot be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, first giving not less than five days' notice thereof. In the event of a failure to meet on the part of the city council to examine the election returns and declare the result, the mayor shall discharge that duty. [Act March 15, 1875, p. 256, sec. 9.]

Art. 792. [395] [351] **Who are eligible to the office of mayor and alderman.**—No person shall be eligible to the office of mayor unless he possesses the qualifications of an elector, and shall have resided twelve months next preceding the election within the limits of the city; and no person shall be eligible to the office of alderman unless, in addition to the above qualifications, he be a resident of the ward from which he may be elected at the time

of the election; provided, that if any alderman shall remove from the ward in which he was elected, his office shall be deemed vacant, and a new election ordered to fill the same. [Id. sec. 10.]

Art. 793. [566] [495] **Member of city council ineligible to other office, and shall not be contractor, surety, etc.**—No member of the city council shall hold any other employment or office under the city government while he is a member of said council, unless herein otherwise provided; and no member of the city council, or any officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any officer of the city. [Acts 1875, p. 256.]

Art. 794. [562] [491] **None but resident voters eligible to office.**—No person other than an elector resident of the city shall be appointed to any office by the city council. [Id. sec. 143.]

Art. 795. [563] [492] **Resignation of officers.**—Resignation by any officer authorized to be elected or appointed by this title shall be made to the city council in writing, subject to their approval and acceptance; provided, that nothing in this article shall apply to appointments by the mayor. Any such appointee wishing to resign shall present his resignation to that officer, in writing, for his action. [Id. sec. 144.]

Art. 796. [564] [493] **Power of city council to remove officers.**—The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice and an opportunity to be heard in his defense. In addition to the foregoing power of removal, the city council shall have power at any time to remove any officer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; provided, that two-thirds of the aldermen elected vote in favor of said resolution. [Id. sec. 145.]

Art. 797. [396] [352] **Vacancy, how filled.**—In case of a vacancy in the office of mayor or alderman, by refusal to accept or failure to qualify, or by death, resignation or otherwise, the city council shall order a new election to fill such vacancy; and all special elections shall be conducted as herein provided for in the annual election; provided, that in all special elections to fill vacancies ten days' notice shall be deemed sufficient. In case of a vacancy in any other office in the city than mayor or alderman, by refusal to accept or failure to qualify, or by death, resignation or otherwise, the mayor or acting mayor, shall fill such vacancy by appointment to be confirmed by the city council. [Acts of 1887, p. 41.]

Art. 798. [397] [353] **Election to fill vacancy ordered by commissioners' court, when.**—Whenever a vacancy occurs, by resignation or otherwise, in the municipal offices of any incorporated town or city in this state, so that the vacancy can not be filled under the charter of said town or city, or under the laws of this state now in force, then, and in that event, it shall be the duty of the commissioners' court of said county in which said town or city is situated, upon a petition of not less than twenty-six taxpaying voters living in said city, to order an election to be held to fill such vacancy, giving notice of not less than ten days in the usual manner provided for such elections; provided, where such town or city has been chartered by special act of the legislature, and such town or city contains more than two hundred and less than five thousand inhabitants, and the offices of such town or city have been vacant for a period of ten years or more, such charter of said town or city shall become void and forfeited, and no election of officers in such town or city shall be had; but the inhabitants of such town or city may reincorporate

under the general laws of this state, relating to towns and cities, in the manner as now, or may hereafter be, prescribed by the laws of this state. [Acts 1897, p. 159. Acts 1875, p. 256.]

Art. 799. [398] [354] **Election, etc., in such case, how conducted, etc.**—Said election shall, in all things, be carried on as required by law in similar elections; and the officers so elected shall in like manner be qualified and installed into office. [Act March 15, 1875, p. 256, sec. 2.]

Art. 800. [565] [494] **Outgoing officer shall deliver books, etc., to his successor, etc.**—Whenever any person shall be removed from any office, or the term for which he was elected or appointed has expired, or he has resigned, or has ceased to act in his official capacity, he shall deliver over to his successor all books, papers and effects in any way appertaining to his office. Every person violating this provision shall be guilty of a misdemeanor, and shall be deemed an offender within the meaning of any law of the state punishing such offenses, and, in addition thereto, he shall, on conviction before the mayor or recorder, be fined in a sum not exceeding five hundred dollars, and imprisoned for any time not exceeding six months or either. Any officer who shall have been intrusted with the collection or custody of funds belonging to said city who shall be in default to said city, besides being liable to criminal prosecution and a civil action for debt, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with twelve per cent interest. [Acts of 1875, p. 256, sec. 146.]

Art. 801. [399] [355] **City council composed of mayor and aldermen, etc.**—The city council shall be composed of the mayor and aldermen provided for by this title. The mayor shall be president of the council, and in case of a tie on any question he shall give the casting vote. At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president pro tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor. [Act March 15, 1875, p. 256, sec. 12.]

Art. 802. [553] [482] **Wards of city to remain unchanged until, etc.**—The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance; provided, that the city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same; but no such division or change shall be made unless it be done at least three months preceding the city election next ensuing; and said wards so established shall contain as far as practicable an equal number of voters. [Id. sec. 134.]

CHAPTER THREE.

DUTIES AND POWERS OF OFFICERS.

Article.	Article.		
Officers shall take official oath.....	803	Duties and powers of the marshal.....	809
Duties of mayor.....	804	Certain cities may dispense with office of marshal, etc.	809
Mayor may summon citizens to act as a special police force, etc.....	805	Duties of the secretary.....	810
Powers of the mayor.....	805	Treasurer shall give bond; his duties, etc.	811
Ordinances and resolutions adopted shall not take effect until, etc.....	807	Powers of city council over officers....	812
May appoint police officers; salary, fees, tenure, etc.; bond; powers.....	808		

Article 803. [400] [356] **Officers shall take official oath.**—Every person elected by the voters of said city to fill any office, or by the city council, under this title, shall, before entering on the duties of his office, take and subscribe the official oath prescribed in the constitution of this state; and the city council may, by ordinance, require such additional oath as they may deem best calculated to secure faithfulness in the performance of their duties by such officers. [Id. sec. 13.]

Art. 804. [401] [357] **Duties of mayor.**—The mayor of the city shall be the chief executive officer of said corporation, and shall be vigilant and active at all times in causing the laws and ordinances for the government of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, as far as it may be in his power, shall cause all negligence, carelessness and positive violations of duty to be prosecuted and punished. He shall have power, whenever in his judgment the good of the city may require it, to summon meetings of the city council; and he shall, from time to time, communicate to that body all such information, and recommend all such measures, as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, ornament and good government of said city. [Acts of 1881, p. 115, secs. 1 and 2.]

Art. 805. [402] [358] **Mayor may summon citizens to act as a special police force, etc.**—Whenever the mayor shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city, or the inhabitants thereof, he shall summon into service, as a special police force, all or as many of the citizens as in his judgment and discretion may be necessary and proper; and such summons may be by proclamation or order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof; or such summons may be by personal notification. Such special police force, while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city; and any person so summoned and failing to obey, or appearing and failing to perform any duty that may be required by this title, shall be fined in a sum not exceeding one hundred dollars. [Act March 15, 1875, p. 1256, sec. 15.]

Art. 806. [403] [359] **Powers of the mayor.**—The mayor shall have like power, with a justice of the peace, to administer oaths of office. He shall possess and execute, in the city, in criminal cases, all the powers and duties of a justice of the peace. He shall have authority in case of a riot or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theater, ball-room, grog-shop, tipping-house, bar-room or other place of resort, or public room, or

building, and may order the arrest of any person violating, in his presence, the laws of the state, or any ordinance of the city; and he shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council. [Id. sec. 16.]

Art. 807. [404] [360] **Ordinances and resolutions adopted shall not take effect until, etc.**—All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and if the mayor approve thereof, he shall sign the same; and such as he shall not sign, he shall return to the city council, with his objections thereto. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be reconsidered; and if, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force; and if the mayor shall neglect to approve or object to any such proceedings for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect. [Id. sec. 17.]

[Note.—For provisions as to recorder and clerk of corporation court, see chapter, "Corporation Court."]

[Note.—The Act of 1899, chapter 3, page 40, creating corporation courts (embodied in chapter 5 of this title) abolished the municipal court and officers of judge, recorder and clerk thereof, in every city, town, or village (as theretofore established) after the due and legal organization of the corporation court therein.]

Art. 808. **May appoint police officers; salary, fees, tenure, etc., bond; powers.**—The city council or town council in any city or town in this state, incorporated under the provisions of this title relating to cities and towns, may, by ordinance, provide for the appointment, term of office and qualifications of such police officer, or officers, as may by such city council be deemed necessary. Such police officer or officers so appointed by such city council shall receive a salary or fees of office, or both, as shall be fixed by the city council; and such city council may, by ordinance, provide that such police officer or officers so appointed shall hold their office at the pleasure of the city council and for such term as the city council may from time to time direct. Such police officer or officers, so appointed by such city council, shall give such bond for the faithful performance of his duties, as the city council may require; and such police officer or officers so appointed shall have like powers, rights and authority as are by said title vested in city marshals. [Acts 1907, p. 299.]

Art. 809. [407] [483a] [363] **Duties and powers of the marshal.**—The marshal of the city shall be ex officio chief of police, and may appoint one or more deputies; the appointment of which deputies shall only be valid upon the approval of the city council. Said marshal shall, either in person or by deputy, attend upon the recorder's or mayor's court while said court is in session, and shall promptly and faithfully execute all writs and process issued from said court; he shall have like power, with the sheriff of the county, to execute the writ of search warrant; he shall be active in quelling riots, disorder and disturbances of the peace within the limits of said city, and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the recorder's or mayor's court of any person charged with an offense against the ordinances or laws of the city; it shall be his duty to arrest, without warrant, all violators of the public peace and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbances whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theater, bar-room, ball-room, drinking house,

or any other place or building of public resort; and in the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority and jurisdiction as the sheriff of the county under the laws of the state. He shall receive a salary or fees of office, or both, to be fixed by the city council. The marshal shall give such bond for the faithful performance of his duties as the city council may require; and he shall perform such other duties and possess such other powers, rights and authority as the city council may, by ordinance, require and confer, not inconsistent with the constitution and laws of this state.

Certain cities may dispense with office of marshal, etc.—A city council or town council of any city or town within this state having less than three thousand inhabitants, according to the last preceding census, may, by an ordinance of said [city] council or town council, as the case may be, dispense with the office of marshal, and at the same time, by such ordinance, confer the duties of said office upon any peace officer of said county; provided, that when the city marshal has been elected by the people, he shall not be removed during his term of office, under the provisions of this article. [Acts 1875, p. 256; Acts 1901, p. 289; Acts 1903, p. 114.]

Art. 810. [408] [364] **Duties of the secretary.**—It shall be the duty of the city secretary to attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and to engross and enroll all laws, resolutions and ordinances of the city council, to keep the corporate seal, to take charge of, and preserve and keep in order, all the books, records, papers, documents and files of said council, to countersign all commissions issued to the city officers and licenses issued by the mayor, and to keep a record or register thereof, and to make out all notices required under any regulation or ordinance of the city. He shall draw all warrants on the treasurer, and countersign the same, and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep in books regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement, and also accounts with each person, including officers who have money transactions with the city, crediting amounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall also keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts made by the city council; and he shall do, and perform, all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary, payable at stated periods, and such additional fees as may be allowed by the city council.

Art. 811. [409] [365] **Treasurer shall give bond; his duties, etc.**—The treasurer of said city shall give bond in favor of the city in such amount, and in such form as may be required by the city council, and with sufficient security, to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation; provided, that no order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter, and whensoever, at other times, he may be required by them so to do; at the end of every half year he shall cause to be published, at the expense of the city, a statement, showing the amount of receipts and expenditures for the six months next

preceding, and the general condition of the treasury; and he shall do and perform such other acts and duties as the city council may require; and, for his services, he shall receive such compensation as shall be fixed by the city council. [Id. sec. 22.]

Art. 812. [411] [367] **Powers of city council over officers.**—The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for; and, in all cases of vacancy, the same shall be filled only for the unexpired term. [Id. sec. 24.]

CHAPTER FOUR.

GENERAL POWERS AND DUTIES OF THE CITY COUNCIL.

Article	Article
City council, who shall preside over it, etc.	May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.
813	858
Shall hold stated meetings, may call special meetings; petitions, etc., to, etc.	May prevent, etc., the driving of animals into or through the city
814	859
Attendance, etc., of officers	May establish pounds, etc.
815	860
Salary of officers shall be fixed by city council, etc.	May prevent, etc., horseracing
816	861
Power to pass, etc., ordinances, etc., and other powers	May regulate street railways
817	862
Style of ordinances	May control, etc., the laying of railroad tracks, etc.
818	863
Ordinances, when and how published	May improve public grounds, cemeteries, etc.
819	864
Ordinances, etc., remain in force until, etc.	To provide city with water, etc., water system not to be leased without vote, etc.
820	865
Published ordinances admissible in evidence	May establish market, etc.
821	866
Fines, etc., to be paid into city treasury	May provide light and gas for the city
822	867
Council may remit fines and penalties	May assess and collect taxes on street railways
823	868
May prescribe duties of officers, etc.	May license, tax, etc., certain occupations
824	869
May create and regulate police	May license hackmen and prescribe their compensation, etc.
825	870
May prevent trespasses, etc., and punish offenders	May license, etc., peddlers, theaters, etc.
826	871
May regulate the carrying of weapons	May license, etc., billiard tables, etc.
827	872
May suppress riots, etc.	May license, etc., circuses, etc.
828	873
May punish vagrants, etc.	May authorize proper officer to grant license, etc.
829	874
May restrain, etc., the sale, etc., of intoxicating liquors	Shall control the finances and property
830	875
May prevent sale of liquors in certain places	Rate of interest on city indebtedness
831	876
May close drinking houses, etc., on Sunday	Power to appropriate money, etc.
832	877
May prevent and punish the keeping of disorderly houses, etc.	Power to provide special fund for special purposes, etc.
833	878
May prohibit and punish the abuse of animals	To appropriate revenues, and for what purposes; to issue bonds, etc.
834	879
May establish, etc., work houses, etc.	City bonds shall specify what
835	880
May compel convicts to labor on streets, etc.	Bonds shall be signed, etc., and payable where and when
836	881
Regulate hiring of convicts	May issue bonds for public improvements; regulations as to
837	882
May do, etc., to promote health and suppress disease	Gulf cities may issue bonds for harbors, etc.
838	883
May make health and quarantine regulations	Interest and sinking fund tax to be levied, interest paid and bonds sold, etc.
839	884
May establish hospitals, etc.	Board of examiners of finances
840	885
May regulate inspection, etc., of provisions, etc.	Duties of board
841	886
May regulate weight and quality of bread	Compensation
842	887
May regulate butchers	Council to pass on such report
843	888
May define nuisances and punish persons guilty thereof, etc.	Statement of receipts and expenditures, etc., shall be published annually
844	889
May abate nuisances	May pass ordinances to fund debt, etc.
845	890
May compel the cleansing of premises	May compromise debts and issue bonds
846	891
May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so	Barred debts can not be compromised
847	892
May direct the location of certain establishments, etc.	Bonds when executed must be registered with comptroller
848	893
May regulate the burial of the dead, etc.	Bonds when issued, how disposed of, etc.
849	894
May prevent, etc., dead animals, etc., being deposited within city limits	Tax laws to remain in force
850	895
May tax, etc., dogs	The method of liquidating compromise bonds
851	896
Sanitary regulations by cities and counties	Laws to enforce collection continued in force, and all defenses to bonds cut off
852	897
Incorporated cities may establish libraries	Tax collector; liability; governor to appoint, when
853	898
Control over streets, alleys, etc.	Receiver of corporation may be appointed, when
854	899
May prevent the incumbering of streets, etc., and cause unsafe buildings to be removed, etc.	Compromise bonds exempt from taxation and may be used to pay taxes
855	900
City council may cause dangerous buildings, etc., to be removed	Other instances when debts may be compromised and bonds issued, etc.
856	901
May construct bridges, etc., sewers, sidewalks, etc.	Official paper, and contract for publishing, etc.
857	902

Article 813. [412] [368] **City council, who shall preside over it, etc.**—The mayor and aldermen shall constitute the city council of the city. The city council shall meet at such times and places as they shall by resolution direct. The mayor, when present, shall preside at all meetings of the city council, and shall, in all cases, have a casting vote, except in elections. In his absence and absence of president pro tempore, any one of the aldermen may be appointed to preside. [Acts 1875, p. 256, sec. 25.]

Art. 814. [413] [369] **Shall hold stated meetings; may call special meetings; petitions, etc., to, etc.**—The city council shall hold stated meetings; and the mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each of the members of said council, the secretary and city attorney, served personally or left at their usual place of abode. Petitions and remonstrances may be presented to the council in writing only; and the council shall determine the rules of its proceedings, and be the judge of the election and qualifications of its own members, and have the power to compel the attendance of absent members, and punish them for disorderly conduct. [Id. sec. 26.]

Art. 815. [567] [496] **Attendance, etc., of officers.**—Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter. [Id. sec. 148.]

Art. 816. [569] [498] **Salary of officers shall be fixed by city council, etc.**—The city council shall, on or before the first day of January next preceding each and every election, fix the salary and fees of office of the mayor to be elected at the next regular election, and shall, at the same time, establish the compensation or salary to be paid to the officers elected or appointed by the city council; and the compensation or salary so established shall not be changed during the term for which said officers shall be elected or appointed. [Id. sec. 150.]

Art. 817. [464] [418] **Power to pass, etc., ordinances, etc., and other powers.**—The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the constitution of this state, for the good government, peace and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government, or in any department or officer thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof by fines, penalties and imprisonment in the prison, workhouse, or house of correction, or to work on the streets or other public works, or either, in the discretion of the court before whom conviction may be had; but no fine or penalty shall exceed one hundred dollars, nor the imprisonment more than fifteen days for any offense, unless a larger fine and longer period of imprisonment is herein allowed; and for any fine, penalty and costs imposed by the mayor or recorder in the trial of any cause or complaint before him, execution may issue to collect such fine and costs, to be levied and executed in the same manner that executions are from the district court. The same shall be issued by the mayor or recorder to the marshal, who, in levying on property and selling, shall have like power and authority as the sheriff of the county in executions issued from the district court; and the laws of the state, so far as applicable, shall apply to and be in full force and effect as to the executions issued from the mayor's or recorder's court; and any person upon whom any fine or penalty is imposed may be committed until the payment of the same, with costs, and in default thereof may be imprisoned in the city prison or workhouse, or house of correction, or may be required to work on the streets or other public work of the city for such time and in such manner as may be provided by ordinance; provided, such imprisonment

shall not exceed fifteen days, unless a longer period is herein allowed. [Id. sec. 74.]

Art. 818. [559] [488] **Style of ordinances.**—The style of all ordinances shall be, “Be it ordained by the city council of the city of ——” (inserting the name of the city); but it may be omitted when published in the form of a book or pamphlet. [Id. sec. 140.]

Art. 819. [557] [486] **Ordinances, when and how published.**—Every ordinance imposing any penalty, fine, imprisonment or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten days; if the official paper be published weekly, the publication shall be made in one issue thereof; and proof of such publication shall be made by the printer or publisher of such paper, making affidavit before some officer authorized by law to administer oaths, and filed with the secretary of the city or town, and shall be prima facie evidence of such publication and promulgation of such ordinances in all courts of the state; and such ordinances so published shall take effect, and be in force, from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect, and be in force, from and after the passage, unless otherwise provided. If any town or city shall desire to publish its ordinances in pamphlet or book form, it shall not be necessary to republish such ordinances as have been previously published. [Acts of 1889, p. 4.]

Art. 820. [560] [489] **Ordinances, etc., remain in force until, etc.**—All ordinances, regulations or resolutions in force in any city accepting the provisions of this title, and not in conflict with this title, shall remain in force under this title until altered, amended or repealed by the city council. [Acts of 1875, p. 256, sec. 144.]

Art. 821. [558] [487] **Published ordinances admissible in evidence.**—All ordinances of the city, where printed and published by authority of the city council, shall be admitted and received in all courts and places without further proof. [Acts of 1875, p. 256, sec. 139.]

Art. 822. [561] [490] **Fines, etc., to be paid into city treasury.**—All fines, forfeitures and penalties for the breach or violation of this title, or any regulation, order or ordinance of the city council, shall, when collected, be paid into the city treasury for the use and benefit of said city. [Id. sec. 142.]

Art. 823. [568] **Council may remit fine and penalty.**—The city or town council shall have power to remit in whole or in part, and on such conditions as may be deemed proper by them, by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof. [Acts 1875, p. 256, sec. 149.]

Art. 824. [568] **May prescribe duties of officers, etc.**—The city or town council shall have power to prescribe the duties of all officers and persons appointed by them or elected to any office or place whatever, subject to the provisions of this title. [Acts 1875, p. 256, sec. 149.]

Art. 825. [440] [396] **May create and regulate police.**—To create, establish and regulate the police of the city; to appoint watchmen and policemen, and prescribe their duties and powers and compensation. [Id. sec. 52.]

Art. 826. [457] [411] **May prevent trespasses, etc., and punish offenders.**—To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane and insulting language, misdemeanors and all disorderly conduct, and punish all persons thus offending. [Acts of 1875, p. 256, sec. 67.]

Art. 827. [425] [381] **May regulate the carrying of weapons.**—To regulate the carrying of weapons, and to prevent the carrying of the same concealed. [Id. sec. 38.]

Art. 828. [441] [397] **May suppress riots, etc.**—To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city. [Id. sec. 53.]

Art. 829. [443] [399] **May punish vagrants, etc.**—To restrain and punish vagrants, mendicants, street beggars and prostitutes. [Id. sec. 55.]

Art. 830. [434] [390] **May restrain, etc., the sale, etc., of intoxicating liquors.**—To restrain, regulate and prohibit the selling or giving away indirectly to evade a tax or penalty, of intoxicating or malt liquors by any person within the city, except by persons duly licensed; to forbid or punish the selling or giving away of any intoxicating or malt liquors to any minor, apprentice or habitual drunkard. [Acts of 1875, p. 256, sec. 46.]

Art. 831. [436] [392] **May prevent sale of liquors in certain places.**—The city council shall have full power, by ordinance, to prevent the sale or giving away of any intoxicating liquors in any house or other place where theatrical or dramatic representations are given, and also to prevent intoxicating liquors of any description from being brought into any house or place where such representations are given, under any pretext whatsoever. [Id. sec. 48.]

Art. 832. [435] [391] **May close drinking-houses, etc., on Sunday.**—To close drinking houses, saloons, bar-rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold, on Sundays, and prescribe hours for closing them, and also all places of amusement and business. [Id. sec. 47.]

Art. 833. [458] [412] **May prevent and punish the keeping of disorderly houses, etc.**—To prevent and punish the keeping of houses wherein indecent, loud or immodest dramatic or theatrical representations are given, houses of prostitution within the city, and to adopt summary measures for the removal or suppression of all such establishments. [Id. sec. 68.]

Art. 834. [442] **May prohibit and punish the abuse of animals.**—To prohibit and punish the abuse of animals.

Art. 835. [454] [409] **May establish, etc., workhouses, etc.**—To erect and establish one or more workhouses or houses of correction, within or without the city limits, make all necessary rules and regulations thereof, and appoint all necessary keepers or assistants. In such workhouse or house of correction may be confined all vagrants, stragglers, idle, suspicious and disorderly persons who may be committed by the mayor or recorder; and any person who shall fail or refuse to pay the fine, penalty or costs imposed for any misdemeanor or breach of any ordinance of the city may, instead of being committed to jail, be kept therein, subject to labor and confinement. [Acts 1879, p. 9, sec. 65. R. S. 1879, 409.]

Art. 836. [455] [410] **May compel convicts to labor on streets, etc.**—To compel and force all offenders against any ordinance of the city, found guilty by the recorder or mayor and sentenced to fine and imprisonment, to labor on the streets and alleys of said city or on any public work, under such regulations as may by ordinance be established. [Id. sec. 66.]

Art. 837. [456] [410a] **Regulate hiring of convicts.**—To compel any person who may be convicted of a violation of any of the ordinances of the city, and who may be committed to jail in default of the payment of the fine and costs adjudged against such person to be hired out to any individual, company or corporation within the county in which said conviction is had (and to remain in said county) for the purpose of paying off and discharging said fine and costs, under such regulations as may be prescribed by ordinance, and to pass such ordinances as may be necessary to the regulation and enforcement of said contract of hiring. [Acts of 1887, p. 136.]

Art. 838. [448] [404] **May do, etc., to promote health and suppress disease.**—To do all acts and make all regulations which may be necessary or ex-

pedient for the promotion of health or the suppression of disease. [Acts 1875, p. 256, sec. 60.]

Art. 839. [417] [373] **May make health and quarantine regulations.**—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof. [Id. sec. 30.]

Art. 840. [424] [380] **May establish hospitals, etc.**—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals. [Id. sec. 37.]

Art. 841. [438] [394] **May regulate inspection, etc., of provisions, etc.**—To regulate the inspection of beef, pork, flour, meal, salt and other provisions, whisky and other liquors to be sold in barrels, hogsheads and other vessels and packages; to appoint weighers, gaugers and inspectors, and prescribe their duties and regulate their fees. [Id. sec. 50.]

Art. 842. [439] [395] **May regulate weight and quality of bread.**—To regulate the weight and quality of the bread to be sold or used within the city [Id. sec. 51.]

Art. 843. [437] [393] **May regulate butchers, etc.**—To make such rules and regulations in relation to butchers as they may deem necessary and proper. [Id. sec. 49.]

Art. 844. [453] [408] **May define nuisances and punish persons guilty thereof, etc.**—To abate and remove nuisances and to punish the authors thereof by penalties, fine and imprisonment, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof.

Art. 845. [447] [403] **May abate nuisances.**—To abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient. [Acts 1875, p. 256, sec. 59.]

Art. 846. [450] [405] **May compel the cleansing of premises.**—To compel the owner or occupant of any grocery, soap, tallow or chandler establishment, or blacksmith shop, tannery, stable, slaughter-house, distillery, brewery, sewers, privy, hide-houses or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants. [Acts 1879, p. 9, sec. 61.]

Art. 847. [459] [413] **May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.**—To require the owner of private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix and improve the same, as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine and imprisonment. In the event of there being no person in the city on whom such order can be served the city may have such work done and such improvements made on account of the owner thereof; and all costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court; and the city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction. [Id. sec. 69. R. S., 1899, 413.]

Art. 848. [451] [406] **May direct the location of certain establishments, etc.**—To direct the location of business, tanneries, blacksmith shops, foundries, livery stables and any manufacturing establishment; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits, slaughtering establishments and hide-houses or establishments for keeping or curing hides, establishments for making soap, for steaming or rendering lard, tallow, offal and such other

substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on. [Acts 1879, p. 9, sec. 62. R. S. 1879, 406.]

Art. 849. [452] [407] **May regulate the burial of the dead, etc.**—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of deaths, marriages and births; to direct the returning and keeping of bills of mortality. [Id. sec. 63.]

Art. 850. [462] [416] **May prevent, etc., dead animals, etc., being deposited within city limits.**—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or any other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and require the owner of any dead animal to remove the same to such place as may be designated. [Acts 1875, p. 256, sec. 72.]

Art. 851. [445] [401] **May tax, etc., dogs.**—To tax, regulate or restrain and prohibit the running at large of dogs, and to authorize their destruction when at large contrary to ordinances, and to impose penalties on the owners or keepers thereof for violations of such ordinances. [Id. sec. 57.]

Art. 852. [449] **Sanitary regulations by cities and counties.**—To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements. [Acts of 1879, p. 9.]

Art. 853. [433] [389] **Incorporated cities may establish libraries.**—Any incorporated city or town in this state is authorized to establish a free library in such city or town, and to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine. [Acts Feb. 26, 1874, p. 13, sec. 1. R. S. 1879, 389.]

Art. 854. [419] [375] **Control over streets, alleys, etc.**—To have the exclusive control and power over the streets, alleys and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and to prevent the incumbering thereof in any manner, and to protect the same from encroachment or injury; and to cause all able-bodied male inhabitants above eighteen years of age, except ministers of the gospel, to work thereon not exceeding five days in any one year, or furnish a substitute or a sum of money, not to exceed one dollar for each day's work demanded, to employ said substitute, and to enforce the same by appropriate ordinances; and to regulate and alter the grade of premises; and to require the filling up and raising of the same; and such city council shall also have power to alter or vacate the alley in any block of ground within the city, upon the written application of the owner of the block, or if there be more than one owner of such block, then upon the written application of all the owners thereof uniting in such application; and such alley so vacated shall thereupon revert to, and become the property of, the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated. [Acts of 1889, p. 1. R. S. 1879, 375.]

Art. 855. [426] [382] **May prevent the incumbering of streets, etc., and cause unsafe buildings to be removed, etc.**—To prevent the incumbering of

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

Art. 856. [550] [479] **City council may cause dangerous buildings, etc., to be removed.**—Whenever, in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof is liable to fall down and endanger persons or property, they may order any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall, in addition, have the power to remove the same at the expense of the city, on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached, and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses. [Acts of 1875, p. 256, sec. 131.]

Art. 857. [420] [376] **May construct bridges, etc., sewers, sidewalks, etc.**—To establish, erect, construct, regulate and keep in repair, bridges, culverts and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate and punish any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk; and the cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such a manner as the city council may by ordinance provide; and a sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser; and the balance of proceeds of sale, after paying the amount due the city and costs of sale, shall be paid by the city to the owner. [Id. sec. 33.]

Art. 858. [446] [402] **May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.**—To prohibit and restrain the firing of fire-crackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise. [Id. sec. 58.]

Art. 859. [463] [417] **May prevent, etc., the driving of animals into or through the city.**—To prevent, regulate and control the driving of cattle, horses and all other animals into or through the city. [Id. sec. 73.]

Art. 860. [444] [400] **May establish pounds, etc.**—To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they can not be sold, and to impose penalties on the owners thereof for a violation of any ordinance. [Id. sec. 56. R. S. 1879, 400.]

Art. 861. [442] [398] **May prevent, etc., horse-racing, etc.**—To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets. [Id. sec. 54.]

Art. 862. [461] [415] **May regulate street railways.**—The city council shall have power to compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed so as not to exceed seven miles per hour, and to compel said city railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run; the city council may enforce these regulations by proper ordinances, with suitable penalties for any violation of said ordinances. [Id. sec. 71.]

Art. 863. [460] [414] **May control, etc., the laying of railway tracks, etc.**—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys, and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct, and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city; provided, that the provisions of this article shall apply to railroads known as steam railroads, and not to city, street or horse railroads. [Id. sec. 70.]

Art. 864. [423] [379] **May improve public grounds, cemeteries, etc.**—To provide for the inclosing, regulating and improving all public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornaments and shade trees in the streets, sidewalks or public grounds. [Id. sec. 36.]

Art. 865. [418] [374] **To provide city with water, etc.; water system not to be leased without vote, etc.**—To provide, or cause to be provided, the city with water; to make, to regulate and establish public wells, pumps and cisterns, hydrants and reservoirs, in the streets or elsewhere within said city or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water; provided, that any city or town owning, or that may hereafter own, its water system and plant shall not lease or sell the same without first submitting the question of such proposed lease or sale to a vote of the qualified voters who are property taxpayers of such town or city, as shown by the last preceding tax rolls, at a general election, or at one held for that especial purpose, nor unless a majority of those voting shall vote in favor thereof. Before submitting such question to a vote as aforesaid, the proposed contract of lease or sale shall be distinctly set forth in the form of an ordinance or contract, and shall be filed with the city or town secretary or clerk for at least twenty days prior to the day of the election, and shall, at all times, be subject to inspection by the people of such city. [Acts 1875, p. 256. Acts 1900, p. 17.]

[Note.—See arts. 769-772 and 1003-4.]

Art. 866. [422] [378] **May establish market house, etc.**—To establish or erect, or cause to be established or erected, markets and market houses, designate, control and regulate market places and privileges, inspect and determine the mode of inspecting meat, fish, vegetables and all produce and every article and thing therein brought for sale. [Acts 1875, p. 256, sec. 34.]

Art. 867. [421] [377] **May provide light and gas for city.**—To provide for lighting the streets and erecting lamp posts and lamps therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts; to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere. [Id. sec. 34.]

Art. 868. [461] [415] **May assess and collect taxes on street railways.**—The city council shall have power to assess and collect the ordinary municipal taxes upon street railways. [Id. sec. 71.]

[Note.—For general powers of taxation, see chapter 6 of this title.]

Art. 869. [427] [383] **May tax, etc., certain occupations.**—To tax all trades, professions, occupations, and callings, the taxing of which is not prohibited by the constitution of the state; which tax shall not be construed to be a tax on property. [Id. sec. 40.]

Art. 870. [430] [386] **May license, etc., hackmen, and prescribe their compensation, etc.**—To license, tax and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection, and make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses. [Id. sec. 43.]

Art. 871. [428] [384] **May license, etc., peddlers, theaters, etc.**—To license, tax, and regulate, or suppress and prevent hawkers, peddlers, pawnbrokers, and keepers of theatrical or other exhibitions, shows and amusements. [Id. sec. 41.]

Art. 872. [431] [387] **May license, etc., billiard tables, etc.**—To license, tax and regulate billiard tables, pin alleys, ball alleys, saloons, bar-rooms and all places or establishments where intoxicating or fermented liquors are sold; to suppress and restrain disorderly houses, tippling shops and groceries, gambling and gaming houses, lotteries and all fraudulent devices and practices, and prohibit bawdy houses and houses of prostitution or assignation within the limits of the city. [Id. sec. 44.]

Art. 873. [429] [385] **May license, etc., circuses, etc.**—To license, tax, and regulate, or prohibit, theaters, circuses, the exhibitions of common showmen, and of shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, and musical exhibitions and performances. [Id. sec. 42.]

Art. 874. [432] [388] **May authorize proper officer to grant license, etc.**—To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees and charges to be paid therefor. No license shall be issued for a longer period than one year, and shall not be assignable except by permission of the city council. [Id. sec. 45.]

Art. 875. [414] [370] **Shall control the finances and property.**—The city council shall have the management and control of the finances and of all property, real, personal and mixed, belonging to the corporation. [Id. sec. 27.]

Art. 876. [577] [504] **Rate of interest on city indebtedness.**—No indebtedness of any character whatever hereafter incurred by said corpora-

tion shall draw a higher rate of interest than ten per cent per annum. [Act Feb. 26, 1874, sec. 156.]

Art. 877. [415] [371] **Power to appropriate, money, etc.**—The city council shall have power to appropriate money, and provide for the payment of debts and expenses of the city. [Acts 1875, p. 256, sec. 28.]

Art. 878. [416] [372] **Power to provide special funds for special purposes, etc.**—To provide by ordinance special funds for special purposes, and to make the same disburseable only for the purpose for which the fund was created; and any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be removed from office, and be incapable thereafter to hold any office in said city. [Id. sec. 29.]

Art. 879. [466] [420] **To appropriate revenues and for what purposes; to issue bonds, etc.**—To appropriate so much of the revenues of the city, emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, waterworks, and so forth, as they may from time to time deem expedient. And, in furtherance of these objects, they shall have power to borrow money upon the credit of the city, and issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding ten per cent per annum, payable semi-annually at such place as may be fixed by city ordinance; provided, that the aggregate amount of bonds issued by the city council shall, at no time, exceed six per cent of the value of the property within said city subject to ad valorem tax. [Id. sec. 76. R. S. 1879, 420.]

Art. 880. [467] [421] **City bonds shall specify, what.**—All bonds shall specify for what purpose they were issued; and when any bonds are issued by the city a fund shall be provided to pay the interest and create a sinking fund to redeem the bonds; which fund shall not be diverted, nor drawn upon for any other purpose; provided, however, that said sinking fund may, as it accumulates, be invested in bonds of the United States, the state of Texas, or counties in said state; and the city treasurer shall honor no draft upon said fund except to pay interest upon or to redeem the bonds for which it was provided, or for investment in other securities as above provided. [Acts of 1889, p. 2. R. S. 1879, 421.]

Art. 881. [468] [422] **Bonds shall be signed, etc., and payable where and when, etc.**—Said bonds shall be signed by the mayor and countersigned by the secretary, and payable at such places and at such times as may be fixed by ordinance of the city council, not less than ten nor more than forty years. [Acts of 1875, p. 256, sec. 78.]

Art. 882. **May issue bonds for public improvements; regulations as to.**—All cities and towns providing for permanent public improvements, as contemplated by article 925, shall have the power to issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding six per cent per annum; provided, that the aggregate amount of bonds issued for the construction or the purchase of public buildings, water works, sewers and other permanent improvements shall never reach an amount where the tax of twenty-five cents on the one hundred dollars valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, also, that the amount of bonds issued for street improvement purposes shall never reach an amount where the tax of fifteen cents on the one hundred dollars valuation of property will not pay current interest and provide a sinking fund sufficient to redeem them at maturity; and the amount of bonds legally issued under acts passed prior to the adoption of the present constitution shall

not be computed and estimated in the amount of bonds which may be issued for the above named city improvements. [Acts 1909, 2 S. S., p. 444.]

Art. 883. [482] **Gulf cities may issue bonds for harbors, etc.**—The boards of aldermen, or other constituted municipal authorities of cities bordering on the coast of the Gulf of Mexico, are hereby authorized and empowered to appropriate money to improve, and to aid in the improvement of, their harbors and of the bars at the entrance thereof; provided, that they shall not thereby increase their aggregate debt beyond the amount of indebtedness limited by their charters respectively; such appropriations to be made out of any surplus funds which may at any time be on hand, and by the use or sale of any bonds heretofore authorized to be issued; provided, such bonds are not needed for the purposes for which they were specially authorized; and, also, if necessary therefor, to issue and dispose of bonds with interest coupons attached in such amounts as may be necessary, not to exceed the limit of indebtedness fixed by their charters. [Acts of 1883, p. 48.]

Art. 884. [483] **Interest and sinking fund tax to be levied, interest paid and bonds sold at not less than par.**—The city council, or other constituted municipal authorities, as the case may be, shall levy an annual ad valorem tax on the property in said city, sufficient to pay the interest and create a sinking fund for the redemption of said bonds, as required by the constitution. The interest on said bonds shall be paid semi-annually, and it shall not exceed five per cent. Said bonds shall not be sold at less than par. [Id.]

Art. 885. [578a] **Board of examiners of finances.**—It shall be the duty of the mayor of each city or incorporated town within this state, incorporated under the general laws of the state, at the first regular meeting in January of each year of the board of aldermen or city council, by and with the advice and consent of such board of aldermen or city council, to appoint three resident citizens of such city or incorporated town, who shall constitute and compose a board of examiners of the finances of said city or incorporated town. [Acts 1895, p. 41.]

Art. 886. [578b] **Duties of board.**—It shall be the duty of such examiners when appointed to proceed to examine the books and accounts of the various officers of such city or incorporated town, and to make a true report of the financial condition thereof under oath to the mayor and board of aldermen or city council of such city or incorporated town as soon after their appointment as practicable; provided, that in no instance shall the return of such report under oath be deferred longer than the first regular meeting of the board of aldermen or city council in March of each year. [Id.]

Art. 887. [578c] **Compensation.**—Such examiners shall receive for their services such compensation as the board of aldermen or city council shall fix each, for every day actually employed in their investigations, not to exceed fifteen days in each year, which sum shall be paid by order of the board of aldermen or city council. [Id.]

Art. 888. [578d] **Council to pass on such report.**—The annual report of such board of examiners shall be passed upon by the board of aldermen or city council, and spread upon the minutes of their meeting at the first regular meeting of said board or council after the return of such report. [Id.]

Art. 889. [556] [485] **Statement of receipts and expenditures, etc., shall be published annually.**—The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city. [Acts of 1875, p. 256, sec. 137. R. S. 1879, 485.]

Art. 890. [465] [419] **May pass ordinances to fund debt, etc.**—To pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city, or of any future debt, by cancelling the evidences thereof, and issuing to the holders or creditors notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed ten per cent. The council shall also provide by ordinance for issuing the bonds of the city in such sums as may be agreed upon for railroad subsidies heretofore voted, or that may be hereafter voted, in accordance with the laws of this state. [Id. sec. 75. R. S. 1879, 419.]

Art. 891. [471] **May compromise debts and issue bonds.**—The mayor and board of aldermen are authorized and empowered, by resolution or ordinance of said board of aldermen by referring to this and the succeeding articles of this chapter relating hereto and adopting the same, to compromise and fund any existing valid indebtedness by the city or town issued, whether bonded or floating, and the coupons due upon the bonded debt; and for this purpose, they are authorized and empowered to issue new bonds, in denomination of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable semi-annually at the office of the state treasurer or at such other place as said board of aldermen shall provide; said new bonds to become due and payable in not exceeding thirty years, and to bear such rate of interest, not exceeding six per cent per annum, as in their discretion may best subserve the purpose intended. [Acts of 1887, p. 50]

Art. 892. [472] **Barred debts can not be compromised.**—No compromise shall be made under the provisions of this chapter, by which any debt shall be funded which is barred by the statute of limitations. [Id.]

Art. 893. [474] **Bonds when executed must be registered with comptroller.**—The mayor and board of aldermen shall cause to be prepared the necessary blank bonds to give effect to the provisions of this chapter, the cost of which shall be paid out of the treasury of such city or town; said bonds when issued by any city or town shall be signed by the mayor and attested by the secretary (or recorder if there be no secretary), with the seal of such city or town affixed; and such new bonds shall be registered in the office of the state comptroller. [Id.]

[Note.—See provisions as to submission of bonds to attorney general, etc., article 619 et seq.]

Art. 894. [475] **Bonds when issued, how disposed of, etc.**—Such new bonds may be exchanged for the old bonds, or they may be sold and the proceeds applied to the purchase of such old bonds; provided, that no delivery of such new bonds shall take place, unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided further, no bonds issued under this chapter as a compromise of existing indebtedness shall be sold at less than par; and each bond shall be made to bear the lowest rate of interest that will give a par value. [Id.]

Art. 895. [476] **Tax laws to remain in force.**—All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds; provided, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value. [Id.]

Art. 896. [479] **The method of liquidating compromise bonds.**—Whenever a compromise of the debt of any city or town shall be effected, as hereinbefore provided, and the bonds are delivered to the creditors, a board of liquidation, consisting of five reputable citizens of such city or town shall be appointed forthwith in the manner following: The mayor of the city or

town shall appoint one; the governor of the state shall appoint one; and the district judge of the district in which such city or town shall be situated shall appoint one; the city council of the city or town shall appoint one; and the holders of said indebtedness, or a majority of them, shall appoint one; and each shall fill vacancies in the office of their respective appointee in said board; and, in case of failure, neglect or refusal of any one or all of said officers to appoint a member of said board, or to fill vacancies therein, then the holders of said bonds, or any one or more of them, shall have the right to apply to the district court of the district in which such city or town shall be situated, or to the judge thereof in vacation, for the appointment of a member or members of said board necessary to complete the same; and it shall be the duty of said court or judge to make said appointment. The members of said board shall serve without compensation, and shall hold their offices for the term of four years and until their successors are appointed and qualified. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall constitute a quorum for the transaction of business. Said board, or a majority thereof, shall select some solvent depository for all moneys coming under their control, as hereinafter provided, and for whose acts they shall be responsible, and shall, in writing signed by them, notify the collector of taxes of said city or town of said selection. It shall thereupon become the duty of such collector to deposit at the close of business each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance to said collector; and said collectors shall be liable on their official bonds for any failure to promptly make such deposits and for ten per cent per month of such amounts, and in addition thereto as penalty; which sums may be recovered by said board of liquidation in a suit therefor; and it shall be their duty to promptly institute such suits. But whenever the total of said deposits shall equal the annual interest on said bonds, it shall be lawful for such collector to discontinue said deposits, until he shall be notified in writing by said board that said deposits are reduced below that sum. Said funds of cities or towns shall be subject to the order of said boards of liquidation, and shall be applied by them to the payment, first, of the interest on said bonds as the same matures, and, secondly, to the payment of the principal thereof, and thirdly, to the payment of interest on any valid bonds issued by such city and not embraced in any issue of bonds issued under the provisions hereof, and, fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of same. The members of said board shall be liable for the prompt payment of said interest out of said funds, and in case of failure or refusal they shall, in addition, be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby, in any court of competent jurisdiction. Whenever there shall be in the hands of such depositories a sufficient sum to pay two per cent of the principal of said bonds, in addition to one year's interest, it shall be the duty of said board of liquidation to use the same in the purchase of outstanding bonds, provided in article 895; which bonds when so purchased shall be canceled, and shall, together with all coupons which have been paid, be returned to the council of the city or town. Expenses incurred by said board in advertising for purchase of bonds shall be paid out of said funds. Said boards shall make semi-annual reports to the said councils of their acts and of all receipts and disbursements of moneys coming under their control. [Id.]

Art. 897. [477] Laws to enforce collection continued in force, and all defenses to bonds cut off.—The object and intention of these provisions being

to enable the cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any other indebtedness whatever, whether bonded or floating, to compromise the same, and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith either by the holders of the present bonds or by any persons purchasing such new bonds as provided herein, that all laws in force, or which may hereafter be in force, for the assessment and collection of the state taxes shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits instituted to enforce the payment of said new bonds or coupons against any such city or town, no defense either in law or equity shall be admitted in any of the courts of this state, except such as originated upon, or subsequent to, the issuance of such new bonds. [Id.]

Art. 898. [478] **Tax collector; liability; governor to appoint, when.**—Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond, at the suit of any persons holding any of said bonds or coupons, for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the mayor and board of aldermen shall appoint any person who shall fail, neglect, or refuse to give said bond, or whenever they shall fail, neglect, or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required by these provisions or any other laws of this state relating to the collection of said taxes, from the term of his said appointment until the next general election. [Id.]

Art. 899. [480] **Receiver appointed, when.**—Any city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated take charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end, said court, or the judge thereof in vacation, shall appoint a receiver, or may make the assessor and collector of said city or town its receiver, to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town. [Id.]

Art. 900. [473] **Compromise bonds exempt from taxation and may be used to pay taxes.**—The new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town; and the taxes levied to pay said new bonds may be paid in said bonds or coupons thereof if matured; provided, said coupons and bonds shall only be received in payment of taxes levied for the purpose of paying such bonds and coupons. [Id.]

Art. 901. [481] **Other instances when debts may be compromised and bonds issued, etc.**—Cities and towns shall also have authority to fund, compromise and liquidate their indebtedness and issue bonds therefor, under such conditions, restrictions and limitations as are prescribed under title 18 (bonds—county, municipal, etc.) conferring such authority on counties cities and towns, and as may be otherwise provided by law.

Art. 902. [555] [484] **Official paper, and contract for publishing, etc.**—The city council shall, as soon as may be after the commencement of each municipal year, contract as they may by ordinance or resolution determine with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices, and other matters required by this title or by the ordinance of the city to be published. [Acts 1875, p. 256, sec. 136.]

[Note.—For provisions as to bonds of counties, cities, towns, etc., see title 18.]

CHAPTER FIVE.

CORPORATION COURTS.

Article	Article		
Corporation court created.....	903	Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure.....	915
Jurisdiction	904	Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court	916
Judge or recorder elected or appointed how; term; mayor ex officio recorder when	905	Process how served; defendant entitled to notice of complaint, if demanded....	917
Recorder elected or appointed, when and how; discretion of council; term of office, etc.; vacancy; council may make mayor ex officio recorder when.....	906	Writs of mayor, etc., may be executed anywhere in the county.....	918
Clerk of corporation court elected by council when, provided; term; duties..	907	Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited	919
Right of trial before jury.....	908	Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committal; city liable to officers of appellate court, when; court to be always open	920
Rules of pleading, practice and procedure.	909	Appeals to what court; trial de novo; appeals, how governed.....	921
Seal of corporation court.....	910	Until organization of corporation courts, municipal court as now established has jurisdiction, but thereafter abolished.	922
Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state, but no fees; process	911		
Council to prescribe rules for collecting fees and costs, practice, etc.; rules in meantime	912		
Fines and costs paid into city treasury, etc.	913		
Costs to be collected as provided by ordinances, but not greater than in justices' courts	914		

Article 903. **Corporation court created.**—There is hereby created and established in each of the cities, towns and villages of this state, now or hereafter incorporated, whether by general or special act, a court to be known as the corporation court in such city, town or village, which court shall have jurisdiction and organization hereinafter prescribed. [Acts of 1899, p. 40, sec. 1.]

Art. 904. **Jurisdiction.**—Said court shall have jurisdiction within the territorial limits of said city, town or village, within which it is established, in all criminal cases arising under the ordinances of the said city, town or village, now in force, or hereafter to be passed, and shall also have jurisdiction concurrently with any justice of the peace in any precinct in which said city, town or village is situated, in all criminal cases arising under the criminal laws of this state, in which the punishment is by fine only, and where the

maximum of such fine may not exceed two hundred dollars and arising within the territorial limits of such city, town or village. [Id. sec. 2.]

Art. 905. Judge or recorder elected or appointed, how; term, mayor ex officio recorder, when.—Such court shall be presided over by a judge to be known as the recorder of such court, in such city, town or village, who, in cities, towns or villages incorporated under special charter or charters, shall be elected or appointed in the manner and under the respective provisions of the charter now in force concerning the election or appointment of the magistrate to preside over the municipal court in such city, town or village, and all such provisions are hereby made applicable to the recorder herein provided for; and in cities, towns and villages not incorporated under special charter, such recorder shall be elected by the qualified voters of such city, town or village, in the same manner as the mayor of such city, town or village, and whose term of office shall be the same as such mayor; provided, in such cities, towns and villages not incorporated and acting under special charter, the mayor of such city, town or village shall be ex officio recorder of such court, and shall act as such, unless the city council or board of aldermen of such city, town or village shall, by ordinance, authorize the election of a recorder. [Id. sec. 3.]

Art. 906. Recorder elected or appointed, when and how; discretion in council; term of office, etc.; vacancy; council may make mayor ex officio recorder, when.—Every two years there shall be elected or appointed in each city, town or village within this state, now or hereafter incorporated, a recorder, who shall preside over the corporation court hereby created and established, and who shall be elected or appointed as provided in article 905; provided, however, that whenever by the provisions of the charter under which such city, town or village is now incorporated, it is provided that the magistrate now presiding over the municipal court therein is to be elected by the people, then in such case the city council of any such city, town or village may order an election for the recorder, or, in its discretion, may appoint the recorder, who shall hold his office until the next general election for city officers; provided, further, that wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected or appointed therein, the said recorder, first elected or appointed, shall hold his term of office corresponding to the unexpired term of the said magistrate; and every two years thereafter such recorder shall be elected or appointed for a term of two years, and until his successor is elected and qualified. In case of vacancy in the office of recorder or clerk of the court in any city, town or village, such vacancy shall be filled by the council or board of aldermen for the unexpired term only; provided, further, that the board of aldermen may provide by ordinance for the mayor to act as ex officio recorder in all cities and towns not operating under special charter. [Id. sec. 4.]

Art. 907. Clerk of corporation court elected by council, when; provided; terms; duties.—There shall be a clerk of said corporation court elected by the council or board of aldermen of each such city, town or village, at the same time at which the recorder is elected; but, in such city, town or village, it may be provided by ordinance that the city secretary shall be ex officio clerk of the said court, and may be authorized to appoint a deputy, who shall have the same powers as the said secretary. The clerk of said court shall hold his office for two years, and until his successor is elected and qualified. In case of an ex officio clerk as aforesaid, he shall hold his office during his term as city secretary. It shall be the duty of said clerk to keep a minute of the proceedings of the said court; to issue all process, and generally to do and perform all of the duties of a clerk of a court as prescribed

by law for the clerk of the county court, in so far as the said provisions may be applicable. [Id. sec. 5.]

Art. 908. [406] [362] **Right of trial before jury.**—Every person brought before the mayor or recorder, to be tried for an offense for which the penalty may be fine or imprisonment, or both, shall be entitled, if he shall demand it, to be tried by a jury of six legal voters of the city, who shall be summoned, impaneled and qualified as jurors in justices' courts under the laws of the state. [Acts 1875, 2 S. S., p. 113, sec. 19.]

Art. 909. **Rules of pleading, practice and procedure.**—All rules of pleading, practice and procedure now established for the county court shall apply in said corporation court in each such city, town or village, in so far as the same are applicable, except that the proceedings in said court shall be commenced by complaint in the manner and under the regulations, as now provided by law, in cases prosecuted before justices of the peace, and except that the recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney; which such charges he shall have power to give or refuse under the same rules and regulations now applicable to the granting or refusing of such charges by the county judge in criminal cases. Complaints before such court hereby created and established may be sworn to before the recorder, clerk of said court, the city secretary, the city attorney or his deputy, each and all of which officers, for that purpose, shall have power to administer oaths; or it may be sworn to before any other officer authorized by law to administer oaths; provided, that, in all cities, towns and villages in this state not operating under special charters, the rules of pleading, practice and procedure now established for justices courts shall apply to said corporation courts in such cities, towns and villages in so far as the same are applicable. [Acts 1899, p. 42, sec. 6.]

Art. 910. **Seal of corporation court.**—The said corporation court shall have a seal, having engraved thereon a star of five points in the center, and words, "Corporation Court in _____, Texas," the impress of which shall be attached to all proceedings, except subpoenas, issued out of said court, and shall be used to authenticate the official acts of the clerk and of the recorder, where he is authorized or required to use the seal of office. [Id. sec. 7.]

Art. 911. **Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state, but no fees; process.**—In all prosecutions in said court, whether under an ordinance or under the provisions of the Penal Code, the complaint shall commence in the name of the State of Texas, and shall conclude, "against the peace and dignity of the State;" and, where the offense is covered by an ordinance, the complaint may also conclude, as "contrary to the said ordinance;" and all prosecutions in such court shall be conducted by the city attorney of such city, town or village, or by his deputy; but the county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the state of Texas in such prosecutions, but, in all such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services, and in no case shall the said county attorney have the power to dismiss any prosecution pending in said court, unless for reasons filed and approved by the recorder of said court. [Id. sec. 8.]

Art. 912. **Council to prescribe rules for collecting fees and costs, practice, etc.; rules in meantime.**—The council or board of aldermen of each such city, town or village shall, from time to time, by ordinance, prescribe such rules, not inconsistent with the provisions of this chapter nor other laws of this state, as in the discretion of the council or board of aldermen may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all costs and fines imposed by such

court as herein created and established, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said council or board of aldermen may deem proper, not inconsistent with the provisions of this chapter nor other law of this state; and, until the passage of such ordinance, all rules and regulations of such city, town or village now in force concerning the municipal courts therein, and the enforcement of collection of fines and costs imposed by such court, shall be applicable to the court hereby created and established. [Id. sec. 9.]

Art. 913. **Fines and costs paid into city treasury, etc.**—All costs and fines imposed by the said court in any city, town or village, in any prosecution therein, shall be paid into the city treasury of said city, town or village, for the use and benefit of the city, town or village. [Id. sec. 10.]

Art. 914. **Costs to be collected as provided by ordinances, but not greater than in justices' courts.**—There shall be taxed against, and collected of, each defendant, in case of his conviction before such court, such costs as may be provided for by ordinance of the said city, town or village; but in no case shall the council or board of aldermen of any such city, town or village, prescribe the collection of greater costs than are prescribed by law to be collected of defendants convicted before justices of the peace. [Id. sec. 11.]

Art. 915. **Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure.**—The provisions of the Code of Criminal Procedure now in force regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried before a justice of the peace, shall, so far as applicable, govern and be applicable to the trial of cases before the corporation court herein created and established. [Id. sec. 12.]

Art. 916. **Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court.**—The judge of said corporation court shall have the power to punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to take recognizances, admit to bail, and forfeit recognizances and bail bonds under such rules and regulations as now govern the taking and forfeiture of the same in the county court. [Id. sec. 13.]

Art. 917. **Process how served; defendant entitled to notice of complaint, if demanded.**—All process issuing out of said corporation court shall be served by the chief of police or any policeman or marshal of the city, town or village within which it is situated, under the same rules and regulations as are now provided by law for the service by sheriffs and constables of process issuing out of the county court, so far as the same are applicable. But each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded. [Id. sec. 14.]

Art. 918. [551] [480] **Writs of mayor, etc., may be executed anywhere in the county.**—Writs issued by the mayor or recorder of said city for offenses against the laws may be executed, and the accused person or persons arrested by the marshal or his deputies anywhere within the county in which such city is situated. [Acts 1875, p. 256, sec. 132.]

Art. 919. [552] [481] **Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited.**—Whenever any person has been required by the mayor or recorder to give a peace bond, or a bond for good behavior, or any similar bond under this title, and has complied with such orders, and been guilty of a violation or infraction of such bond, and the same is proved or established to the satisfaction of that officer in any trial or complaint, such party so offending may be fined in the sum of two hundred dollars and imprisoned for two months; and the city in its corporate name may sue in

any court having jurisdiction for the recovery of the penalty of such bond. [Id. sec. 133. R. S. 1879, 481.]

Art. 920. Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committals; city liable to officers of appellate court, when; court to be always open.—Unless provided by special charter, the council or board of aldermen of each city, town or village shall, by ordinance, prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, which compensation and fees shall be paid out of the treasury of the said city, town or village. In all such cases, the fines imposed on appeal, together with the costs imposed in the corporation court, and the court to which the appeal is taken, shall be collected of the defendant and his bondsmen, and such fine and the costs of the corporation court shall, when collected, be paid into the treasury of the city, town or village. When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance of such city, town or village, providing for the custody of prisoners convicted before such corporation court; and said city, town or village shall be liable to the officers of the court to which the appeal is taken for the costs due them when such defendant has fully discharged such fine and costs. Such corporation court shall hold no terms, and shall be at all times open for the transaction of business. [Acts 1899, p. 43, sec. 15.]

Art. 921. Appeals to what courts; trial de novo; appeals how governed.—Appeals from judgments rendered by such corporation courts shall be heard by the county court, except in cases where the county courts have no jurisdiction, in which counties such appeals shall be heard by the district court of such counties, unless in such county there is a criminal district court, in which case the appeal shall be from the corporation courts to the said criminal district court; and, in all such appeals to such county court, district court, or criminal district court, the trial shall be de novo, the same as if the prosecution had been originally commenced in that court. Said appeals shall be governed by the rules of practice and procedure for appeals from justices' courts to the county court, as far as the same may be applicable. [Id. sec. 16.]

Art. 922. Until organization of corporation courts municipal court as now established has jurisdiction, but thereafter abolished.—Until the due and legal organization of the said court in any city, town or village, as herein provided for, the municipal court in said city, town or village, as now established, shall continue to exercise its powers and jurisdiction. After the due and legal organization of the said corporation court, the said municipal court and the office of the judge and recorder and clerk thereof shall be abolished, and the said municipal court in each city, town or village shall be entirely superseded by the corporation court and such officers herein created and established, as the same shall be and become duly and legally organized. [Id. sec. 17.]

CHAPTER SIX.

TAXATION.

	Article		Article
Ad valorem tax.....	923	Occupations that are subject to taxation.....	929
May levy and collect tax for improve- ments, buildings, etc.....	924	Same subject	930
May levy tax for interest and sinking fund on certain bonds, for current ex- penses, permanent improvements, roads, etc.....	925	Power of city council to provide for as- sessing, etc., taxes.....	931
Cities of ten thousand inhabitants and over to levy and collect tax; validating act	926	Collection of license tax, etc.....	932
Poll tax	927	Occupation license to be suspended or revoked, etc., when.....	933
Occupation tax	928	Real estate includes what	934
		Personal estate includes what.....	935
		City council may provide for the exemp- tion of property from taxation, etc....	936
		Taxes for payment of indebtedness.....	937

Article 923. [484] [425] **Ad valorem tax.**—The city council shall have power within the city, by ordinance, to annually levy and collect taxes, not exceeding one-fourth of one per cent on the assessed value of all real and personal estate and property in the city not exempt from taxation by the constitution and laws of the state. [Id. sec. 81. Const., art. 11, sec. 4. R. S. 1879, 425.]

Art. 924. [485] **May levy and collect tax for improvements, buildings, etc.**—The city or town council or board of aldermen of any incorporated city or town within the limits of this state shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding twenty-five cents on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have assumed or which may hereafter assume the exclusive control and management of the public free schools and institutions of learning within their limits. [Acts of 1885, p. 99.]

Art. 925. [486] [425c] **May levy tax for interest and sinking fund on certain bonds; for current expenses, permanent improvements, roads, etc.**—The city or town council of any city or town in this state incorporated under the general law shall have the power, by ordinance, to levy and collect an annual ad valorem tax, sufficient to meet the interest and sinking fund on all indebtedness legally incurred prior to the adoption of the constitutional amendment in 1883, regarding the power of cities and towns to levy and collect taxes, etc., and may levy and collect twenty-five cents on the one hundred dollars valuation of all property in such city or town for current expenses, and may levy and collect an additional twenty-five cents on the one hundred dollars valuation for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements within the limits of such city or town, and shall also have power, by ordinance, to levy and collect a tax not exceeding fifteen cents on the one hundred dollars valuation of property for the construction and improvement of the roads, bridges and streets of such city or town within its limits. Within the meaning of this article shall be included building sites and buildings for the public free schools and institutions of learning within those cities and towns which have assumed, or may assume hereafter, the exclusive control and management of the public free schools and institutions of learning within their limits. [Acts 1909, 2 S. S., p. 444.]

[Note.—For provisions as to bonds, contained in this act, see article 882.]

Art. 926. [487] [426] **Cities of 10,000 inhabitants and over to levy and collect tax; validating act.**—Cities having more than ten thousand inhabitants may levy, assess and collect taxes not exceeding one and one-half per cent on

the assessed value of real and personal estate and property in the city, not exempt from taxation by the constitution and laws of the state; and assessments, levy and collection of taxes made by such cities for the year 1889 are hereby made valid to the amount aforesaid; and such cities are hereby authorized to levy, assess and collect a further tax of twenty-five cents on the one hundred dollars worth of property for the purpose of paying the debts of such city lawfully contracted prior to the first day of January, 1889, not to include any bonded debt. Any funding warrants that may be issued for such debt by any such city shall not be included in the limit of six per cent prescribed by article 879; provided, that this article shall not apply to, or in any manner affect, any city organized under a special charter, and shall not be construed to validate any debt contracted by any city without authority of law existing at the time the same was contracted. [Acts of 1889, p. 3.]

Art. 927. [489] [428] **Poll tax.**—The city council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one years (idiots and lunatics excepted), who is a resident thereof at the time of such annual assessment. [Acts of 1875, p. 113, sec. 82.]

Art. 928. [490] [429] **Occupation tax.**—The city council shall have power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and each and every person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; but this enumeration shall not be construed to deprive the city council of the right and power to levy and collect other license taxes, and from other persons and firms, under the general authority herein granted. [Id. sec. 83.]

Art. 929. [491] [430] **Occupations that are subject to taxation.**—Every person and firm engaged in selling goods, wares and merchandise; every person or firm keeping a billiard table, ball alley, or nine or ten-pin alley, or any similar game; every person or firm selling goods, wares and merchandise at public auction; every merchandise or cotton broker, or commission business; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever. [Id. sec. 84.]

Art. 930. [492] [431] **Same subject.**—Nothing herein contained shall in any wise prevent or restrain the city council from collecting the license, and each license tax hereinbefore provided for by this title; each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or callings subject to said tax shall pay on each, and no license shall extend to more than one establishment, or include more than one occupation, avocation, business or calling. [Id. sec. 85.]

Art. 931. [493] [432] **Power of city council to provide for assessing, etc., taxes.**—The city council shall have power to provide by ordinance for the assessing and collecting of the taxes aforesaid, and to determine when taxes shall be paid by corporations, and when by the individual corporators; provided, no tax shall be levied unless by consent of two-thirds of the aldermen elected. [Id. sec. 86. R. S. 1879, 432.]

Art. 932. [494] [433] **Collection of license tax, etc.**—The license tax shall be collected by the assessor and collector, and shall be paid to that officer by each and every person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax; and, if any person shall engage in any business, calling, avocation or occupation which by an ordinance of the said city is subject to a license tax, without first having obtained said license, he, she or they shall, on conviction before the mayor or recorder's court, be liable to imprisonment or a fine of ten dollars, or both imprisonment and such fine, for each day such violation of said ordinance may continue; and this article shall apply to all

persons owing any license and failing to pay the same; provided, that the city council may collect said license tax by suit in any court having jurisdiction, under such rules and regulations as they may provide by ordinance; said taxes, commonly known as licenses, laid as herein provided, shall not be construed to be a tax on property within the meaning of the provisions of this title. [Id. sec. 87.]

Art. 933. [554] [483] **Occupation license to be suspended or revoked, etc., when.**—In all cases where, by any provision of this title, or by ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business or avocation, and has, on complaint before the mayor or recorder, been adjudged guilty of violating any rule, regulation, or ordinance of the city council in relation thereto, the mayor or recorder, in addition to fine and imprisonment, or either, may suspend or revoke the license so granted. [Acts of 1875, p. 256, sec. 135.]

Art. 934. [495] [434] **Real estate includes what.**—The term real estate or property, as used in this title, shall be construed to include lots, lands and all buildings or machinery and structures of every kind erected upon and affixed to the same. [Id. sec. 88.]

Art. 935. [496] [435] **Personal estate includes what.**—The term personal estate or property, as used in this title, shall be construed to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. [Id. sec. 89.]

Art. 936. [497] [436] **City council may provide for the exemption of property from taxation, etc.**—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper; provided, nothing contained in this chapter on taxation shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. [Id. sec. 90. R. S. 1879, 436.]

Art. 937. [498] [437] **Taxes for payment of indebtedness.**—The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor; and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied. [Const., art. 11, sec. 6. R. S. 1879, 437.]

CHAPTER SEVEN.

ASSESSMENT AND COLLECTION OF TAXES.

Article	Article
Power of city council to provide for collection of taxes.....	933
Power of city council to regulate tax lists, assessment of taxes, etc.....	939
Duty of taxpayers to render inventory of property, etc.....	940
Assessor and collector, powers, duties, bond, etc.....	941
Duty of assessor and collector to make list of personal property, etc.....	942
Unrendered property shall be ascertained, etc., by assessor.....	943
Assessment for back taxes.....	944
Board of equalization, how constituted..	945
Annual meetings of board.....	946
Value of property, how fixed.....	947
Shall equalize value of lots.....	948
Lists of unrendered property to be examined.....	949
Notice to taxpayer, how given.....	950
Valuation lowered, when.....	951
Rolls to be approved, when.....	952
Action of board final.....	953
Compensation of board and secretary....	954
Oath of members.....	955
Duty of assessor and collector in regard to collection of taxes.....	956
Property of taxpayer shall be levied on and sold for taxes, when.....	957
Assessor and collector shall make deed to purchaser of property sold for taxes; effect of deed, right of redemption, etc.	958
Sale may take place at any other time than that first advertised, and may be continued from day to day.....	959
Property shall be struck off to city, when.....	960
Certain provisions of general tax law applicable, when.....	961
Property of infant, etc., may be redeemed, when.....	962
Redemption of lands sold for taxes....	963
Taxes, etc., collectible in current money only.....	964

Article 938. [499] [438] **Power of city council to provide for collection of taxes.**—The city council may and shall have full power to provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and due or becoming due to said city, and are hereby authorized, and to that end may and shall have full power and authority to sell, or cause to be sold, real as well as personal property, and may and shall make all such rules and regulations, and ordain and pass all ordinances, as they may deem necessary to the levying, laying, imposing, assessing and collecting of any of the taxes herein provided. [Acts of 1875, p. 113, sec. 91.]

Art. 939. [500] [439] **Power of city council to regulate tax lists, assessment of taxes, etc.**—The city council shall have power, by ordinance, to regulate the manner and mode of making out tax lists or inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and define the powers of the assessor and collector, and adopt such measures as they may deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon; and may by ordinance provide that any person, firm or corporation having property subject to taxation or being liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisal thereof, as required by ordinance of said city, shall be liable to fine and imprisonment. [Id. sec. 92.]

Art. 940. [501] [440] **Duty of taxpayers to render inventory of property, etc.**—Every person, partnership and corporation owning property within the limits of the corporation shall, within two months after published notice, hand in to the assessor and collector of the city a full and complete inventory of the property possessed or controlled by him, her or them within said limits not exempt from taxation, on the first day of January of the current year, verified as required by ordinance; and any person failing or refusing to comply with the provisions of this article shall be liable to fine and imprisonment, and the city council shall, by ordinance, clearly define the duties of taxpayers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon. [Id. sec. 93.]

Art. 941. 410] [366] **Assessor and collector, powers, duties, bond, etc.**—The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and, on completion of the rolls,

shall deliver one of them to the city secretary. He shall collect all taxes due the city, and in the event of nonpayment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall, in the performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give bond, in such amount and in such form as the city council may prescribe, with good and sufficient sureties; and the city council may require a new bond whenever, in their opinion, the existing bond is insufficient; and whenever such bond is required, he shall perform no official act until said bond shall be given and approved. He shall, at the expiration of every week, pay to the treasurer all money by him collected, and shall report to the city council, at the first meeting in every month, all moneys so collected and paid; and he shall perform all such other duties, and in such manner and according to such rules and regulations as the city council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same, under oath, to be administered by him. The assessor and collector shall receive such fees and commissions for his services as may be allowed by the ordinances of the city. [Id. sec. 23.]

Art. 942. [502] [442] **Duty of assessor and collector to make lists of personal property, etc.**—It shall be the duty of the assessor and collector to make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner; and the value of such property shall be determined by the board of equalization, and the same may be sold as in other cases, if the tax be not paid in the time prescribed by law. [Id. sec. 95.]

Art. 943. [503] [443] **Unrendered property shall be ascertained, etc., by assessor.**—It shall be the duty of the assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property, to ascertain such property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. [Id. sec. 96.]

Art. 944. [504] [444] **Assessment for back taxes.**—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for the past year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In all cases where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. [Id. sec. 97.]

Art. 945. [505] **Appointment and duties of board of equalization.**—The city councils of the several cities and towns of this state incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each being a qualified voter, a resident and property-owner of the city or town for which he is appointed, who shall be styled the board of equalization; and at the same meeting said council shall, by ordinance, fix the time for the meeting of such board of equalization. [Acts of 1887, p. 152.]

Art. 946. [506] **Annual meetings of said board.**—The board of equalization shall convene annually, at the time fixed by the city council, to receive all the assessment lists or books of the assessor of their city, for examination, correction, equalization, appraisal, and approval; and at all meetings of said board the city secretary shall act as secretary thereof. [Id.]

Art. 947. [507] **Shall value property.**—The board of equalization shall cause the assessor to bring before them, at the time fixed for the convening of said board, all the assessment lists or books of the assessor of their city, for their examination, that they may see if each and every person has rendered his property at a fair market value; and said board shall have power to send for persons and papers, to swear and qualify persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and, if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. [Id.]

Art. 948. [508] **Values to be equalized by board.**—The board of equalization shall equalize as near as possible the value of all the improved lots within the corporate limits of their city, having reference to the size and location of said lots and the improvements thereon, and shall equalize the value of unimproved lots as near as possible, having reference to the size and location thereof, and all other property of the same kind shall be made as nearly equal as possible. Any person may file with said board at any time before the final action of said board a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint; and said complainant shall have the right to have witnesses summoned in sustaining said complaint as to the insurance on said property, or the rents and profits it may bring the holder thereof. [Id.]

Art. 949. [509] **Unrendered property list to be examined by board.**—The city assessor, at the same time that he delivers to said board his lists and books, as provided in article 947, shall also furnish to said board a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath or affirmation as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information; and said board shall examine said lists and appraise the property so listed by the assessor. [Id.]

Art. 950. [510] **Notice to property owners.**—In all cases where the board of equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor, they shall, after having fully examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board may have adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised; which notice may be served by depositing the same, properly addressed and postage paid, in the city postoffice. [Id.]

Art. 951. [511] **Board to lower values, when.**—The board of equalization shall meet at the time specified in said order of adjournment, and shall hear all persons the value of whose property has been raised, and, if said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. [Id.]

Art. 952. [512] **Approval of lists and rolls by board.**—The board of equalization, after they have finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists mentioned in article 949, that he may make

up therefrom his general rolls as required by law; and, when said general rolls are so made up, the board shall meet again to examine said rolls and approve the same, if found correct. [Id.]

Art. 953. [513] **Action of board final.**—The action of said board at the meeting provided for in article 951 shall be final, and shall not be subject to revision by said board or by any other tribunal thereafter. [Id.]

Art. 954. [514] **Compensation of board.**—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such compensation for their services, to be allowed by the city council, as said council may deem just and reasonable. [Id.]

Art. 955. [515] **Oath to be taken.**—Before said board shall enter upon their duties, they shall be sworn, by any officer authorized by law to administer oaths, to faithfully and impartially discharge all duties incumbent upon them by law as such board. [Id.]

Art. 956. [516] [445] **Duty of assessor and collector in regard to collection of taxes.**—The assessor and collector, after the completion of the assessment roll, as required by ordinance, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and for that purpose shall call once upon every person taxed, or on the agent or attorney of such person at the usual place of his or her residence, office, place of business, or elsewhere, and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence with some adult member of the family, shall be a sufficient demand; provided, that if any person thus owing taxes has no residence, office or place of business, and no agent in the city or known to the assessor and collector, then the said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. [Acts of 1875, p. 256, sec. 98.]

Art. 957. [517] [446] **Property of taxpayer shall be levied on and sold for taxes, when.**—If any person shall fail, neglect or refuse to pay the taxes imposed on him and his property, within the time prescribed by the ordinances of said city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much property liable to taxation belonging to such person as may be sufficient to pay his taxes; and the assessor and collector shall give notice of the time and place of sale by advertisement in writing (if not unknown property), the property and amount of taxes, costs and fees due thereupon; such notice shall be published in some newspaper published in said city; and at the expiration of such notice, and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction, in front of the court house door of the city, or such building as may be used for such purpose; provided, that when real estate is offered for sale the smallest portion of grounds (to be taken from the east side of the premises) shall be sold for which any person will take the same and pay the taxes, costs and fees. [Id. sec. 100.]

Art. 958. [518] [447] **Assessor and collector shall make deed to purchaser to property sold for taxes; effect of deed, right of redemption, etc.**—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed, of the following facts:

First. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

Second. That the taxes or assessment were not paid at any time before the sale.

Third. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

1. That the land, lot or portion thereof sold was advertised for sale in the manner and for the length of time required by law.
2. That the property was sold for taxes or assessments as stated in the deed.
3. That the grantee in the deed was the purchaser.
4. That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon paying to the purchaser double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. The assessor and collector shall have full power to levy upon any personal property to satisfy any tax imposed by this title; all taxes shall be a lien upon the property upon which they are assessed, and, in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and costs of collection. [Id. sec. 100.]

Art. 959. [519] [448] **Sale may take place at another time than that first advertised, when, and may be continued from day to day.**—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property in the manner prescribed in the first instance; and, in case said property levied upon or seized for taxes can not be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. [Id. sec. 101.]

Art. 960. [520] [449] **Property shall be struck off to city, when.**—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land or any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and shall have power to sell and convey the same. [Id. sec. 102.]

Art. 961. [5198] [4760] **Certain provisions of general tax law applicable, except, etc.**—The provisions of chapter thirteen of title 126, in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to collectors of taxes for towns and cities as for collectors of taxes for counties and collectors of taxes for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and

making deeds, as are provided for collectors of taxes for counties, except as in this chapter otherwise provided. [Acts 1876, p. 259, sec. 20.]

Art. 962. [521] [450] **Property of infant, etc., may be redeemed, when.**—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. [Id. sec. 103.]

Art. 963. **Redemption of lands sold for taxes.**—All lands sold under and by virtue of decree and judgment of court, for taxes due any incorporated city or town within this state, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court; provided, that purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. [Acts 1899, p. 50.]

Art. 964. [522] [452] **Taxes, etc., collectible in current money only.**—Taxes levied to defray the current expenses of the city government, and all license and occupation taxes levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. [Const. article 11, sec. 4. Acts 1875, p. 256, sec. 105.]

CHAPTER EIGHT.

FIRE DEPARTMENT.

Article	Article		
City council may regulate and control the erection of wooden buildings.....	965	May control, etc., the storing of gunpowder, etc.	971
May prohibit, etc., dangerous condition of chimneys, etc.	966	May regulate, etc., the building of parapets and party walls.	972
May prevent the deposit of ashes in improper places.	967	May compel owners of buildings to have scuttles, etc.	973
May require inhabitants to keep fire buckets, etc.	968	May provide regulations for extinguishment of fires.	974
May regulate carrying on of business dangerous in promoting fires.	969	Same subject.	975
May regulate, etc., use of fireworks and firearms.	970	May procure fire engines, etc.	976
		Buildings may be blown up, etc., when, and the damage in such case.	977
		Damages satisfied, how.	978

Article 965. [523] [453] **City council may regulate and control the erection, etc., of wooden buildings.**—The city council, for the purpose of guarding against the calamities of fire, may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits within said city as they may designate and prescribe; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct, require and prescribe that all buildings within the limits so designated and prescribed, as aforesaid, shall be made or constructed of fire-proof materials, and to prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent of the value thereof, and may prescribe the manner of ascertaining such damage; may declare all the dilapidated buildings to be nuisances and direct the same to be repaired, removed or abated in such manner as they shall prescribe and direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or

in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe.

Art. 966. [524] [454] **May prohibit, etc., dangerous condition of chimneys, etc.**—The city council shall have power: To prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stovepipes, ovens, or other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition when considered dangerous. [Id. sec. 106.]

Art. 967. [525] [455] **May prevent deposits of ashes in improper places, etc.**—To prevent the deposit of ashes in places where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint one or more officers to enter into all buildings and inclosures to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition. [Id. sec. 107.]

Art. 968. [526] [456] **May require the inhabitants to keep fire buckets, etc.**—To require the inhabitants to keep and provide as many fire buckets and ladders or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire. [Id. sec. 108.]

Art. 969. [527] [457] **May regulate carrying on of business dangerous in promoting fires.**—To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds. [Id. sec. 109.]

Art. 970. [528] [458] **May regulate, etc., use of fireworks and firearms.**—To regulate or prevent and prohibit the use of fireworks and firearms. [Id. sec. 110.]

Art. 971. [529] [459] **May control, etc., the storing of gunpowder, etc.**—To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gunpowder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same. [Id. sec. 111.]

Art. 972. [530] [460] **May regulate, etc., the building of parapet and party walls.**—To regulate and prescribe the manner and to order the building of parapet and party walls. [Id. sec. 112.]

Art. 973. [531] [461] **May compel owners of buildings to have scuttles, etc.**—To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same. [Id. sec. 113.]

Art. 974. [532] [462] **May provide regulations for extinguishment of fires.**—To authorize the mayor, officers of fire companies, or any officer of said city, to keep away from the vicinity of any fire all idle, disorderly and suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing goods from being stolen. [Id. sec. 114.]

Art. 975. [533] [463] **Same subject.**—And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient. [Id. sec. 115.]

Art. 976. [534] [464] **May procure fire engines, etc.**—The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine-houses for keeping and preserving the same; and shall have power to organize fire, hook and ladder, hose and ax companies, and fire brigade; and the companies so organized, with such assistant engineers as may be provided for, and the chief engineer, shall constitute the fire department of the city. Each company shall have the right to elect its own members and officers. The engineers shall be chosen in such manner as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass such ordinances as they

may deem proper for the interest and welfare of said department and to contribute to the efficiency thereof; all officers so elected and approved shall be commissioned by the mayor; and the said companies, officers and members shall observe and be governed by the ordinances of said city relating to the fire department; said companies shall have power to adopt their own constitution and by-laws, not inconsistent with the provisions of this title and the ordinances of said city; and said department shall take the care and management of the engines and other implements and apparatus provided and used for the extinguishment of fires; and their powers and duties shall be prescribed and defined by the city council. [Id. sec. 116.]

Art. 977. [535] [465] **Building may be torn down or blown up, etc., when, and the damages in such cases.**—When any building in the city is on fire, it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other building which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor; but any person interested in any such building so destroyed or injured may, within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and, if the city council and the claimant can not agree on the terms of adjustment, then the application of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council, and the third by both. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpoena and swear witnesses and shall give all parties a fair and impartial hearing, and give notice of the time and place of meeting; said commissioners shall be qualified voters and owners of real estate in the city, shall take into account the probabilities whether the said building would have been destroyed by fire if it had not been so pulled down and destroyed, and the loss of insurance upon said property, if any, caused by pulling down, blowing up or destroying said building, and may report that no damage should equitably be allowed to such claimant. [Id. sec. 117.]

Art. 978. [536] [466] **Damages satisfied, how.**—Whenever a report shall be made, and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages.

CHAPTER NINE.

SANITARY DEPARTMENT.

[See Article 852]

<p>City council may appoint health physician, etc. 979</p> <p>Power to make regulations in regard to pestilence and disease. 980</p> <p>Owner, etc., of public conveyance, conveying into city person sick with contagious disease, liable to punishment, when 981</p> <p>Any person liable to punishment, when 982</p> <p>Inn-keeper, physician, etc., shall report persons sick with smallpox, etc. 983</p> <p>Power of council to have city cleansed, etc. 984</p> <p>Health physician may be authorized to do what 985</p> <p>Cities to regulate sewer, etc., connections, draining, plumbing 986</p> <p>Examining and supervising board of plumbers 987</p>	<p>Article. Article.</p> <p>Composition of board. 988</p> <p>Term regulated and vacancies filled by mayor and aldermen, etc. 989</p> <p>Inspector of plumbing elected, when and how 990</p> <p>Board to examine plumbers and plumbing inspector, licenses and register of. 991</p> <p>Licenses not to issue for more than one year, renewable, etc. 992</p> <p>License fees; disposition of. 993</p> <p>Members of board to receive no compensation 994</p> <p>License not transferable. 995</p> <p>Examination and fee not required of same person but once. 996</p> <p>No license until examination passed. 997</p> <p>Every plumbing firm to have one member a practical plumber. 998</p>
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(See arts. 838-852. See also title 66, Health, Public, and especially arts. 4540 et seq.)

Article 979. [537] [467] **City council may appoint health physician, etc.**—The city council shall appoint a health officer, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same. [Id. sec. 119. Acts 1909, p. 340, sec. 20.]

Art. 980. [538] [468] **Power to make regulations in regard to pestilence and disease.**—The city council shall have power to take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine, for that purpose, any person coming from any place infected, or believed to be infected, with that disease; to establish, maintain and regulate pest-houses or hospitals at some place within the city, or not exceeding five miles beyond its bounds; to cause any person who shall be suspected of being infected with any such disease to be sent to such pest-house or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they may deem expedient; and from time to time do all acts, make all regulations, and pass all ordinances which they shall deem expedient for the preservation of health and the suppression of disease in the city. [Id. sec. 120.]

Art. 981. [539] [469] **Owner, etc., of public conveyance conveying into city persons sick with contagious disease, liable to punishment, when.**—The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance, which shall enter the city, having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person became sick on the way and could not be left, shall be deemed guilty of a misdemeanor, punishable with fine and imprisonment; and such owner, driver, conductor or person in charge, shall, within three hours after the arrival of such sick person, report in writing the facts, with the name of such person and the house where he was put down in the city, to the health officer; and every neglect to comply with these provisions shall be a misdemeanor, punishable by fine and imprisonment, or either. [Id. sec. 121.]

Art. 982. [540] [470] **Any person liable to punishment, when.**—Any person who shall bring, or cause to be brought, into the city any person or property of any kind, tainted or infected with malignant fever, or pestilential, or infectious disease, shall be guilty of a misdemeanor, and punishable by fine and imprisonment, or either. [Id. sec. 122.]

Art. 983. [541] [471] **Inn-keeper, physician, etc., shall report persons sick with smallpox, etc.**—Every keeper of an inn, hotel, tavern, boarding or lodging house in the city, in which any inmate thereof shall be sick with smallpox, varioloid, yellow fever, or other infectious or pestilential disease, shall, upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report, under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. A violation of either of the provisions of this article, or any part of either of them, shall be a misdemeanor, punishable by fine and imprisonment, or either. [Id. sec. 123.]

Art. 984. [542] [472] **Power of city council to have city cleansed, etc.**—The city council shall have power to require the filling up, draining and regulating of any lot or lots, grounds or yards, or any other places in the city, which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; also to cause all premises to be inspected, and to impose fines on the owners of houses under which such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid, and for the making, filling up, altering or repairing of all sinks and privies, and directing the mode and material for constructing them in future, and for cleansing and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground, from filth, carrion or impure or unwholesome matter of any kind, and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the city council shall, also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city, on account of the owners, and cause expenses to be assessed on the real estate, or lot or lots, benefited thereby; and, on filing with the county clerk of the county in which the city is situated a statement, by the mayor, of such expenses, shall have a first and privileged lien on such property to secure such expenditure, and twelve per cent interest thereon. For any such expenditures and interest, as aforesaid, suit may be instituted and recovery had in the name of the corporation, in any court having jurisdiction; and the statement so made, as aforesaid, or a certified copy thereof, shall be full proof and satisfactory evidence of the amount expended in any such improvement. [Id. sec. 124.]

Art. 985. [543] [473] **Health physician may be authorized to do what.**—The health officer may be authorized by the city council, when the public interest requires, to exercise for the time being such of the powers and perform such of the duties of the chief of police as the city council may in their discretion direct, and authorized to enter all houses and other places, private or public, at all times, in the discharge of his duties, under this title, having first asked permission of the owners or occupants; the city council shall have power to punish, by fine and imprisonment, or either, any neglect or refusal to observe the orders and regulations of the health officer. [Id. sec. 125.]

[Note.—For power of condemnation for hospitals, pest-houses, etc., see article 1003, and for other powers in reference to public health, see articles 838 and seq.]

Art. 986. **Cities to regulate sewer, etc., connections, draining, plumbing.**—Every city in this state, whether organized under the general laws of the state or by special act of the legislature, having underground sewers or cesspools,

shall pass ordinances regulating the tapping of said sewers and cesspools, regulating house draining and plumbing. [Acts 1897, p. 236. Acts 1909, p. 162, sec. 1.]

Art. 987. **Examining and supervising board of plumbers.**—Such cities shall create a board for the examination of plumbers, to be known as the examining and supervising board of plumbers, to provide for an inspection of plumbing. [Id. sec. 1.]

Art. 988. **Composition of board.**—The said board shall consist of the following five persons: A member of the local board of health, if there be such a board of health, and if there be no local board of health, then the city physician or the city health officer, the city engineer, the city inspector of plumbing, a master plumber of not less than ten years active and continuous experience as a plumber, and one journeyman plumber of not less than five years of such active and continuous experience. [Id. sec. 1.]

Art. 989. **Term regulated and vacancies filled by mayor and aldermen, etc.**—The mayor and the board of aldermen, or the board of commissioners, as the case may be, shall regulate the length of term each member shall serve; they shall fill all vacancies occurring in the examining and supervising board of plumbers, appointments to said vacancies to be for the unexpired term of the member whose place is filled. [Id. sec. 1.]

Art. 990. **Inspector of plumbing elected, when and how.**—In any such city where there is no city inspector of plumbing provided for by special charter, the board of commissioners, or board of aldermen, as the case may be, shall elect such inspector of plumbing, who shall hold office for a period of time to be fixed by such board; provided, that such city inspector of plumbing may be the city engineer, if the board should see fit to elect him. [Id. sec. 1.]

Art. 991. **Board to examine plumbers and plumbing inspectors; licenses and register of.**—The examining and supervising board of plumbers, herein created, shall examine and pass upon all persons now engaged in the business of plumbing, whether as a master plumber, employing plumber, or journeyman plumber, in their respective cities, and all persons who may hereafter wish to engage in the business of plumbing as master plumber, employing plumber, or journeyman plumber, within their respective jurisdictions, and also all persons who may apply for the office of plumbing inspector. They shall issue a license to such persons only as shall successfully pass a required examination. They shall also register, in a book to be kept for that purpose, the names and places of business of all persons to whom a plumber's license is issued. [Acts 1897, p. 236.]

Art. 992. **Licenses not to issue for more than one year, renewable, etc.**—They shall not issue licenses for more than one year, but the same shall be renewed from year to year, upon proper application. [Id. sec. 2.]

Art. 993. **License fees; disposition of.**—Each applicant for examination for plumber's license shall pay, to such person as the examining and supervising board of plumbers may designate to receive the same, the sum of three dollars for each master plumber examined, and the sum of two dollars for each journeyman plumber examined, which fees may be used by said board to defray any of its legitimate expenses, the residue, if any, to be paid over to the treasurer of the city in which said board shall operate. [Id. sec. 3.]

Art. 994. **Members of board to receive no compensation.**—Members of the examining and supervising board of plumbers shall receive no compensation for their services on said board. [Id. sec. 3.]

Art. 995. **License not transferable.**—Said license shall be non-transferable. [Id. sec. 3.]

Art. 996. **Examination and fee not required of same person but once.**—The examination and examination fee shall not be required of the same person more than once. [Id. sec. 3.]

Art. 997. **No license until examination passed.**—The license shall not be issued to any person or firm to carry on or work at the business of plumbing, or to act as inspector of plumbing, until he or they shall have appeared before the examining and supervising board for examination and registration, and shall have successfully passed the required examination. [Id. sec. 5.]

Art. 998. **Every plumbing firm to have one member a practical plumber.**—Every firm carrying on the business of plumbing shall have at least one member who is a practical plumber. [Id. sec. 5.]

[For penal provisions, see P. C. article — Acts 1897, p. 237, sec. 6.]

CHAPTER TEN.

STREETS AND ALLEYS.

	Article		Article
Power of city council to have streets, etc., graded, etc.....	999	Suit against owner of property for improvement tax, when, etc.....	1002
Estimate of cost of improvements shall be made, etc.....	1000	Condemnation of property.....	1003
Property levied on and sold for improvements, when and how, etc.....	1001	Condemnation of property by private corporations.....	1004
		Rules for condemning property for railways followed.....	1005

Article 999 [544] [474] **Power of city council to have streets, etc., graded, etc.**—The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way, shall be paid for by the city alone; and said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number; and all moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement. [Id. sec. 126.]

Art. 1000. [545] [475] **Estimate of cost of improvements shall be made, etc.**—Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be any lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown; it shall be the duty of the officer or committee aforesaid to enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street, or alley, fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes.

and shall be a lien upon the property until the payment of the same. [Id. sec. 127.]

Art. 1001. [546] [476] **Property levied on and sold for taxes for improvements, when and how, etc.**—After such action on the part of the city council as above provided for, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall commence forthwith to collect the same. And after the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given; and, if said tax be not paid before the day of sale, said officer or committee shall sell said property in the name and under the circumstances, and to the extent and subject to the same conditions which are or may be provided by ordinance for sale of real estate in the city, charged with the payment of taxes imposed by the said corporation; and said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed provided for in this article. [Id. sec. 128.]

Art. 1002. [547] [477] **Suit against owner of property for improvement tax, when, etc.**—In addition to the power and authority granted to the city council to collect said assessment of taxes as aforesaid, they shall have the further power and additional remedy of instituting suit in the corporate name in any court having jurisdiction for the recovery against any owner of property for the amount due for any such work so made as aforesaid; and the city council shall provide, by resolution or ordinance under the provisions of this title, for carrying out and executing the powers in this chapter conferred, and may adopt such resolutions and enact such ordinances and make such regulations as they may deem necessary. [Id. sec. 129.]

Art. 1003. [548] **Condemnation of property.**—That whenever a city council of an incorporated city or town shall deem it necessary to take any private property, in order to open, change or widen any public street, avenue or alley, or for the construction of water mains, or supply reservoirs, or stand pipes for water works or sewers, or for the purpose of establishing thereon one or more hospitals or pest-houses, within or without the limits of such city or town, or for the purpose of constructing and maintaining sewer pipes, mains and laterals and connections and also private property upon which to maintain vats, filtration pipes and other pipes, and which to use and occupy as a place for ultimate disposition of sewerage in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it be also made to appear that such sewer system is beneficial to the public use, health and convenience, such property may be taken for such purposes by making just compensation to the owner thereof. If the amount of such compensation cannot be agreed upon, it shall be the duty of such city council to cause to be stated in writing the real estate or property sought to be taken, the name of the owner thereof, and his residence, if known, and file such statement with the county judge of the county in which said property is situated. [Acts 1909, p. 9.]

[Note.—See articles 769-772, 865, 854, 857, 840, 879.]

Art. 1004. [548] **Condemnation of property by private corporations.**—Any company or corporation, chartered under the laws of this state, for the purpose of constructing water works, or furnishing water supply for any town or city, shall have the same right to condemn property necessary for the construction of supply reservoirs or stand pipes for water works, when deemed necessary to preserve the public health, that is given towns and cities under this article. Upon the filing of the statement provided for in this article, it

shall be the duty of said judge, in term time or vacation, to appoint three disinterested freeholders and qualified voters of the county, as special commissioners to assess the damages to accrue to the owner by reason of such condemnation. And repealing all laws in conflict herewith. [Acts 1891, p. 172. Id.]

Art. 1005. [549] **Rules for condemning property for railroads followed.**—The commissioners so appointed shall, in their proceedings, be governed and controlled by the law in force in reference to the condemnation of the right of way for railroad companies and the assessment of damages therefor—the city, town, company or corporation occupying the position of the railroad company. And all laws in reference to applications for the condemnation for right of way of railroad companies, including the measure of damages, the right of appeal, and the like, shall apply to an application by a city or town, company or corporation, under this and the preceding article, for the condemnation of property for the purpose of opening, changing or widening streets, avenues or alleys, or for the construction of water mains, sewers, supply reservoirs or stand pipes—the city, town, company or corporation to occupy the position of the railroad company. [Acts of 1889, p. 3.]

CHAPTER ELEVEN.

STREET IMPROVEMENTS.

	Article		Article
Powers acquired by accepting benefits of this chapter, and by whom.....	1006	Notice and hearing before assessment, etc.; no assessment in excess of benefit	1013
Terms defined.....	1007	Governing body may correct mistake, etc.; in assessment proceedings, etc.; may reassess, etc.....	1014
Governing body to order improvement of highways, etc.....	1008	Suit to set aside or correct assessment.....	1015
Cost of improvements, how paid, etc.; assessments	1009	Referendum on adoption of provisions of this chapter; ordinances to carry out same	1016
What cost assessed against railroad, etc., special tax lien enforceable, how.....	1010	Provisions of this chapter cumulative; subordinate to special charter.....	1017
Cost how assessed; certificates; costs; attorneys' fees; liens.....	1011		
No lien on exempt property; owner personally liable; lien not invalidated, how, enforcement.....	1012		

Article 1006. **Powers acquired by accepting benefits of this chapter, and by whom.**—Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided, shall have power to improve any street, avenue, alley, highway, public place or square, or any portion thereof, within their limits, by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same and to construct necessary appurtenances thereto, including sewers and drains. [Acts 1909, 2 S. S., p. 402, sec. 1.]

Art. 1007. **Terms defined.**—The term “city,” whenever used herein, shall include all incorporated towns, cities and villages; that the term “governing body,” whenever used herein, shall include the governing or legislative bodies of all incorporated towns, cities or villages, whether known as councils, commissions, boards of commissions, common councils, boards of aldermen, or city councils, or whatever name such bodies may be known or designated under general or special laws; that whenever the term “highway” is used herein, it shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. [Id. sec. 2.]

Art. 1008. Governing body to order improvement of highways, etc.—The governing body of any city shall have power to order the improvement of any highway therein, or part thereof, and to select the materials and methods for such improvement, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements out of any available funds of the city, or as herein provided. [Id. sec. 3.]

Art. 1009. Cost of improvements, how paid, etc.; assessments.—The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of property abutting thereon; provided, that in no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property; but the whole cost of construction of sidewalks and curbs in front of any property may be assessed against the owner thereof or his property. [Id. sec. 4.]

Art. 1010. What cost assessed against railroad, etc.; special tax lien; enforceable, how.—Subject to the terms hereof, the governing body of any city shall have power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails and tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim, except state, county and municipal taxes and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner in any court having jurisdiction. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method or methods of enforcing the same. [Id. sec. 5.]

Art. 1011. Cost, how assessed; certificates; costs; attorney's fees; liens.—Subject to the terms hereof, the governing body of any city shall have power, by ordinance, to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefited thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate of interest shall not exceed eight per centum per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property; and such governing body shall have power to cause to be issued in the name of the city assignable certificates, declaring the liability of such owners and their property for the payment of such assessments, and to fix the terms and conditions of such certificate.

If any such certificate shall recite that the proceedings with reference to making such improvements have been regularly had in compliance with law, and that all prerequisites to the fixing of the assessment lien against the property described in said certificate, and the personal liability, shall be prima facie evidence of the facts so recited, and no further proof thereof shall be required in any court.

The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorneys fees, if incurred. Such assessments shall be secured by, and constitute a lien on, said property, which shall be the first enforceable claim against the property against which it is assessed, superior to all other liens and claims, except state, county and municipal taxes. [Id. sec. 6.]

Art. 1012. **No lien on exempt property; owner personally liable; lien not invalidated, how; enforcement.**—Nothing herein contained shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt. The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit in any court having jurisdiction or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof. [Id. sec. 7.]

Art. 1013. **Notice and hearing before assessment, etc.; no assessment in excess of benefit.**—No assessment of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village, where such tax is sought to be levied, if there be such a paper there, if not, the nearest to said city, town or village, of general circulation in the county in which said city is located, the first publication to be made at least ten days before the date of the hearing. The governing body may provide for additional notice cumulative of notice by advertisement. Said hearing shall be before the governing body of such cities, at which hearing such owners shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefits of said improvement to their property, and any other matter with reference thereto. But no assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner, in the enhanced value of his property, by means of such improvement, as ascertained at such hearing.

The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof. [Id. sec. 8.]

Art. 1014. **Governing body may correct mistake, etc., in assessment proceedings, etc.; may reassess, etc.**—The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in enhanced value of such property from such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment. [Id. sec. 9.]

Art. 1015. **Suit to set aside or correct assessment.**—Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right, within twenty days thereafter, to bring suit in any court having jurisdiction, to set aside or correct the same, or any proceeding with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from

any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question. [Id. sec. 10.]

Art. 1016. **Referendum on adoption of provisions of this chapter; ordinances to carry out same.**—The benefits of the provisions of this chapter shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. And said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city; but said governing body is hereby empowered, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election; and, if a majority of the voters voting upon the question of the adoption of this chapter, at such election, shall vote to adopt the same, the result of the election shall by said governing body be entered upon their minutes, and thereupon all the terms hereof shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof; and the facts therein recited shall in all courts be accepted as true. Whenever the provisions of this chapter shall have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof. Whenever one hundred qualified voters in any city shall in writing petition for an election to determine the adoption of this chapter, it shall be the duty of its governing body to order such election. [Id. sec. 11.]

Art. 1017. **Provisions of this chapter cumulative; subordinate to special charter.**—This chapter shall not repeal any law, general or special, already in existence, pertaining to the making of such improvements, but the provisions of this chapter, and of resolutions or ordinances passed pursuant thereto shall be cumulative of, and in addition to, such existing laws; provided, that in any case in which a conflict may exist or arise between the provisions of this chapter and the provisions of any law granting a special charter to any city in the state, the provisions of such special charter shall control. [Id. sec. 12.]

CHAPTER TWELVE.

PUBLIC UTILITY CORPORATIONS, RATES AND CHARGES—REGULATION BY COUNCIL, ETC.

<p>City council may regulate rates.....1018 Mayor not to accept franks, privileges, etc.1019 Council may pass ordinances to protect company, etc.....1020 Company to make reports.....1021</p>	<p style="text-align: center;">Article</p> <p>Penalties1022 City council of city owning plants may regulate rates. Also may establish and operate plants, etc.....1023 This chapter does not repeal, what.....1024</p>
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Article 1018. **City council may regulate rates.**—The city council of all cities and towns in the state of Texas of over two thousand population, incorporated under the general laws thereof, shall have the power to regulate, by ordinance, the rates and compensation to be charged by all water, gas, light and sewer companies, corporations or persons using the streets and public grounds of said city or town, and engaged in furnishing water, gas, light or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules and regulations; provided, that the city council or board of aldermen shall not prescribe any rate or compensation which will yield less than ten per cent per annum net on the actual cost of the physical properties, equipments and betterments. [Acts 1907, p. 217, sec. 1.]

Art. 1019 **Mayor, etc., not to accept franks, privileges, etc.**—It shall be unlawful for the mayor or any member of any city council or board of aldermen, of any such city, or town in this state, to accept directly or indirectly any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said council or board of aldermen, or any gift or anything of value from any of the companies, corporations or persons heretofore mentioned in article 1018 of this chapter. [Id. sec. 2.]

Art. 1020. **Council may pass ordinances to protect company, etc.**—The city council shall have the power to pass such ordinances as they may deem necessary or proper to protect any of said companies, corporations or persons, in the free and full enjoyment of all their rights and franchises, to prevent any interference with their property or privileges, and to prevent the free or unauthorized use or waste of the water or other commodity or service furnished, and to prescribe penalties to enforce such ordinances. [Id. sec. 3.]

Art. 1021. **Company to make reports.**—Any such company, corporation, or person, who may be engaged in furnishing to the inhabitants of any city or town mentioned in article 1018, any water, light, gas or sewerage service, shall, on or before the first day of March of each year, file with the mayor of such city or town a report, in writing, sworn to by the manager, secretary, or president of such corporation, by a member of such company, and by any such person, which report shall show:

- (a) The amount of any lien or mortgage upon the properties composing such plant;
- (b) All other indebtedness pertaining to such enterprise and the consideration therefor;
- (c) The actual cost of the visible physical properties, date when installed and the present value thereof, and herein the lands, machinery, buildings, pipes, poles, circuits, mains, shall each be treated separately;
- (d) The annual cost of operating such plant, showing under separate items, the amount paid for actual salaries, amount paid for labor of all kinds, fixed charges, including interest, taxes and insurance, giving each separately, amount paid for fuel, for extensions and repairs, giving each separately, and particularizing the extension and repairs, the cost of maintenance, amount

paid for damages, claims or suits for damages, identifying each claim or suit, amount paid for miscellaneous expenses, and, if any machinery or equipment is abandoned, worn out or its use discontinued within the preceding year, the same shall be stated, the original cost thereof shall be given, and the present value thereof shall be stated;

(e) The report shall give the gross earnings from any such plant, including revenues from every source whatever, stating items separately, amount received by each department. [Id. sec. 4.]

Art. 1022. **Penalties.**—Any such corporation, or any member of such company, or any such person mentioned in this chapter, who shall for thirty days wilfully fail or refuse to file the report in the manner provided by this chapter, shall forfeit and pay to any such city or town the sum of one hundred dollars per day for each and every day during which it shall continue in default; or, if any such corporation, or company, or person, shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to such city or town the sum of two hundred and fifty dollars for each such wilfully false report; all of which forfeitures and penalties shall be recovered at the suit of such city or town, in any court of competent jurisdiction of the county wherein such city or town is located. [Id. sec. 5.]

Art. 1023. **City council of city owning plants may regulate rates; also may establish and operate plants.**—The city council of any city or town in the state of Texas, incorporated under the general laws thereof, shall have the power, where such city or town owns the plant, to regulate, by ordinance, the rates and compensation to be charged the public by such city or town for water, sewerage, gas, electricity or other fluid or substance used for lights, heat or power, to establish and operate necessary plants for the manufacture, generation or production thereof, and to sell and distribute the same to the public within and throughout the limits of any such city or town. [Id. sec. 6.]

Art. 1024. **This chapter does not repeal, what.**—Nothing in this chapter shall be construed as repealing or invalidating any provision of chapter 13 of this title or chapter 5 of title 25. [Id. sec. 7.]

CHAPTER THIRTEEN.

PUBLIC UTILITY CORPORATIONS, RATES AND CHARGES—
REGULATION BY COURT.

Article.	Article.
Extortionate rates unlawful, district court to regulate, etc.; provided, etc....1025	Books to be produced, rate to yield ten per cent, and to stand three years and less, etc.....1028
City council to pass resolution, etc.; copy delivered to president, etc.....1026	Appeal may be taken, etc.....1029
After twenty days, suit in district court, if, etc.....1027	Upon judgment fixing rate, decree enforcing same, etc., duty of attorney general, etc. ....1030
What to be considered in fixing rates, etc. ....1028	What public utilities herein included....1031
	Any city incorporated under special charter may avail itself of provisions, etc.1032

Article 1025. **Extortionate, etc., rates, unlawful; district courts given jurisdiction to regulate, etc., provided, etc.**—All extortionate and unreasonable rates charged by public utility corporations, as hereinafter defined, are hereby declared to be unlawful; and the district courts of this state are hereby vested with jurisdiction and full power and authority to regulate, prevent and abolish the same; and, to this end, said courts are given the power and authority, whenever the public interest may require, to fix and establish rates for the service and products of all public utility corporations, and, whenever the public interest may require and to carry out the provisions herein conferred, said courts are hereby expressly authorized to issue injunctions, quo warranto, and all other writs for the purpose of carrying out and making effective the purposes of this chapter, and said writs shall be governed by the rules and regulations now prescribed by law; provided, that no proceeding shall be begun in a district court having for its purpose the fixing of rates of public utility corporations, until and unless the city council of the city or town desiring to invoke the power herein conferred upon the district courts shall comply with the provisions of article 1026 of this chapter. [Acts 1905, p. 348, sec. 1.]

Art. 1026. **City council to pass resolutions, etc.; copy to be delivered to president, etc.**—If the city council of any city or town, incorporated under the general laws of this state, shall desire to invoke the power of the district court granted in article 1025 of this chapter, such council shall, by a two-thirds vote of all the members elected to said council, pass a resolution setting forth the matters complained of, naming the corporation against which the complaint is made, and in a general way the reasons for such complaint, and shall cause a copy of the same to be delivered to the president, vice president or secretary of said corporation, or cause to be left a copy of said resolution at the principal office of such corporation. [Id. sec. 2.]

Art. 1027. **After twenty days, suit in district court, if, etc.**—If, within twenty days after the said corporation has been furnished with a copy of the resolution of the city council, the wrongs complained of shall not be corrected to the satisfaction of the city council, a petition setting forth the wrongs and grievances complained of, and stating the relief sought, may be filed in the name of the city or town as plaintiff against the corporation as defendant in any district court of the county in which such city or town may be situated; and process shall be issued upon said petition, and be served upon such corporation, as now provided by law in civil cases, and the case shall be set for trial in the same manner as other civil cases, except that it shall have precedence over all cases of a different character filed in such court as to the time of trial. Process shall issue in said cause at the instance of either party, in the same manner as process is now, or may hereafter issue in civil cases; and the right of trial by jury of the issues involved shall also be given upon the demand of either party, as provided by law. [Id. sec. 3.]

Art. 1028. What to be considered in fixing rates; books to be produced; rate to yield ten per cent, etc., and to stand three years, unless, etc.—Upon the trial of the cause, it shall be the duty of the court or jury, in arriving at a decision as to whether or not the rates complained of are reasonable or extortionate, and in fixing the rates, to consider the cost of construction of the plant of the public utility corporation against which the petition is filed, the cost of the operation of such plant, its maintenance and repairs, the fixed charges that may be against the corporation, amount invested in such plant, and such other matters as may be material to the issues. And the court trying the same shall have the power to order the corporation to make perfect of its books and records for inspection in court for its information in determining the question in issue. After a full hearing of all the evidence adduced by the parties, the court or jury shall have power, and it shall be their duty to fix the rates which may be charged by such public utility corporation; provided, that the rates fixed must be sufficient to yield such public utility company not less than ten per cent upon the investment, and the same shall continue in force for a period of three years. The rates fixed shall be entered of record upon the minutes of the court, and shall be held conclusive, as reasonable, fair and just, and shall remain for three years as the rates to be charged by such corporation, unless changed or modified by the judgment of said district court, or by the appellate courts to which either of the parties to said suit may appeal, or have writ of error. [Id. sec. 4.]

Art. 1029. Appeal may be taken, etc.—If either party to the suit shall be dissatisfied with the decisions of the court and the rate thereby established, an appeal may be taken by either party to the court of civil appeals of the supreme judicial district in which such district court may be located; and said appeal shall be at once returnable to said court of civil appeals, and shall have precedence in such court of all cases of a different character therein pending; and the said parties to said suit may have their writ of error from the supreme court. [Id. sec. 5.]

Art. 1030. Upon judgment fixing rate, decree enforcing same on pain of forfeiture of charter or permit; duty of attorney general or county or district attorney, under, etc.; to institute suit for forfeiture, etc.—When final judgment is rendered in any cause fixing the rates to be charged by said corporation, the court rendering such judgment shall order in its decree the enforcement of the same; and to this end and to carry out and execute such judgment, the court is hereby specially authorized and empowered to provide in its decree that, if the same is not obeyed according to the terms thereof, the said corporation shall forfeit its charter, if the same be a domestic corporation, or its permit to do business in this state, if the corporation be a foreign corporation; and, if said order or decree be violated, it shall be the duty of the attorney general, or county or district attorney under the direction of the attorney general, to institute suit in the district court of the county in which such corporation may have its principal office, or in Travis county, Texas, for the forfeiture of the charter of such corporation, or the cancellation of its permit, as the case may be, and, if said charter be forfeited or permit canceled, the offending corporation shall thereafter be prohibited from carrying on its business within this state. [Id. sec. 6.]

Art. 1031. What public utilities herein included.—The public utilities included within the meaning of this chapter are defined to be water companies, furnishing water to the public; gas companies, furnishing gas to the public; electric light or power companies, furnishing light or power to the public; telephone companies, furnishing telephones to the public; and sewerage companies, conducting sewerage for the public, whether said companies are incorporated under the laws of this state or a foreign state. [Id. sec. 7.]

Art. 1032 Any city incorporated under special charter may avail itself of provisions, but cumulative.—Any city within this state, incorporated under a special law, may, at its option, avail itself of the provisions of this chapter, but the same shall be cumulative of any other method which may now be provided in such special charter, and this chapter shall not repeal any provisions of such special charter. [Id. sec. 8.]

CHAPTER FOURTEEN.

TOWNS AND VILLAGES.

Article	Article
May be incorporated, when.....1033	If bond is not given in five days after, etc. ....1055
Towns and villages incorporated, when.....1034	Powers, duties and fees of constable....1056
Adjoining territory, how added.....1035	Taxes, by whom collected, etc.; sale of property for, etc.....1057
County judge to order election to determine, etc.....1036	Real estate sold may be redeemed, etc.....1058
Officers appointed to hold election.....1037	Where purchaser is a non-resident.....1059
Qualifications of electors.....1038	Ordinances not to be enforced, until....1060
Tickets, written or printed.....1039	Where property is liable for taxes and owner is unknown.....1061
Returns of election.....1040	Charters amended, how.....1062
Duty of county judge to make an entry.....1041	Takes effect, when.....1063
Powers of corporation.....1042	Property of re-incorporating city or town, vested how; assumption of indebtedness.....1064
Election of mayor, etc.....1043	Certain incorporations validated.....1065
Who are eligible for offices.....1044	Condemnation of railroad right of way and roadbed for streets.....1066
Commission of mayor, etc.....1045	Proceedings for.....1067
Officers—term of office.....1046	Duty of railroad to keep in condition for travel portion of roadbed and right of way crossed by street; penalty.....1068
Annual election of officers.....1047	Condemnation for same purpose by county commissioners.....1069
Quorum may pass by-laws.....1048	
May prevent and remove nuisances, regulate markets, etc.....1049	
Board of aldermen may levy tax.....1050	
Aldermen may prescribe fine, etc.....1051	
Vacancies, how filled.....1052	
Additional officers may be appointed.....1053	
Board must prescribe amount of bonds, etc.....1054	

Article 1033. [579] [506] May be incorporated, when.—When a town or village may contain more than five hundred and less than ten thousand inhabitants, it may be incorporated as a town or village in the manner prescribed in this chapter. [Acts 1881, p. 63. Acts 1897, p. 193.]

Art. 1034. [580] [507] Towns and villages incorporated, when.—If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the judge of the county court of the county, in which the town or village is situated, stating the boundaries of the proposed town or village, and the name by which it is to be known, if it be incorporated, and accompany the same with a plat of the proposed town or village, and including therein no territory except that which is intended to be used for strictly town purposes; provided, that if any town or village be situated on both sides of a line dividing two counties, application may be made to the judge of the county court of either county in which a portion of said town or village is located, in manner and form as is hereinbefore provided; provided, further, that in towns and villages that may be incorporated on territory in two counties, in the trial of the offense before the mayor or recorder for a violation of the laws of the state, or the ordinances of the corporation, an appeal shall be to the county court of the county in which the offense may have been committed, in cases in which said mayor or recorder has not final jurisdiction; but when said mayor or recorder are sitting as an examining court, parties brought before

them as such examining court, charged with an offense against the laws of the state, shall be bound over by them to the county court of the county in which said offense is alleged to have been committed, or the district court, as the case may be, and provided, that a new election shall not be ordered in less than one year. [Acts 1889, p. 5. Id.]

Art. 1035. **Adjoining territory, how added.**—Whenever a majority of the inhabitants who are qualified voters of any territory adjoining the limits of any town or village, incorporated or hereafter incorporated under the provisions of this chapter, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact, and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village; thenceforth the territory so received shall be a part of said town or village, and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto, and passed in pursuance of this chapter; provided, however, that the area of no town or village shall ever exceed that of cities or towns, as provided for in article 777, chapter one, title twenty-two, Revised Statutes of Texas. [Acts 1903, p. 116.]

Art. 1036. [581] [508] **County judge to order election to determine, etc.**—If satisfactory proof is made that the town or village contains the requisite number of inhabitants, it shall be the duty of the county judge to make an order for holding an election on a day therein stated, and at a place designated within the town or village, for the purpose of submitting the question to a vote of the people.

Art. 1037. [582] [509] **Officers appointed to hold election.**—The county judge shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it; and after a previous notice of ten days, by posting advertisement at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Art. 1038. [583] [510] **Qualifications of electors.**—Every male person who has attained the age of twenty-one years, and who has resided within the limits of the proposed town for the six months next preceding, and is a qualified elector under the laws of the state, shall be entitled to vote at the election.

Art. 1039. [584] [511] **Tickets, written or printed.**—On each ticket the voter must write, or cause to be written or printed, "corporation" or "no corporation."

Art. 1040. [585] [512] **Returns of election.**—If a majority of the votes are cast in favor of incorporation, the officers holding the election shall make return thereof to the county judge of the county within ten days after the same was held.

Art. 1041. [586] [513] **Duty of county judge to make entry, etc.**—The county judge shall, within twenty days after the receipt of the returns, make an entry upon the records of the commissioners' court, that the inhabitants of the town or village are incorporated within the boundaries thereof; which boundaries shall also be designated in the entry, and a certified copy of such entry, together with the plat of the town or village, shall thereupon be recorded in the proper record of deeds of such county. [Acts 1897, p. 193.]

Art. 1042. [587] [514] **Powers of corporation.**—When the entry mentioned in the preceding article has been made, the town shall be invested with all the rights incident to such corporations under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and

dispose of real and personal property; provided, such real property is situated within the limits of the corporation.

Art. 1043. [588] [515] **Election of mayor, etc.**—The county judge shall immediately order an election for a mayor, a marshal and five aldermen.

Art. 1044. [589] [516] **Who are eligible for offices.**—No person shall be eligible to any of said offices, nor shall any person be qualified to vote at any election to fill any of them, unless he possess the requisites provided by article 1038.

Art. 1045. [590] [517] **Commission of mayor, etc.**—The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected. [R. S. 1879, 517.]

Art. 1046. [591] [518] **Officers; term of office.**—The mayor, aldermen and all other officers elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article. [Act May 26, 1873, p. 99, sec. 5.]

Art. 1047. [592] [519] **Annual election of officers.**—The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the state. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each and every year. The mayor, or, in case of his inability or refusal to act, any two aldermen, shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor, or person acting as such, to the persons elected to the various offices for such corporation. [Id. sec. 6.]

Art. 1048. [593] [520] **Quorum may pass by-laws.**—The mayor shall be the president of the board of aldermen, and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of the state, as shall be deemed proper for the government of the corporation.

Art. 1049. [594] [521] **May prevent and remove nuisances, regulate markets, etc.**—The board of aldermen shall have and exercise exclusive control over the streets, alleys and other public places within the corporate limits, and shall have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money (not to exceed one dollar for each day's work demanded) to employ such substitute. They shall, as far as practicable, prevent any nuisances within the limits of the corporation, and cause such as exists to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found; they may establish markets and may do whatever else may be necessary to give effect to the provisions of this chapter; provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners' court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets. [Acts 1895, p. 89.]

Art. 1050. [595] [522] **Board of aldermen may levy tax.**—The board of aldermen shall have power to levy and collect an occupation tax of not more

than one-half the amount levied by the state; also to levy taxes on persons and property, real and personal, within the corporation, subject to taxation by the laws of the state; but the tax on persons and property shall not, in any one year, exceed the rate of one-fourth of one per cent on the one hundred dollars valuation. [Acts of 1891, p. 171.]

Art. 1051. [596] [523] **Aldermen may prescribe fine, etc.**—The board of aldermen shall have power to prescribe the fine to be imposed by the mayor for the violation of any by-law or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

Art. 1052. [597] [524] **Vacancies, how filled.**—When a vacancy shall occur in any of the offices created by this chapter, or by the board of aldermen under its provisions, the acting aldermen shall fill such vacancy for the unexpired term.

Art. 1053. [598] [525] **Additional officers may be appointed.**—The board of aldermen shall have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time, and appoint others in their stead.

Art. 1054. [599] [526] **Board must prescribe amount of bonds, etc.**—The board shall prescribe the bonds and security which the marshal and such other officers as may be appointed shall give, which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties. Said bond shall be payable to the corporation.

Art. 1055. [600] [527] **If bond is not given in five days after, etc.**—If the bond required in the preceding article is not given within five days after the marshal is elected, or the officer appointed, the board shall have the power to appoint another marshal or officer in the place of the one so elected or appointed.

[Note.—The Act of 1899, chapter three, page forty, creating corporation courts (embodied in chapter five, title twenty-two) abolished the municipal court and the offices of judge, recorder and clerk thereof, in every city, town or village (as theretofore established) after the due and legal organization of the corporation court therein.]

Art. 1056. [607] [534] **Powers, duties and fees of marshals.**—The marshal shall have the same power within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of the state, and shall receive therefor such fees as may be fixed by the board.

Art. 1057. [608] [535] **Taxes, by whom collected, etc.; sale of property for, etc.**—The corporation tax shall be assessed and collected by the marshal; and, if the same be not voluntarily paid, he shall have power to make the collection in the same manner and with like effect as is prescribed in chapter seven of this title, for collection of taxes in cities, so far as is applicable.

Art. 1058. [609] [536] **Real estate sold may be redeemed, etc.**—Real estate sold for taxes due the corporation may be redeemed as provided in chapter seven of this title.

Art. 1059. [610] [537] **Where purchaser is a non-resident.**—Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Art. 1060. [611] [538] **Ordinances not to be enforced until.**—No ordinance or by-law shall be enforced until it has been published at least ten days in three public places in the town or in a newspaper, if one be published in the corporation. [R. S. 1879, 538.]

Art. 1061. [612] 539] **Where property is liable for taxes and owner is unknown.**—When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid, the property shall be sold for the payment thereof, as nearly as may be, in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid. [R. S. 1879, 539.]

Art. 1062. [613] **Charters amended, how.**—Towns and villages heretofore incorporated by the congress of the republic or the legislature of the state may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of the state or the Revised Statutes. [Acts of 1881, p. 83.]

Art. 1063. [614] **Takes effect, when.**—In order to amend the charter of any town or village, it shall be necessary, before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment; and a certified copy of the same shall be approved by the attorney general and recorded in the office of the secretary of state before the same shall take effect. [Id.]

Art. 1064. [616] [541] **Property of any reincorporating city or town vested, how; assumption of indebtedness.**—When any town or city shall reincorporate, under chapters one or fourteen of this title, upon a majority vote of the legal voters, taxpaying property owners of said town or city, all property, real and personal, of the old or de facto corporation, shall be vested in the new one; and the new corporation shall assume all the legal indebtedness, contracts and obligations of the old corporation; and, where cities and towns have reincorporated under chapters one or eleven of title eighteen, of the Revised Civil Statutes of 1895, upon a majority vote of the legal voters taxpaying property owners of said city or town, all property, real or personal, of the old or de facto corporation, shall be vested in the new corporation; and the new corporation shall assume all the legal indebtedness, contracts, and obligations of the old corporation. [Acts 1891, p. 95. Acts 1897, p. 64.]

Art. 1065. **Certain incorporations validated.**—All towns and villages which have heretofore attempted to be incorporated under the provisions of this chapter, but which, in said attempted incorporation, failed to comply with all the requirements of said chapter, but which said towns or villages have, from and after the date of their several attempted incorporations, as aforesaid, exercised the functions of towns and villages, and been recognized as such towns or villages, be and are hereby declared to be towns and villages of the class named, and their incorporations be and the same are hereby declared to be as legal and valid as if the original acts of incorporation had been in strict compliance with the requirements of the law; provided, that nothing in this article shall be held to validate the incorporation of towns and villages that had less than two hundred inhabitants at the time of this attempted incorporations of such towns and villages. [Acts 1895, p. 90.]

Art. 1066. **Condemnation of railroad right of way and roadbed for streets.**—Any town or village in this state, incorporated under this chapter, or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such towns or villages, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. [Acts 1897, p. 216, sec. 1.]

Art. 1067. **Proceedings for.**—Whenever the board of aldermen of any town or village, incorporated as aforesaid, shall have passed an ordinance or reso-

lution to open, widen or extend a street to any point within its corporate limits, and such street is to be opened, widened or extended over or across any railroad bed and right of way, if such town or village, and the company over whose roadbed and right of way such street is to be opened, widened or extended, cannot agree as to the damages to be paid said railway company for the right of way over and across their roadbed and right of way, it shall be the duty of the mayor of such town or village to state in writing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railway company, and file the same with the county judge of the county in which such town or village is situated. Upon the filing of such written statement with the county judge, the same proceedings shall be had for the purpose of condemning the right of way for the street that are now required by law for the condemnation of right of way for the benefit of railroad companies. [Id. sec. 2.]

Art. 1068. Duty of railroad to keep in condition for travel portion of roadbed and right of way crossed by streets; penalty.—It shall be the duty of every railroad company in this state to place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and, in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each and every week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved, in a suit in the name of such town or village. [Id. sec. 3.]

Art. 1069. Condemnation for same purpose by county commissioners.—County commissioners shall have the right, upon petition of twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for same purpose. [Id. sec. 4.]

CHAPTER FIFTEEN:

COMMISSION FORM OF GOVERNMENT.

Article	Article
Election to determine.....1070	Officers to be elected, etc.....1073
Qualification of voters, form of ballot...1071	Clerk, etc., appointment, etc.....1074
Judges and clerks; election, etc.; order; effect .....1072	Commissioners, powers and duties.....1075
	Meetings and compensation.....1076

Article 1070. **Election to determine.**—Whenever ten per cent of the qualified voters of any village, town or city in this state, having a population of less than ten thousand inhabitants, to be determined by the last preceding federal census, or if no such census has been had, then of the vote cast for governor at the last preceding primary election, shall petition the county judge when such village, town or city shall be unincorporated, or if incorporated, then to the mayor of such village, town or city, requesting that an election be ordered to determine whether such village, town or city shall adopt the commission form of government; then such county judge or mayor shall order such election, giving thirty days' notice thereof, by posting three written or printed notices at three public places in such village, town or city, and by publishing such notice in some newspaper published therein, if there be one. such notices to be under the official signature of such county judge or mayor. [Acts 1909, p. 189, sec. 1.]

Art. 1071. **Qualification of voters; form of ballot.**—A qualified voter under this chapter shall be any one entitled at the time of the election to vote at a general election. Each voter shall have written or printed on the ballot, "For Commission," or "Against Commission." [Id. sec. 2.]

Art. 1072. **Judges and clerks; elections, how held; returns; order; effect.**—The said county judge or mayor shall appoint two judges, one of which shall be designated as the presiding judge, and two clerks, to hold said election. The election shall be held under the general election laws of this state, and the returns made to said county judge or mayor, as aforesaid, within two days after said election; and, if a majority of the votes cast are, "For Commission," then said county judge or mayor, as the case may be, shall enter an order to this effect upon the minutes of said commissioners' court or mayor's court, and after said entry of said order, said village, town or city, shall be under the commission form of government. [Id. sec. 3.]

Art. 1073. **Officers to be elected; term; vacancy, how filled.**—At such election, there shall be elected from the qualified voters of said village, town or city, a mayor and two commissioners, who shall serve until the first Tuesday in April following. The term of office of said commissioners and mayor shall be two years; and they shall be elected on the first Tuesday in April every two years, after said first election. In case of death or resignation of the mayor or commissioners, the others shall fill the place by appointment, and in case of a tie vote the county judge shall vote off the tie. [Id. sec. 4.]

Art. 1074. **Clerk, appointment, duties, bond; city attorney and police, appointment and salary.**—Said commission shall have authority to appoint some one to be clerk of said commission, and said clerk shall perform the duties of clerk, assessor, collector of taxes and treasurer. Said clerk shall, before entering upon the duties of his office, enter into a good and sufficient bond, with two or more sureties, in double the estimated amount of the annual current revenues of such village, town or city, said estimate to be made by said mayor and two commissioners, said bond to be approved by said mayor and commissioners and filed and recorded in the minutes of said commission, and they shall have authority to appoint a city attorney and such police force as

they may deem necessary, and shall fix the salary of all such officers. [Id. sec. 5.]

Art. 1075. **Commissioners, powers and duties.**—The said commissioners shall have all the duties, authority and powers conferred by the general laws of the state in force at the time of the taking effect of this law, applying to city councils of villages, towns and cities of less than ten thousand inhabitants, and such other duties, authority and powers as they may designate by ordinances not in conflict with the said general laws, as aforesaid, of this state. [Id. sec. 6.]

This act cumulative.—This act shall not repeal any laws under which such villages, towns or cities may now operate, but is intended to be cumulative. [Id. sec. 8.]

Art. 1076. **Meetings and compensation.**—Said commissioners shall hold a regular meeting once a month for one day, and shall receive for their services five dollars per day for each regular meeting; and the mayor or the two commissioners may call a special meeting whenever they deem it necessary, but shall not be entitled to pay for any special meeting so called. This chapter shall not repeal any laws under which such villages, towns or cities may now operate, but is intended to be cumulative. [Id. sec. 7.]

CHAPTER SIXTEEN.

ABOLITION OF CORPORATE EXISTENCE.

	Article		Article
Abolition of corporation provided.....	1077	Court to levy tax, when, etc.....	1086
Petition and election to abolish, provided, etc.....	1078	County assessor and collector to assess and collect tax; compensation.....	1087
Qualified voters at such election; duty of county judge.....	1079	Suits by receiver against delinquent taxpayers.....	1088
Receiver of abolished corporation; appointment; bond, etc.....	1080	Compensation of receivers.....	1089
Duties of receiver.....	1081	Receivers compensation and costs prior claims.....	1090
Claims against city, proceedings to collect.....	1082	Claims paid pro rata according to priority.....	1091
Limitation not to run, when.....	1083	Balance turned over to trustees, etc., of public schools.....	1092
No receiver for corporation dissolved, when, etc.....	1084	Public free school management, etc.....	1093
No suit to be brought on protested claims, after what time.....	1085	Collection of municipal or school taxes.....	1094
Payment of claims, and priority; sale of property in hands of receiver.....	1086	Public buildings of abolished corporation.....	1095
		Corporation may be abolished, how.....	1096

Article 1077. [617a] **Abolition of corporation provided.**—Cities and towns incorporated under the general laws of the state, and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of chapter one. of this title, may abolish their corporate existence in the manner hereinafter provided. [Acts 1895, p. 166.]

Art. 1078. [617b] **Petition and election to abolish, provided, etc.**—When one hundred of the property taxpayers, who are qualified voters of any such city or town, desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such city or town, as in the case of its incorporation; provided, that when a majority of the property taxpayers, who are qualified voters, of any such city or town is less than one hundred in number, then the county judge shall order an election as above provided for upon the presentation to him of

a petition signed by a majority of the property taxpayers of such city or town, who are qualified voters thereof, paying [praying] for same. [Acts 1899, p. 245.]

Art. 1079. [617c] **Qualified voters at such election; duty of county judge.**—All persons who are legally qualified voters of the state and county in which any such election is ordered, and are resident property taxpayers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election; and, if a majority of such qualified voters voting at such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court, and from the date of such order, said corporation shall cease to exist. [Acts 1895, p. 166.]

Art. 1080. **Receiver of abolished corporation; appointment; bond, etc.**—In all cases where any city or town having theretofore had a valid corporate existence, under the laws of the state of Texas, has abolished said corporate existence in the manner provided by law, and in all cases where any city or town having a valid corporate existence under such laws, may hereafter abolish their corporate existence, any creditor of any such city or town may apply to the judge of the district court of the judicial district, in which such city or town may be situated, for the appointment of a receiver for said corporation; and, after having posted up in at least three public places in the county wherein such city or town is located, one of which shall be in said city or town, written notices stating the substance of the application, when and before whom the same will be heard, such judge, either in term time or vacation, may appoint a suitable person as such receiver for such corporation, and shall fix the amount of bond to be given by such receiver in at least double the probable amount of the indebtedness or value of the property of such city or town, conditioned for the faithful performance of his duties as such officer, and for the paying over and delivery of all money and property coming into his hands as such receiver, to the party or parties entitled to receive same, such bond to be approved by the judge making the appointment; and same, together with the order of appointment, shall be filed with, and recorded in, the minutes of said court by the clerk of the district court of the county wherein such city or town is situated. [Acts 1905, p. 325.]

Art. 1081. **Duties of receiver.**—A receiver appointed under the preceding article, after having given the required bond, and after having same filed and recorded as therein directed, shall take charge of all the real and personal property, including moneys, minute books, ordinances, etc., except such property as pertains to the public free schools or devoted exclusively to public use, and shall return an inventory of all such property, money, books, etc., so received by him to the next succeeding term of the district court for the county in which such city or town is situated; and, for the purpose of securing such property, money, books, etc., he may, under the order of said court, or the judge thereof, made in vacation, bring suit or suits against any person or persons in possession of such property, books or moneys, or indebted to said city or town, the same as such city or town could were it still incorporated. [Id. sec. 2.]

Art. 1082. **Claims against city; proceedings to collect.**—Any person, firm or corporation, having any claim against such city or town, shall, within six months from the appointment of said receiver, present to him a statement of the amount of such claim, duly verified, which, if he finds correct, he will mark allowed, and file same in said district court; and at its next regular term, if no protest be filed as hereinafter provided, said claim shall be approved by said court and shall thereafter be considered a valid debt against such city or town; provided, however, that no such claim or account against such city shall be

allowed or approved by the receiver of such city without notice of the presentment thereof first having been given, by publication in some newspaper, if any in the town or city where same is filed or presented, for four successive weeks, and in case there be no newspaper published in such town or city, then by posting written or printed notice of the presentment of such claim, to be posted at the courthouse door of the county in which said town or city is situated for four weeks prior to the allowance of said claim or account. And such notice, whether published or posted, shall state the name and residence of the creditor, the amount and date of said claim and account, and for what purpose incurred. In case such receiver finds any claim so presented to him unjust, in whole or in part, he shall endorse his finding thereon, and return same to the claimant, who may file same with the district court, if he desires to accept the finding of the receiver, and such claim for the amount allowed by the receiver may be acted upon by the said court as other claims. In case any protest by any taxpayer of said city or town be filed against any claim filed in said court, together with a bond of sufficient sureties, to be approved by said court, that he will pay all costs of suit in case said claimant establishes his claim in full, in any state court in which he may sue thereon, then such district court shall refuse to approve such claim until it shall have been established by judgment, recovered thereon in a state court of competent jurisdiction; and such suit to establish such claim, or any claim disallowed in part or in whole, may be brought against the receiver, who shall make all legal defenses against such claim; but the court trying said claim is hereby authorized to hear and consider any material defense that may be, or may have been, urged against said claim, except that of limitation, though such claim, prior thereto, may have been reduced to judgment, but such judgment shall be considered, upon such trial as prima facie evidence of the justness of such claim. Any judgment recovered against such receiver upon a claim against such city or town shall be allowed by the receiver and approved by the district court wherein the receivership is pending; but, in all suits upon claims wherein protest and bond were filed in the district court, the claimant shall be liable for the costs of the suit, unless he recovers judgment for the full amount for which he asked the approval of the said district court; and, in suits upon claims rejected in part by the receiver, the claimant shall be liable for the costs of the suit, unless he establishes his claim for a greater amount than was allowed by the receiver. [Id. sec. 2.]

Art. 1083. Limitation not to run, when.—Limitations shall not run, begin to run, or be plead against any claim against such city or town, at any time prior to six months after the appointment of such receiver. [Id. sec. 3.]

Art. 1084. No receiver for corporation dissolved, when, etc.—No receiver shall be appointed for any such city or town whose corporate existence was dissolved prior to July 17, 1905, where the application therefor was not filed in said court within two years from and after July 10, 1905. [Id. sec. 3.]

Art. 1085. No suit to be brought on protested claims, after what time.—No suit shall be brought against such receiver upon any claim, against the allowance of which a protest has been filed, as herein provided for, at any time after six months from the date of filing such protest, nor after the expiration of six months from the date of the disallowance of any such claim, in whole or in part, where the claim has not been filed in the district court, after such disallowance as hereinbefore provided. [Id. sec. 3.]

Art. 1086. Payment of claims, and priority; sale of property in hands of receiver.—It shall be the duty of the district court of the county in which such town or city is situated, and in which such receivership is pending, to provide for the payment of all claims legally established against such city or town, and to determine the priority of any claims, and to order the sale of all property

in the hands of the receiver subject to sale for such purpose, and to direct such receiver to pay such claims. [Id. sec. 4.]

Court to levy tax, when, etc.—In case the money and proceeds of property are insufficient to pay such indebtedness, then it shall be the duty of said court, at the request of any creditor, at the first regular term of said court in each year, to levy a tax upon all the property and real and personal estate, situated within the limits of said city or town, as previously incorporated, on the first day of the preceding January, not exempt from taxation under the constitution and laws of this state, sufficient to discharge the indebtedness, but not to exceed the rate allowed by existing law for such purposes in incorporated cities and towns. [Id. sec. 4.]

Art. 1087. County assessor and collector to assess and collect tax; compensation.—Whenever the district court, having jurisdiction in the premises, has heretofore ordered, or may hereafter order, the assessment and collection of taxes for the payment of the indebtedness of such town or city, it shall be the duty of the county tax assessor for the county in which such town or city is situated to assess the taxes so ordered in like manner as taxes in rural school districts; and it shall be the duty of the county tax collector for such county to collect such taxes in like manner as taxes in rural school districts; provided, that this article shall not repeal any part of articles 1081 and 1082. For the services rendered under this article the assessor and collector shall receive the same compensation as for like services for the assessment and collection of taxes in rural school districts; and it shall be the duty of said collector to pay such taxes, when collected, to the receiver of such city or town. [Acts 1905, p. 327. Acts 1909, p. 68.]

Art. 1088. Suits by receiver against delinquent taxpayers.—Suits may be brought by the receiver against delinquents, and a lien shall exist upon all property for such taxes, the same as though the corporate existence of such city or town had never been abolished, and such levy and assessment had been made by its council and assessor. [Acts 1905, p. 327, sec. 4.]

Art. 1089. Compensation of receivers.—Receivers appointed under the provisions of this chapter shall receive such compensation as may be allowed by the court. [Id. sec. 5.]

Art. 1090. Receivers compensation and costs to be prior claims.—The compensation of the receiver, together with all court costs and expenses, shall constitute a prior claim against such city or town, and shall be first paid out of any money on hand or collected. [Id. sec. 5.]

Art. 1091. Claims paid pro rata according to priority.—In case of taxation, the money collected each year shall be paid pro rata upon all claims according to their priorities, until all claims established and all costs and expenses are fully paid. [Id. sec. 5.]

Art. 1092. Balance turned over to trustees, etc., of public schools.—On final settlement of such receivership, any money or property left on hand shall be turned over to the trustees or other officers in charge of the public free school situated in said city or town for the benefit of such school. [Id. sec. 5.]

Art. 1093. [617e] Public free school management, etc.—Where the public free schools of any such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its corporation is abolished under the provisions of this chapter, such trustees shall have the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners' court, unless such city or town shall sooner become incorporated for school purposes only. [Acts 1895, p. 166.]

Art. 1094. [617f] Collection of municipal or school taxes.—All taxes for municipal or school purposes which shall have been levied at the date of abolishment of such corporation, and which shall have not been paid, shall

be collected by the collector of the county in the same manner provided by law for the collection of state and county taxes, and paid into the county treasury; but the portion of such taxes levied for the purpose of maintaining the public free schools of such city or town shall be paid over to the trustees of public free schools of said city or town and applied by them to the purposes for which they were levied.

Art. 1095. [617g] **Public buildings of abolished corporations.**—When any corporation is abolished under the provisions of this chapter, and shall at the time of such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners' court of such county for the purposes to which same were originally used and intended; and, for this purpose, the commissioners' court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city.

Art. 1096. [615] [540] **Corporation may be abolished, how.**—When twenty-five of the qualified voters of any incorporated town or village shall desire the abolishment of such corporation they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation; and, if there be a majority of the voters of said corporation, voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court; and, from and after the date of such order, the said corporation shall cease to exist; provided, nothing in this chapter shall be so construed as to repeal or otherwise affect any laws now upon the statutes of this state providing for the incorporation of towns and villages for school purposes; said towns and villages having not less than two hundred inhabitants. [Acts 1897, p. 194.]

TITLE 23.

COMMISSIONER OF DEEDS.

	Article.		Article.
Appointment of commissioners and terms of office	1097	Force of acknowledgments thus taken.....	1100
Oath of commissioner.....	1098	Commissioners to take depositions.....	1101
Commissioner may administer oath or affirmation—their effect.....	1099	Commissioners' seal.....	1102

Article 1097. [618] [542] **Appointment of commissioners and terms of office.**—The governor of the state of Texas is hereby authorized to name, appoint, and commission one or more persons in each or any of the other states of the United States, the District of Columbia, or in each or any of the territories of the United States, or in each or any foreign country, upon the recommendation of the executive authority of said states, District of Columbia, or territories or foreign country, as he may deem expedient, which commissioners shall hold office for two years or until their successors are qualified, and shall have authority to take the acknowledgements and proofs of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments, and also to take the privy examination, acknowledgement and declaration of married women as to all such instruments when executed by them. [Acts of 1885, p. 98.]

Art. 1098. [619] [543] **Oath of commissioner.**—Every commissioner, appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city or county in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of this title, or the laws of this state; which oath or affirmation, certified to by the clerk, under his hand and seal of office, shall be filed in the office of the secretary of state in this state. [Act May 8, 1846, sec. 4. P. D. 3765.]

Art. 1099. [620] [544] **Commissioner may administer oaths or affirmations; their effect.**—Every commissioner appointed by virtue of this title shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him; and such oath or affirmation, made before such commissioner, shall be, and is hereby declared to be, as good and effectual, to all intents and purposes, as if taken by any officer in this state competent to take the same. [Id. sec. 3. P. D. 3764.]

Art. 1100. [621] [545] **Acknowledgments thus taken; their force.**—Any contract, letter of attorney, or other writing, to be used or recorded in this state, and such acknowledgment or proof taken or made in the manner directed by the laws of this state, and certified by any one of said commissioners, before whom the same shall be taken or made, under his seal—which certificate shall be indorsed on, or annexed to, said deed or instrument aforesaid—shall have the same effect, and be as good and valid in law for all purposes, as if the same had been made or taken as now required by law. [Id. sec. 2. P. D. 3763.]

Art. 1101. [622] [546] **Commissioners to take depositions.**—Every commissioner appointed under this title shall have power and authority to take depositions under a commission issued to him according to law, from any court in this state, to be used as evidence in any cause pending in a court of the same, when returned as prescribed by law. [Id. sec. 5. P. D. 3766.]

Art. 1102. [623] [547] **Commissioners' seal.**—Every commissioner under this title shall provide for himself a seal with a star of five points in the

center, and the words, "Commissioner of the State of Texas," engraved thereon, which seal shall be used to certify all the official acts of such commissioner; and, without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this state. [Act. Dec. 31, 1861, p. 21, sec. 5. P. D. 3771.]

TITLE 24.

CONVEYANCES.

[See Title, Frauds—Statute of]

Article.	Article.
Conveyances must be in writing, signed and delivered.....1103	Conveyance by sheriff or other officer will pass title, when.....1110
Purchaser or creditor, without notice not to be affected.....1104	Estates in futuro.....1111
Conveyance of the greater estate passes the less.....1105	Implied covenants.....1112
An estate deemed a fee simple, when.....1106	"Incumbrances" embraces, what.....1113
Form of conveyance.....1107	Conveyance of the separate lands of the wife, how made.....1114
Other forms and clauses valid.....1108	Conveyance of homestead, how made.....1115
Must be witnessed or acknowledged.....1109	Failing as a conveyance, shall be valid as a contract.....1116

Article 1103. [624] [548] **Conveyances must be in writing, signed and delivered.**—No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. [Act. Feb. 5, 1830. P. D. 997, 3875.]

Art. 1104. [625] [549] **Purchaser or creditor, without notice, not to be affected.**—A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party who shall have signed or delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgement or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated. [Id. P. D. 997.]

Art. 1105. [626] [550] **Conveyance of the greater estate passes the less.**—All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise affect such remainder. [Id. P. D. 998.]

Art. 1106. [627] [551] **An estate deemed a fee simple, when.**—Every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. [Id. P. D. 999.]

Art. 1107. [628] [552] **Form of conveyance.**—The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.:

“The state of Texas,

“County of _____,

“Know all men by these presents, That I, _____, of the _____ [give name of city, town or county], in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____, of the

[give name of city, town or county], in the state of ———, all that certain [describe the premises]. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ———, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said ———, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

“Witness my hand, this ——— day of ———, A. D. 19—.

“Signed and delivered in the presence of ———.”

[Id. P. D. 1000.]

Art. 1108. [629] [553] **Other forms and clauses valid.**—No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. [Id. P. D. 1000.]

Art. 1109. [630] [554] **Must be witnessed or acknowledged.**—Every deed or conveyance of real estate must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. [R. S. 1879, 554.]

Art. 1110. [631] [555] **Conveyance by sheriff or other officer will pass title, when.**—Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this state, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. [Id.]

Art. 1111. [632] [556] **Estates in futuro.**—An estate or freehold or inheritance may be made to commence in futuro, by deed or conveyance, in like manner as by will. [Id. P. D. 1002.]

Art. 1112. [633] [557] **Implied covenants.**—From the use of the word “grant” or “convey,” in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.
2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Art. 1113. [634] [558] **Incumbrances include what.**—The term “incumbrances” includes taxes, assessments and all liens upon real property.

Art. 1114. [635] [559] **Conveyance of separate lands of the wife, how made.**—The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded, and certified to in the mode pointed out in articles 6802 and 6805. [Acts 1897, p. 41.]

Art. 1115. [636] [560] **Conveyance of homestead, how made.**—The homestead of the family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto, and by her separate acknowledgment thereof taken and certified to before the proper officer, and in the mode pointed out in articles 6802 and 6805. [Id.]

Art. 1116. [637] [561] **Failing as a conveyance, shall be valid as a contract.**—When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

TITLE 25.

CORPORATIONS—PRIVATE.

Chapter.

1. Preliminary Provisions.
2. Creation of Corporations.
3. Powers and Duties of Private Corporations, and Duties of Stockholders in Reference Thereto, etc.
4. Land, Acquisition, etc., of—Restricted.
5. Reports by Certain Corporations.
6. Books, Records, etc.—Examination.
7. Lien of State for Fines and Penalties, etc.
8. Liabilities of Stockholders and Directors.
9. Insolvent corporations.
10. Dissolution of Private Corporations.
11. Religious, Charitable and Other Corporations.

Chapter.

12. Educational Corporations.
13. Telegraph Corporations.
14. Telephone and Telegraph Companies.
15. To Construct Union Depots.
16. Channel and Dock Corporations.
17. Deep Water Corporations.
18. Drainage Corporations.
19. Macadam and Plank Road Corporations.
20. Bridge and Ferry Corporations.
21. Gas and Water Corporations.
22. Sewerage Companies.
23. Cemetery Corporations.
24. Oil, Gas, Salt, etc., Companies.
25. Bond Investment Companies.
26. Foreign Corporations.

CHAPTER ONE.

PRELIMINARY PROVISIONS.

Article.	Article.
Corporations classified.....1117	Private corporations .....1119
Public corporations.....1118	

Article 1117. [638] [562] **Corporations classified.**—Corporations are either public or private. [Act April 23, 1874, p. 120. P. D. 5932. Acts 1873, p. 42.]

Art. 1118. [639] [563] **Public corporations.**—A public corporation is one that has for its object the government of a portion of the state. [P. D. 5933.]

Art. 1119. [640] [564] **Private corporations.**—Private corporations are of three kinds: First, religious; second, corporations for charity or benevolence; and, third, corporations for profit. [R. S. 1879, 564. P. D. 5934.]

CHAPTER TWO.

CREATION OF CORPORATIONS.

Article.	Article.
Private corporations may be created....1120	Certain corporations exempt from provisions .....1129
For what purposes corporations may be created .....1121	Subscriptions and payment of stock required of excepted corporations.....1130
Charter and what it must set forth....1122	Must be filed with secretary of state, etc. ....1131
Charter must be subscribed and acknowledged .....1123	Corporation shall exist from time of filing charter, etc.....1132
Business firm shall give notice of intention to incorporate.....1124	Charter may be amended, how.....1133
Private corporations for profit must subscribe full amount of stock and pay fifty per cent of same before being chartered .....1125	When amendments shall take effect.....1134
Secretary of state to receive, file and record charter, on satisfactory evidence, and payment of fees and franchise tax.....1126	Amendments, what void and what valid.1135
Satisfactory evidence defined.....1127	Renewal of charter of certain benevolent, etc., corporations, how.....1136
Secretary of state may require other evidence .....1128	Renewal and consolidation of two or more such corporations, etc., how....1137
	Existence of corporation shall not be disputed collaterally .....1138
	Legislature may alter, reform or amend.1139

Article 1120. [641] [565] **Private corporations may be created.**—Private corporations may be created by the voluntary association of three or more

persons for the purposes and in the manner hereinafter mentioned. [Acts 1874, p. 120. Acts 1897, p. 188; P. D. 5935.]

Art. 1121. [642] [566] **For what purposes corporations may be created.**—The purposes for which private corporations may be formed are:

1. The support of public worship.
2. The support of any benevolent, charitable, educational or missionary undertaking.
3. The support of any literary and scientific undertaking; the maintenance of a library or promotion of painting, music and other fine arts.
[Note.—For old sec. 3a, see sec. 16.]
4. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.
5. The maintenance of a public or private cemetery or crematory.
6. The construction and maintenance of any species of roads and bridges in connection therewith.
7. The construction and maintenance of a bridge which may be used for any or all modes of travel and transportation.
8. The construction and maintenance of a telegraph and telephone line.
9. The establishment and maintenance of a ferry.
10. The establishment and maintenance of a line of stages.
11. The building and navigation of steamboats and vessels and the carriage of persons and property therein.
12. The supply of water to the public.
13. The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them, to the public by any means.
14. The transaction of any manufacturing or mining business, and the purchase and sale of such goods, wares and merchandise used for such business.
15. The transaction of a printing or publishing business, and in connection therewith, the sale of goods, wares, and merchandise of a stationery and blank book manufacturing business.
16. For the establishment and maintenance of oil companies, with authority to contract for the lease and purchase of the right to prospect for, develop, and use, coal and other minerals, and petroleum; also, the right to erect, build and own, all necessary oil tanks, cars, and pipes, necessary for the operation of the business of the same. [Acts 1897, p. 188.]
[Note.—For old sec. 16, see sec. 70.]
17. The erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose. [Acts 1897, p. 189.]
18. The transportation of goods, wares and merchandise, or any valuable thing.
19. The promotion of immigration.
20. The construction and maintenance of sewers.
21. For constructing or acquiring, with power to maintain and operate, street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots; and any such company using electricity as the motive power for the operation of its lines shall have the right and authority to supply and sell electric light and power to the public and municipalities; and for the establishment of companies to buy, own, sell and convey right of way upon which to construct railroads; provided, that all street and suburban railways engaged in transporting freight shall be subject to the control of the railroad commission. But no street railway company shall ever be exempted from payment of assessments that may be

legally levied or charged against it for street improvement. Any corporation heretofore organized under the general laws of this state, and which now owns or operates with electric power any street or suburban railway within the state, shall be, and the same hereby is, authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefor, and may, by proceeding in the manner provided by existing laws, amend its articles of incorporation so as to expressly include such authority. [Acts 1897, p. 189. Acts 1903, p. 62.]

22. The erection and maintenance of market houses and market places.

23. The construction, maintenance and operation of dams, reservoirs, lakes, wells, canals, flumes, laterals, and other necessary appurtenances for the purpose of irrigation, navigation, milling, mining, stock raising and city water works.

24. The purchase and sale of goods, wares and merchandise, and agricultural and farm products.

25. The buying and selling of goods, wares and merchandise of any description, by wholesale or wholesale and retail; provided, that no corporation created under this subdivision shall be chartered with a capital stock of less than twenty thousand dollars; and provided, further, that such wholesale and retail business shall not be conducted apart or in separate establishments.

26. The construction of harbors and canals on the coast of the Gulf of Mexico.

27. The growing, selling and purchasing of seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

28. The construction or purchase and maintenance of mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies, and the loan of money by such elevator or public warehouse companies.

29. The accumulation and loan of money; but these subdivisions shall not permit incorporations with banking or discounting privileges.

30. The construction and maintenance of stock yards and pens.

31. The construction and maintenance of establishments for slaughtering, refrigerating, canning, curing, and packing meat, and loaning or advancing money by such establishments on any class of live stock.

32. The construction and maintenance of establishments for the preserving and canning of fruits, vegetables and fish.

33. The establishment and maintenance of clearing houses.

34. To construct and maintain water power.

35. The constructing of railroads and bridges for railroad companies.

36. To support and maintain bicycle clubs, and other innocent sports. [Acts 1897, p. 189.]

37. To act as trustee, assignee, executor, administrator, guardian or receiver, when designated by any person, corporation or court so to do, and to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employes, trustees, executors, administrators, guardians or others appointed to or assuming the performance of any trust, public or private, under appointment by any court or tribunal, or under contract between private individuals or corporations; also on any bond or bonds that may be required to be filed in any judicial proceeding; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the state and municipal corporations or counties, or between private corporations and individuals; to act as executor, and testamentary guardian, when designated as such by decedents; or to act as

administrator or guardian, when appointed by any court having jurisdiction; provided, that, when any executor's, administrator's, or guardian's bond, or any bond required to be filed in any judicial proceeding, may be signed as surety by any corporation organized by authority of this subdivision, and if such corporation shall be deemed and considered by the officer charged by law with the duty of accepting and approving such bond as sufficient security for the amount of such bond, such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other sureties than such corporation; and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this subdivision; provided, that nothing herein shall be construed to permit any corporation to go upon any bond of any state or county official in this state; provided, that each corporation organized under this subdivision, shall publish in some newspaper of general circulation in the county where such company is organized, on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities, that a copy of this statement be filed with the commissioner of insurance and banking, and a fee of twenty-five dollars is paid to that officer for filing the same, and that an examination of its affairs be made at any time by the commissioner of insurance and banking, such examination to be at the expense of the company; provided, the guaranty and fidelity companies organized under the provisions of this subdivision shall have a paid up capital stock of not less than one hundred thousand dollars, and shall keep on deposit with the state treasurer money, bonds, or other securities, in an amount not less than fifty thousand dollars, said securities to be approved by the commissioner of insurance and banking, and that this amount to be kept intact at all times. [Act 1897, p. 190. Acts 1903, p. 197.]

38. The establishment of transportation companies; with power to buy, construct, lease, own, operate, maintain and convey all kinds of steamships, vessels and other water crafts, and may navigate the same between all parts of the globe, and upon rivers, and construct, buy, lease, own, maintain, operate and convey warehouses, docks and wharves, and to buy, lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this state such power as may be granted to or conferred upon it by any foreign government, state or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying or selling merchandise in all foreign countries; to carry passengers, freight, express and mail. [Acts 1897, p. 191.]

39. For the purpose of doing business in any state or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(b) Doing a general business in merchandise and manufactures.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

(d) The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

(e) The improvement of harbors and rivers, and the acquisition, construction, ownership and operating of canals, irrigation works, wharves and warehouses, and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision; provided, that any corporation organized under the provisions of this subdivision shall only own such real es-

tate in this state as may be necessary for its office; provided, further, that, for every charter granted under the provisions of this act which may include more purposes than are contained in any one paragraph of this subdivision, a separate franchise fee or tax shall be paid to the state of Texas for the additional purposes for which such corporation is organized under the various paragraphs of this subdivision. [Acts 1897, p. 191. Acts 1901, p. 70.]

40. The making, compiling and owning of abstracts of titles to lands, and liens of all characters on any property, or any other abstracts of records of this state or any county thereof, required by law.

41. The improvement of rivers and other waterways in this state, and to render the same navigable for steam vessels and other water crafts, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

42. The protection and preservation and propagation of fish, oysters, and game.

43. The organization and maintenance of volunteer fire companies.

44. The protection of women and children and the prevention of cruelty to animals.

45. The erection and maintenance of sanitariums. [Acts 1897, p. 191.]

46. The organization of fire, marine, life and live stock insurance companies; provided, that such live stock insurance companies may be organized with an authorized and paid up capital stock of not less than ten thousand dollars; and provided, further, that all insurance companies mentioned in this subdivision shall be in all other respects subject to, and shall comply with, all of the provisions of title 71, of the Revised Statutes of Texas. [Acts 1897, p. 191. Acts 1907, p. 292.]

47. To construct steam and electric plows for breaking, cultivating and draining of lands.

48. The organization of laborers, workingmen, wage earners and farmers to protect themselves in their various pursuits. [Acts 1897, p. 191.]

49. The promoting and taking stock in manufacturing companies or corporations.

50. The organization of mutual fire, or storm, or lightning insurance companies, without an authorized capital; provided, that the members of said mutual fire insurance companies applying for such charters shall be resident citizens of the state of Texas, which fact shall be proven by the affidavit of a credible person accompanying the articles of incorporation when filed with the secretary of state, and such affidavit shall state that the person making the same is cognizant of the facts therein stated; provided, further, that no permit to transact business within this state shall be granted to any mutual fire, or storm, or lightning insurance company without an authorized capital, incorporated under the laws of any other state.

51. The raising, buying and selling of live stock.

52. The establishment and carrying on of dairies and creamery companies. [Id. p. 192.]

53. The construction, maintenance and operation of terminal railways; and any such terminal railway company, in addition to the rights conferred by law upon corporations generally, shall have and exercise all rights and powers conferred upon railroad companies by chapters 8 and 9 of title 115 of the Revised Statutes of Texas relating to railroads, including the right to issue bonds in excess of its authorized capital stock; provided, that its stock and bonds shall be issued under the direction of the railroad commission of this state, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads; and the commission shall fix the values of the property, rights and franchises of such terminal railway company; and its stocks and bonds shall not exceed the amount authorized by the railroad

commission of Texas; and jurisdiction over the issuance of the bonds herein authorized is hereby expressly vested in the railroad commission; provided, that no such terminal company shall have the right to charge any railroad company for terminal facilities a greater amount than may be, from time to time, designated and established by the railroad commission, which shall have authority to prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charges or service; provided, further, that the provisions of articles 6656, 6657 and 6658 of the Revised Statutes of Texas shall apply to any and all orders, rulings, judgments and decrees of the railroad commission made, entered or held under the provisions of this subdivision in regard to such terminal railway companies. [Act 1907, p. 300. Act 1905, p. 211; 1897, p. 130.]

54. To build, maintain and operate a line of railroad to mines, gins, quarries, manufacturing plants, breweries and mills, and to condemn land necessary for the right of way for such road, from and between such mine, gin, quarry, manufacturing plant or mill, and the nearest line of railroad; but no corporation created under the provisions of this subdivision shall have the power to condemn private property until said corporation shall declare itself a public highway and common carrier, thus placing said road under the control of the railroad commission of this state.

55. To excavate, maintain and operate drainage ditches, canals, and flumes, and to condemn land necessary for the right of way and machinery plants for such drainage ditches, canals and flumes. [Acts 1897, p. 192.]

[Note.—The legislature skipping a number gave to this subdivision the number 57, and so continued the numbering down to subdivision 65. These numbers have been changed so as to run consecutively.]

56. For the organization of cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification, which shall govern all transactions connected with the cotton trade, and with other commodities where standards and classification are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. [Acts 1899, p. 58.]

57. For the organization of companies for growing and selling of fruits, vegetables and tobacco.

58. For the organization of exchanges, with authority to deal in the stocks of mining companies.

59. For conducting the business of undertaker and embalmer. [Acts 1901, p. 70.]

60. The construction, acquiring, maintaining and operating lines of electric, gas or gasoline, denatured alcohol, or naphtha motor railways, within and between any cities or towns in this state for the transportation of freight or passengers, and may also construct, own and operate union depots; but no electric, gas or gasoline, denatured alcohol or naphtha railways, incorporated under this subdivision, shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Corporations created under this subdivision shall be and are authorized to exercise the right of eminent domain for the purpose of acquiring right of way upon which to construct their railway lines and sites for depots and power plants, upon the same conditions and in the same manner as railroad corporations are now required to do under the laws of this State, and shall have the same powers, rights and privileges as are now granted to interurban electric railway companies by chapter 17 of title 115, of the Revised Civil Stat-

utes, and all the powers of whatsoever kind or character conferred by said chapter; provided, no property upon which is located a cemetery shall ever be condemned, unless it shall affirmatively be shown and so found by the court trying in such condemnation suits that it is necessary to take such property, and no other route is possible or practicable; and provided, that the electric, gas or gasoline, denatured alcohol, or naphtha railways, incorporated under provisions of this subdivision which shall engage in transporting freight, shall be subject to the control of the railroad commission. [Acts 1903, p. 204. Acts 1897, p. 130. Acts 1909, 2 S. S., p. 396.]

61. For the organization of companies for the purpose of growing, preparing for market, and selling rice, with power to construct, maintain, and operate such dams, reservoirs, lakes, wells, canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating.

62. For the organization of companies for the purpose of growing and selling sugar cane with the right to make and refine sugar, molasses, and all by-products of sugar cane, and to sell the same. [Acts 1905, p. 28.]

63. For the organization of companies for constructing, operating and maintaining causeways, or causeways and bridges, which may be used for any and all modes of travel and transportation, with the right to demand, receive and collect charges as fares or tolls. Any company organized under this subdivision, that shall construct a causeway and bridge of at least one mile in length across any bay or arm of the sea contiguous to a city having not less than twenty thousand inhabitants, within this state, shall have authority to borrow money and issue bonds without being limited in the amount of such issue by the provisions of article 1162. [Acts 1905, p. 87.]

64. For the organization of companies to conduct and carry on a general apiary business, and in connection therewith to manufacture bee hives and bee keepers' supplies, and the purchase and sale of such goods, wares and merchandise used, manufactured and produced in such business. [Acts 1907, p. 11.]

65. For the establishment and maintenance of fishing, hunting and boating clubs; the protection, preservation and propagation of fish and game; the purchase and ownership of such lands and bodies of water as may be desirable in connection therewith; the erection of suitable improvements thereon; and the raising of such live stock for profit only as the preserves of such club will maintain; provided, also, that fishing and hunting clubs heretofore chartered in this state, may amend their charters and take advantage of this law by complying with existing regulations for the amendment to charters of private corporations.

66. The auditing of books, accounts and transactions of persons, firms or corporations, private, public or municipal.

67. To construct, purchase, maintain and operate warehouses at one or more places in the state for the storage of products of the soil, with authority to issue negotiable receipts therefor. Any corporation organized under this subdivision, shall, by provision of its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled directly or indirectly by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder to not exceeding one thousand dollars of its capital stock.

68. To manufacture and sell denatured alcohol and its by-products. Any corporation organized under this subdivision may, by provision in its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled, directly or indirectly, by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder.

69. To guarantee titles to lands and indemnify the holders thereof against losses by reason of defects in titles. [Acts 1907, p. 291.]

70. The establishment, maintenance, erection or repair of a hotel, office building, opera and play house, apartment house, or steam laundry. [Acts 1897, p. 189.]

71. For the purpose of guaranteeing and assuring the validity of bills of lading and other contracts.

72. Private corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes, namely: The construction or purchase and maintenance of mills and gins; the manufacture and supply to the public, by any means, of ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either, the harvesting of grain, or the harvesting and threshing of grain; provided, that the authorized capital stock of all incorporations, authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. [Acts 1903, p. 227.]

73. A private corporation may be created for or after being created may so amend its charter as to include two or more of the following purposes, namely: The supply of water to the public, the manufacture and supply of ice, gas, electric light and motor power, or either of them, to the public; and the manufacture, supply and sale of carbonated water and the operation of cotton seed oil mills or cotton compresses; provided, that private corporations including more than one of the purposes mentioned in this subdivision in their charters, shall each pay the franchise tax as provided by law for each of the purposes included in their respective charters; and provided, further, that the authorized capital stock of incorporations authorized by this subdivision shall not exceed two hundred thousand dollars. The provisions of this subdivision shall not apply to cities of over ten thousand inhabitants. [Acts 1907, p. 291, sec. 2, and Id. p. 294.]

74. Corporations may be formed and chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in the state of Texas. [Acts 1897, p. 109. Acts 1893, p. 109; 1891, p. 161; 1888, S. S. p. 1; 1887, p. 40; 1885, p. 59.]

Art. 1122. [643] [567] **Charter and what it must set forth.**—A charter must be prepared setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of those who are appointees for the first year.

6. The amount of its capital stock, if any, and the number of shares into which it is divided.

7. The charter of a bridge or ferry company shall also state the stream intended to be crossed by the bridge or ferry.

8. The charter of a road company shall also state: First, the kind of a road intended to be constructed; second, the places from and to which the road is intended to be run; third, the counties through which it is intended to be run; fourth, the estimated length of the road. [P. D. 5937.]

Art. 1123. [644] [568] **Charter must be subscribed and acknowledged.**—The charter of an intended corporation must be subscribed by three or more persons, two of whom at least must be citizens of this state, and must be acknowledged by them before an officer duly authorized to take acknowledgment of deeds; provided, that all charters for the purposes named in clauses two and three of article 1121 of this chapter and title may be subscribed by

married women, who may also be stockholders, officers and directors thereof; and their acts, contracts and deeds shall be as binding and effective for all the purposes of said corporation as if they were males; and the joinder and consent of their husbands and privy examinations separate and apart from them shall not be required. [Acts of 1887, p. 103.]

Art. 1124. [679] [603] **Business firm shall give notice of intention to incorporate.**—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of state government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and, if not, then in some newspaper published in some adjoining county; and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

Art. 1125. **Private corporations for profit must subscribe full amount of stock and pay fifty per cent of same, before being chartered.**—The stockholders of all private corporations created for profit with an authorized capital stock under the provisions of this chapter, shall be required, in good faith, to subscribe the full amount of its authorized capital stock, and to pay fifty per cent thereof before said corporation shall be chartered. [Acts 1901, p. 18. Acts 1897, p. 192. Acts 1907, p. 309, sec. 1.]

Art. 1126. **Secretary of state to receive, file and record charter, on satisfactory evidence of compliance, and payment of fees and franchise tax.**—Whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of state that the full amount of the authorized capital stock has in good faith been subscribed, and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be to the company of the actual value at which it was taken, or property actually received, it shall be the duty of said officer, on payment of office fees and franchise tax due, to receive, file and record the charter of such company in his office, and to give his certificate showing the record thereof. [Id.]

Art. 1127. **Satisfactory evidence defined.**—Satisfactory evidence above mentioned shall consist of the affidavit of those who executed the charter, stating therein:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company.
2. The amount subscribed by each, and the amount paid by each.
3. The cash value of any property received, giving its description, location and from whom and the price at which it was received.
4. The amount, character and value of labor done, from whom, and price at which it was received. [Id.]

Art. 1128. **Secretary of state may require other evidence.**—If the secretary of state is not satisfied, he may, at the expense of the incorporators, require other and more satisfactory evidence before he shall be required to receive, file and record said charter. [Id.]

Art. 1129. **Certain corporations exempt from provisions.**—Corporations created under subdivisions 21, 29, 37, 53, 54 and 60 of article 1121, as well as corporations formed for the construction, purchase and maintenance of mills and gins, having a capital stock of not exceeding fifteen thousand dollars, mutual building and loan associations, and also waterworks, ice plants, electric light plants and cotton warehouses in cities of less than ten thousand inhabitants are exempt from the provisions of articles 1125 to 1128, inclusive. [Id.]

Art. 1130. Subscriptions and payment of stock required of excepted corporations.—The stockholders of all private corporations such as are designated in the last preceding article, created for profit and with an authorized capital stock under the provisions of this chapter shall be required to pay in at least one hundred thousand dollars in cash of their authorized capital stock, or to subscribe at least fifty per cent, and pay in at least ten per cent of their authorized capital before they shall be authorized to do business in this state; and whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of state that at least one hundred thousand dollars of its authorized capital stock has been paid in, in cash, or that at least fifty per cent of its authorized capital has been subscribed and ten per cent paid in, it shall be the duty of said officer to receive, file and record the charter of such company in the office of the secretary of state, upon application and the payment of all fees therefor, and to give his certificate showing the record of such charter and authority to do business thereunder. [Acts 1901, p. 18, sec. 1; modified by Act 1907, p. 309.]

Art. 1131. [645] [569] Must be filed with secretary of state, etc.—Such charter shall thereupon be filed in the office of the secretary of state, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof, certified under the great seal of the state, shall be evidence of the creation of the corporation. [Act April 23, 1874, sec. 9. P. D. 5940.]

Art. 1132. [646] [570] Corporation shall exist from time of filing charter, etc.—The existence of the corporation shall date from the filing of the charter in the office of the secretary of state, and the certificate of the secretary of state shall be evidence of such filing. [Id. sec. 10. P. D. 5941.]

Art. 1133. [647] [571] Charter may be amended, how.—Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter may amend or change its charter or act of incorporation by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments or changes with the secretary of state; and, in case of a corporation, created by special act of the legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the secretary of state, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the legislature; and the same shall be recorded by the secretary of state, followed by the proposed amendments or changes thereof. [Id. sec. 10. P. D. 6011b.]

Art. 1134. [648] [572] When amendments shall take effect.—The amendments or changes provided for in the preceding article shall take effect and be in force, from the date of the filing thereof with the secretary of state; and the certificate of the secretary of state shall be evidence of such filing. [Id.]

Art. 1135. [649] [573] Amendments, what void and what valid.—No amendment or change violative of the constitution or laws of this state or any of the provisions of this title shall be of any force or effect; amendments or changes may include additional purpose for which private corporations may be incorporated to that contained in its original or amended charter, as are specified in subdivision 72 of article 1121; but such amendments which so change the original purpose of such corporation as to prevent the execution thereof shall be of no force or effect. [Acts 1903, p. 227.]

Art. 1136. Renewal of charter of certain benevolent, etc., corporations, how.—Any private corporation created either by special act of the legislature or under the provisions of the general law for the support of any benevolent, charitable, educational or missionary undertaking, the support of any

literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter may expire or may have expired by limitation, may revive such charter, with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of the general law of the state of Texas, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original expired charter. [Acts 1907, p. 301. Acts 1909, p. 226.]

Art. 1137. **Renewal and consolidation of two or more such corporations, etc., how.**—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the fact of consolidation, accompanied by certified copies of said original charters; provided, the provision thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. [Id.]

Art. 1138. [675] [599] **Existence of corporation shall not be disputed collaterally.**—No person who assumes an obligation to an ostensible corporation, as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for the purpose.

Art. 1139. [650] [574] **Legislature may alter, reform or amend.**—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the legislature to alter, reform or amend the same. [Acts April 23, 1874, sec. 9.]

CHAPTER THREE.

POWERS AND DUTIES OF PRIVATE CORPORATIONS, AND DUTIES OF STOCKHOLDERS IN REFERENCE THERETO, ETC.

Article.	Article.		
General Powers of corporations.....	1140	Failure to elect directors shall not dis-	1157
Unpaid stock payable when; proof of pay-	1141	solve, etc.	1157
ment	1141	Trustees to be elected to control religious	1158
On default of payment secretary of state	1142	corporation	1158
to forfeit charter, how.....	1142	Directors shall have general manage-	1159
Notification of forfeiture; record of same;	1143	ment, etc.	1159
relief from forfeiture within six	1143	Directors shall cause record to be kept,	1160
months, conditions of, etc., revival....	1143	etc.	1160
On failure to revive, affairs of corporation	1144	Shall report to stockholders and make	1161
wound up; provided right to avoid for-	1144	dividends	1161
feiture within two years, but no preju-	1144	May borrow money	1162
dice to creditor	1144	Existing corporations may accept pro-	1163
May increase its capital stock, how.....	1145	visions of this title, etc.....	1163
Watering stock prohibited, forfeiture for	1146	Corporation restricted to objects of its	1164
violation	1146	creation	1164
Watered stock and bonds not for money,	1147	Restrictions upon creation of debts.....	1165
etc., quo warranto suit to cancel.....	1147	Contributions to political parties or can-	1166
Suit may be dismissed or not brought on	1148	didates, etc., by corporation officers,	1166
what conditions	1148	etc., forbidden.....	1166
Remedies cumulative	1149	Penalty of forfeiture for violation of pro-	1167
Increase in certain cases validated.....	1150	visions of either of last three preced-	1167
Unpaid increase of stock payable when;	1151	ing articles	1167
forfeiture for default	1151	Stock of corporation is personal estate....	1168
May decrease stock, how.....	1152	Directors may require payment of stock....	1169
Quorum of directors, and annual elec-	1153	Stock forfeited, when and how.....	1170
tions	1153	Corporation may sue its own members....	1171
President and secretary to be chosen.....	1154	Misnomer shall not vitiate.....	1172
By-laws may be adopted, altered, etc....	1155	Corporation may convey lands, how.....	1173
May increase number of directors or	1156	Principal office must be kept in state....	1174
trustees	1156		

Article 1140. [651] [575] **General powers of corporations.**—Every private corporation, as such, has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.

2. To maintain and defend judicial proceedings.

3. To make and use a common seal.

4. To purchase, hold, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal, or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.

5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs and the transfer of its stock.

7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-one; provided, that any corporation formed under subdivisions 1, 2 and 3, article 1121, may increase the number of its directors or trustees to not more than twenty-five. [Id. Acts 1907, p. 301. Acts 1909, p. 225. P. D. 5942.]

Art. 1141 **Unpaid stock payable when; proof of payment.**—The stockholders of all corporations chartered as provided in articles 1125 to 1128, inclusive, as modified by article 1129, shall, within two years from the date of the filing of such charter by the secretary of state, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made

to the secretary of state, in the manner provided in articles 1126 to 1128, inclusive, for the filing of charter. [Acts 1907, p. 309, sec. 2.]

Art. 1142. On default of payment, secretary of state to forfeit charter, how.—In case of the failure to pay the unpaid portion of capital stock, and to make proof thereof to the secretary of state within two years from the date of the filing of the charter, the charter of such company shall, because thereof, become forfeited; which forfeiture shall be consummated without judicial ascertainment by the secretary of state entering upon the margin of the ledger kept in his office relating to such corporations the word "forfeited," giving the date and reason therefor. [Id.]

Art. 1143. Notification of forfeiture; record of same; relief from forfeiture within six months, conditions of, etc.; revival.—The secretary of state shall notify such corporation by mailing to the postoffice named as its principal place of business, or to any other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture; a record of the date and fact of such notice must be kept by such officer; provided, that the stockholders of any such corporation whose charter has been forfeited as above provided who shall, within six months from the date of such forfeiture, and not thereafter, pay in full the unpaid capital stock of such company and furnish to the secretary of state proof of such fact as required herein, and, in addition, shall pay the secretary of state, as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, the company shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word "revived," giving the date thereof. [Id.]

Art. 1144. On failure to revive, affairs of corporation wound up; provided right to avoid forfeiture within two years, but no prejudice to creditor.—If the stockholders should fail to cause the charter powers of said corporation to be revived, as just provided, then, and in such event, the affairs of such company shall be administered and wound up as on dissolution; provided, however, the stockholders of any such company shall have the right, at any time within the two years given, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter; but no creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof. [Id.]

Art. 1145. [652] [576] May increase its capital stock, how.—A corporation may increase its authorized capital by a two-thirds vote of all its stock; provided, that no stock shall be issued except for money paid, labor done or property actually received. And when such vote is given in favor of the increase, the same may be done by the board of directors, trustees, or managing board, of such corporation; and, upon such increase of stock being made in accordance with the above provisions and certified to the secretary of state by the directors, together with satisfactory proof, which shall be the affidavit of the directors showing that the full amount of the increase has been in good faith subscribed, and fifty per cent thereof paid, and in other respects conforming to the proof required as an original application for charter, or showing that such portion thereof has been subscribed or subscribed and paid, as is required for the corporation, thus increasing its stock, and, if the secretary of state is satisfied that the increase of stock has been made in accordance with law and that the requirements of law have been complied with as to the subscription and payment of stock and in other respects, as on an original application for charter, he shall file such certificate of increase; and

thereupon the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. [Id. sec. 3.]

Art. 1146. **Watering stock prohibited; forfeiture for violation.**—No corporation, domestic or foreign, doing business in the state, shall issue any stock whatever, except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the company. Any corporation which violates the provisions of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from or by virtue of the laws of this state. [Id. sec. 5.]

Art. 1147. **Watered stock and bonds not for money, etc., quo warranto suit to cancel.**—Where any corporation has issued and has outstanding any stocks or bonds, given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, it shall be the duty of the attorney general of this state, when convinced that the facts exist which authorize the action, to institute quo warranto or other appropriate judicial proceedings in some court of competent jurisdiction in Travis county, or in any other county of this state where such corporation may be sued, to have any such stocks or bonds issued in violation of the constitution and statutes of this state, canceled, expunged and held for naught; and, within the meaning of the above, is included any bond or stock given in renewal, or in lieu of any originally issued, for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation, in the place of those originally issued for purposes other than as mentioned above. [Acts 1907, p. 342, sec. 3.]

Art. 1148. **Suit may be dismissed or not brought under what conditions.**—If any suit authorized under article 1147 has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court or to the railroad commission of Texas, for destruction, all such illegal stocks complained of, and also the illegal bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. [Id. sec. 4.]

Art. 1149. **Remedies cumulative.**—The rights and remedies given by the last two articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment, or collection of fines, forfeitures and penalties. [Id. sec. 6.]

Art. 1150. [652a] **Increase in certain cases validated.**—That in all cases where the amount of the capital stock of any corporation has heretofore been increased by more than one increase thereof to an amount in excess of double the amount of the original capital, and such increase has been made with the sanction of the secretary of state, under his construction of the law, such increase shall be, and the same is hereby, validated and declared legal. [Acts 1893, p. 123.]

Art. 1151. **Unpaid increase of stock payable when; forfeiture for default.**—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the secretary of state, the charter of such company shall be forfeited; and the provisions of article 1145 of this chapter shall govern the same, as in case of an original creation of a corporation. [Acts 1907, p. 311, sec. 3.]

Art. 1152. May decrease stock, how.—A corporation may decrease its capital stock by such amount as its stockholders may decide by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase as above provided; but no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder or director thereof; nor shall such decrease become effective until full proof is made by affidavit of the directors to the secretary of state of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and the secretary of state may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. [Id. sec. 3.]

Art. 1153. [665] [579] Quorum of directors and annual elections.—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. [Id. sec. 15. P. D. 5946.]

Art. 1154. [656] [580] President and secretary to be chosen.—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. [Id. sec. 16. P. D. 5947.]

Art. 1155. [657] [581] By-laws may be adopted, altered, etc.—The directors or trustees may adopt by-laws for the government of the corporation: but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. [Id. sec. 17. P. D. 5948.]

Art. 1156. [658] [582] May increase number of directors or trustees.—All corporations heretofore created, and now in existence, under any law of this state, are hereby authorized to increase the number of directors or trustees of any such corporation. [Id. sec. 18. P. D. 5949.]

Art. 1157. [659] [583] Failure to elect directors shall not dissolve, etc.—In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such corporation shall not, for that reason, be deemed to be dissolved; but it shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. [Id. sec. 19. P. D. 5950.]

Art. 1158. [660] [584] Trustees to be elected to control religious corporation.—The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation; and the title to all property of any such corporation shall vest in such trustees. [Id. sec. 20. P. D. 5951.]

Art. 1159. [661] [585] Directors shall have general management, etc.—The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock, at any time remaining unsubscribed, in such manner as the by-laws may prescribe. [Id. sec. 21. P. D. 5952.]

Art. 1160. [662] [586] Directors shall cause record to be kept, etc.—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions; and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. [Id. sec. 21.]

Art. 1161. [663] [587] Shall report to stockholders and make dividends.—They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the

corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. [Id. sec. 21.]

Art. 1162. [653] [577] **May borrow money.**—Corporations shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation. [Acts 1883, p. 98, sec. 13. P. D. 5944.]

Art. 1163. [664] [588] **Existing corporations may accept provisions of this title, etc.**—Any corporation heretofore organized, and now in existence, under any general or special law of the republic or state of Texas, may, by a vote of its board of directors, accept any or all of the provisions of this title, and have and exercise all of the rights, power and privileges conferred by this title, by filing a copy of their acceptance with the secretary of state; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the secretary of state, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the secretary of state, not abandoned in the copy of acceptance of any or all the provisions of this title. [Id. sec. 22. P. D. 5953.]

Art. 1164. [665] [589] **Corporation restricted to objects of its creation.**—No corporation, domestic or foreign, doing business in this state, shall employ or use its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation or those permitted by law. [Acts 1907, p. 312, sec. 5.]

Art. 1165. [665] [580] **Restrictions upon creation of debts.**—No corporation, domestic or foreign, doing business in this state, shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation. [Id.]

Art. 1166. **Contributions to political parties or candidate, etc., by corporation officers, etc., forbidden.**—No corporation, domestic or foreign, doing business in the state shall, directly or indirectly, contribute or pay any part of its assets, property or funds to any political party, or to any officer or campaign manager of any political party, or to any person whatsoever, for or on account of such party, nor to any candidate for any office, before or after nominations are made, or to aid in defraying the expenses of any candidate for office, or to any person for or on account of aid in defraying the expenses of a candidate for office, or to any person whatsoever, for, or on account of aid in maintaining or defraying the expenses of any campaign or political headquarters, or to any person whatsoever, for or on account of the success or defeat of any question to be voted upon by the qualified voters of this state, or any subdivision thereof. [Acts 1907, p. 312, sec. 5.]

Art. 1167. **Penalty for violation of either of the last three preceding articles.**—Any corporation which shall violate any of the provisions of either of the three last preceding articles, shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of, the laws of this state.

Whenever it appears that the money, assets, property, or funds of a corporation have been issued, paid out, or used, in violation of any of the provi-

sions of either of the three last preceding articles, by any agent, attorney, director, or officer of such corporation, it shall be held and considered the act of the corporation, unless, within one year from the date of such violation, it has caused to be entered through its board of directors on its records in this state, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violation. [Id. sec. 5.]

Art. 1168. [666] [590] **Stock of corporation is personal estate.**—The stock of any corporation created under this title shall be deemed personal estate, and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. [Id. sec. 24. P. D. 5955.]

Art. 1169. [667] [591] **Directors may require payment of stock.**—The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. [Id. sec. 25. P. D. 5956.]

Art. 1170. [668] [592] **Stock forfeited, when and how.**—If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made. [Id. sec. 26. P. D. 5957.]

Art. 1171. [669] [593] **Corporation may sue its own members.**—All bodies corporate may sue for, recover and receive from, their respective members all arrears or other debts, dues or other demands which are now, or hereafter may be, owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. [Id. sec. 27. P. D. 5958.]

Art. 1172. [674] [598] **Misnomer shall not vitiate.**—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. [P. D. 5965.]

Art. 1173. [676] [600] **Corporation may convey lands, how.**—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact, where the instrument constituting such attorney in fact is executed in said manner first mentioned; and such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds; and all conveyances by corporations heretofore executed in the manner herein set forth shall be held valid so far as regards the manner of execution. [Acts 1905, p. 230. P. D. 5966.]

Art. 1174. [673] [597] **Principal office must be kept in state.**—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of the state, shall keep its principal office within this state. [P. D. 5962.]

CHAPTER FOUR.

LAND—ACQUISITION, ETC., OF, RESTRICTED.

Article.	Article.
Purchase of land, unless necessary to business or to secure debts, prohibited	Purchase, subdivision and sale of city, etc., lands, not prohibited
1175	1179
Excess of land over necessary amount to be alienated, when.....	Forfeiture prescribed; duty of attorney general
1176	1180
Certain corporations forbidden to acquire lands	Proceeds of such forfeitures to be covered into the treasury.....
1177	1181
Lands previously acquired to be alienated, when	
1178	

Article 1175. **Purchase of land, unless necessary to business or to secure debts, prohibited.**—No private corporation shall be permitted to purchase any land under the provisions of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this state, or except where such land is purchased in due course of business, to secure the payment of debt. [Acts 1893, p. 36. Acts 1897, p. 48.]

Art. 1176. [749c] **Excess of land over necessary amount to be alienated, when.**—All private corporations authorized by the laws of Texas, as provided in article 1121, to do business in this state, whose main purpose is not the acquisition or ownership of lands, as mentioned in the preceding articles, which have, heretofore, or may hereafter, acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the time this law takes effect, or the date said land may be hereafter acquired, in good faith, sell and convey in fee simple all lands so acquired, and which are not necessary for the transaction of their business. [Id.]

Art. 1177. [749a] **Certain corporations forbidden to acquire lands.**—No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise shall hereafter be permitted to acquire any land within this state by purchase, lease or otherwise. [Acts 1893, p. 36.]

Art. 1178. [749b] **Lands previously acquired, to be alienated when.**—All private corporations whose main purpose or business is the acquisition or ownership, by purchase, lease or otherwise, of lands in this state, shall, within fifteen years from the time this law takes effect, make an actual bona fide sale of all lands, or interest therein acquired, before this law takes effect, and shall, within said fifteen years, by proper deed, convey in good faith all their right and title to said land. And lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as herein provided, within fifteen years from the date of the acquisition of such land. [Id.]

Art. 1179. **Purchase, subdivision and sale of city, etc., lands not prohibited.**—Nothing in this chapter shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities or villages, and their suburbs not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs whether their suburbs be stated to be measured from the limits, merely, or the corporate limits, of such towns, cities and villages; and provided, further, that all such corporations now existing, or which may be hereafter created, shall be authorized to lease, sell, or subdivide real property in any unincorporated city, town or village, or the suburbs thereof, within this state; provided, if there be a courthouse in such city, town or village, such lease, sale or subdivision may extend two miles in any direction from such courthouse. If there be a depot or depots, and no courthouse, then the two miles shall be measured from the depot nearest the center of such city, town,

or village; and, in case there be neither courthouse nor depot, then the two miles shall be measured from the center of such city, town or village. [Acts 1893, p. 36. Acts 1897, p. 48.]

Art. 1180. [749d] **Forfeiture prescribed; duty of attorney general.**—All corporations holding lands contrary to the provisions of this law shall hold the same subject to the forfeiture and escheat proceedings; and it shall be the duty of the attorney general, or other attorney appointed by the governor for that purpose, when he is informed or has reason to believe that any corporation is holding lands in violation of this law, to institute suit in the name of the state of Texas, in the district court of Travis county, or in the district court of any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided in title 51, for the escheat of estates of deceased persons dying without devise thereof and having no heirs. [Acts 1893, p. 36.]

Art. 1181. [749e] **Proceeds of such forfeitures to be covered into the treasury.**—If it shall be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution. The proceeds of such sale to be applied; first, to the payment of costs of such suit, and balance to be paid into the state treasury, subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale; and if the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat absolutely to the state and be applied to the available school fund of the state of Texas. The court trying said cause shall allow the attorney representing the state a reasonable fee, to be taxed as cost in the suit, but in no case shall the state be liable for costs or fees unless it is successful in said suit. [Id.]

CHAPTER FIVE.

REPORTS BY CERTAIN CORPORATIONS.

	Article.		Article.
Certain corporations to make reports to		Copies of reports to be filed with mayor	
secretary of state.....	1182	and with county clerk, recorded, etc.....	1185
Same subject	1183	Penalty	1186
Reports to be under oath, etc.....	1184		

Article 1182. **Certain corporations to make reports to secretary of state.**—Every corporation within this state owning, leasing or operating in this state, in cities or towns of over twenty-five hundred population, according to the last official census of the United States, a street railway, electric lighting or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually, on or before the first day of March of each year, file a report with the secretary of state, upon blank forms to be furnished by the secretary of state, showing the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, the rate of interest upon such bonds, and when such bonds mature, and the price at which such bonds were sold.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b) amount paid for labor; (c) fixed charges, including interest, taxes and insurance, giving each separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, amount received for sewerage, for power, water, gas, amount received for street railway fares and tickets. [Acts 1905, p. 40, sec. 1.]

Art. 1183. **Same subject.**—The corporations mentioned in article 1182 shall also make to the secretary of state, upon blanks to be furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if any such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. [Id. sec. 2.]

Art. 1184. **Reports to be under oath, etc.**—The reports provided for in articles 1182 and 1183 shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. [Id. sec. 3.]

Art. 1185. **Copies of reports to be filed with mayor and with county clerk, recorded, etc.**—A true copy of the reports required by the provisions of this chapter, sworn to as provided, shall be filed annually, on or before the first day of March of each year, with the mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true copy of said reports with the clerk of the county court of the county in which such corporation has its principal place of business; and the same shall be, by said clerk, delivered to the commissioners' court; and such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. [Id. sec. 4.]

Art. 1186. **Penalty.**—Any such corporation as described in article 1182, which shall for thirty days wilfully fail or refuse to file the reports in the manner provided by this chapter, shall forfeit and pay to the state one hundred dollars for each and every day during which it shall continue in default; which shall be recovered by suit in a court of competent jurisdiction by the attorney general of the state of Texas. [Id. sec. 5.]

CHAPTER SIX.

BOOKS, RECORDS, ETC.—EXAMINATION OF.

Attorney general, etc., may examine books, etc.	Article. 1187	Domestic corporation to forfeit charter rights for refusal, etc.	Article. 1190
Same subject; not to be made public, etc., except, etc.	1188	Venue of suits in Travis county.	1191
Foreign corporation to forfeit permit for refusal, etc.	1189	Provisions cumulative.	1192

Article 1187. **Attorney general, etc., may examine books, etc.**—Every corporation doing business in this state by virtue of a permit or charter granted under the laws of this state shall permit the attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation as often as he may deem it necessary. The attorney general, or his assistant or assistants, or representative or representatives, shall present a request in writing to the president, vice-president, treasurer, secretary, manager, agent or other officer of said corporation at the time the attorney general or his assistant or assistants, or representative or representatives, desire to examine said books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records belonging to said corporation; and it shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the attorney general, or his authorized assistant or assistants, or representative or representatives, to inspect and examine all the books, records and other documents of said corporation, as hereinabove set forth. [Acts 1907, p. 34, sec. 1.]

Art. 1188. **Same subject; not to be made public, etc.; except, etc.**—The attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, shall have the power and authority to make diligent investigation into the organization, conduct and management of any corporation authorized to do business within this state, and shall have power to inspect and examine all or any books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of such corporation, and take copies of any or all of such records or documents herein set forth as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this state; provided, that the attorney general, or his assistant or assistants, or representative or representatives, shall not make public or use said copies or any information derived in the course of said examination of said records or documents as hereinabove set forth, except in the course of some judicial proceedings of which the state is a party, or in a suit by the state to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the law of this state, or for the information of any of the officers of this state charged with the enforcement of its laws. [Id. sec. 2.]

Art. 1189. **Foreign corporation to forfeit permit for refusal, etc.**—Any foreign corporation doing business in this state under a permit granted under the laws of this state, or any officer or agent thereof, who shall fail or refuse to permit the attorney general, or his authorized representative or representatives, assistant or assistants, to examine any or all of its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, whether same be situated within this state or in any other state within the United States, or

shall fail or refuse to permit said attorney general or his authorized assistant or assistants, or representative or representatives to take copies of same, as provided for in article 1188, shall thereby forfeit its right to do business in this state; and its permit shall be canceled. [Id. sec. 4.]

Art. 1190. **Domestic corporation to forfeit charter rights for refusal, etc.**—Any domestic corporation chartered under the laws of this state which shall fail or refuse to permit the attorney general, or any of his authorized assistants or representatives, to examine any or all of its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation, whether the same be situated within this state or in any other state within the United States, or shall fail or refuse to permit said attorney general, or any of his authorized assistants or representatives, to take copies of same as provided for by article 1188, shall forfeit its charter rights and privileges. [Id. sec. 5.]

Art. 1191. **Venue of suits in Travis county.**—All suits to forfeit charters of domestic corporations or to cancel the permits of foreign corporations for violating the provisions of this act shall be prosecuted by the attorney general in the district courts of Travis county; and venue of said suits is hereby given to said courts. [Id. sec. 6.]

Art. 1192. **Provisions cumulative.**—The provisions of this chapter shall be cumulative of all other laws now in force in this state, and shall not be construed as repealing any other right, power or means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations. [Id. sec. 7.]

CHAPTER SEVEN.

LIEN OF STATE FOR FINES AND PENALTIES, ETC.

Article.	Article.
State to have lien on property within state for fines, etc., from date of suit to forfeit charter, etc.....1193	Attorney general may bring suit to fore-close lien; service.....1195
Action not to abate by dissolution, etc.; receivership when; writs; lien.....1194	Rights and remedies cumulative.....1196
	No compromise without trial, without consent of attorney general.....1197

Article 1193. **State to have lien on property within state for fines, etc., from date of suit to forfeit charter, etc.**—Whenever any corporation created under the laws of this state, or any foreign corporation authorized to do business in this state, shall violate any law of this state, including any law against trusts, monopolies and conspiracies, or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this state at the time of such violation, or which may thereafter come within this state, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection; and the state of Texas shall have a lien on all such property from the date that suit shall be instituted by the attorney general, or district or county attorney acting under his direction, in any court of competent jurisdiction within this state, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated, before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the

taking effect of this act, and suit shall be filed in such case, the state shall have a lien, to secure the payment of such fine, penalties and costs from the time this act shall take effect, on all property of such corporation within this state or which shall thereafter become or be brought within the state. [Acts 1907, p. 175, sec. 1.]

Art. 1194. Action not to abate by dissolution, etc.; receivership when; writs; liens.—Any action or cause of action for any fine, forfeiture or penalty that the state of Texas has, or may have, against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit. Whenever a corporation against which the state has heretofore instituted suit, or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this state, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state, for the forfeiture of its charter, the court in this state in which such suit is pending shall appoint a receiver for the property and business of such corporation within this state, or that may come or be brought within this state during such receivership; or the court may, in any case wherein the state is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this state, or for fines or penalties, appoint a receiver for such corporation, whenever the interest of the state may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this state; and the state shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty. [Id. sec. 2.]

Art. 1195. Attorney general may bring suit to foreclose lien; service.—The attorney general or any district or county attorney acting under his direction, may bring suit in the name of the state of Texas, for the foreclosure of such lien in the district court of any county in the state of Texas; and, in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the state of Texas against such corporation for the forfeiture of its charter or cancellation of its permit, or for penalties or fines, service may be had upon any person within this state who acted and was acting as agent of any such corporation in this state at the time of such dissolution or forfeiture of charter or cancellation of permit. [Id. sec. 3.]

Art. 1196. Rights and remedies cumulative.—The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this state, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, penalties and forfeitures. [Id. sec. 4.]

Art. 1197. No compromise without trial without consent of attorney general.—In case any suit should heretofore be brought in any of the courts of this state for the recovery of penalties mentioned in this act, the same shall not be settled or compromised without trial upon the merits thereof, without the consent and approval of the attorney general of the state. [Id. sec. 5.]

CHAPTER EIGHT.

LIABILITY OF STOCKHOLDERS AND DIRECTORS.

When and how stockholders may be made liable on execution.....	Article. 1198	Directors liable for debts of corporation, when and to what extent.....	Article. 1200
Secretary shall furnish names, etc., of stockholders to plaintiff.....	1199		

Article 1198. [671] [595] **When and how stockholders may be made liable on execution.**—If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there can not be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after a reasonable notice in writing to the person or persons sought to be charged; and, upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. [P. D. 5960.]

Art. 1199. [672] [596] **Secretary shall furnish names, etc., of stockholders to plaintiff.**—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation. [P. D. 5961.]

Art. 1200. [670] [594] **Directors liable for debts of corporation, when and to what extent.**—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of declaring the dividend, or shall object thereto, at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from said liability. [Acts 1874. p. 120. Acts 1871, 2 S. S., p. 66. Acts 1893, p. 123. P. D. 5959.]

CHAPTER NINE.

INSOLVENT CORPORATIONS.

	Article.		Article.
Unlawful for insolvent corporations to do business in state.....	1201	Suit may be dismissed or not brought on what conditions	1202
Attorney general, etc., to bring quo warranto, etc., to forfeit charter or cancel permit; receiver, etc.....	1202	Stockholders or creditors may sue to dissolve when; by leave of court, with notice, etc.	1203
		Rights and remedies cumulative.....	1204

Article 1201. Unlawful for insolvent corporations to do business in state.—It shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this state, or to exercise or retain any franchise or permit or charter granted from or by the state. [Acts 1907, p. 341, sec. 1.]

Art. 1202. Attorney general, etc., to bring quo warranto, etc., to forfeit charter or cancel permit; receiver, etc.—It is hereby made the duty of the attorney general of this state, when convinced that any corporation is insolvent, to institute quo warranto or other appropriate proceedings in some court of competent jurisdiction, either in Travis county or in any other county in which said corporation may be sued, to forfeit its charter, if a domestic corporation, and to cancel its permit, if a foreign corporation.

It shall be the duty of the several district and county attorneys of this state, to bring and prosecute the proceedings mentioned above whenever directed so to do by the attorney general of Texas; and the court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership; and the court may continue the existence of such corporation for three years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this act. [Id. sec. 2.]

Suit may be dismissed or not brought on what conditions.—If any suit authorized by this article has been instituted the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency. [Id. sec. 4.]

Art. 1203. Stockholders or creditors may sue to dissolve when; by leave of court, with notice, etc.—Stockholders of any insolvent corporation who own twenty-five per cent of its stock, or creditors of any such insolvent corporation who own twenty-five per cent of its indebtedness, may institute and prosecute a suit for the dissolution of such corporation; provided, that before any petition is filed by either the attorney general, or under his authority, or by stockholders or creditors, as provided in this chapter, leave therefor shall be first granted by the presiding judge of the court in which the proceeding is to be instituted; and, on presentation of any petition, it shall be the duty of such judge, before granting leave to file the same, to carefully examine the same; and he may also require an examination into the facts; and it shall be made to appear with reasonable certainty from said petition, or from the petition and the facts, as the case may be, that the relief sought should be granted; and it is further provided that any such corporation proceeded against shall have ten full days notice prior to the day set for the hearing, on an application for the appointment of a receiver. [Id. sec. 5.]

Art. 1204. **Rights and remedies cumulative.**—The rights and remedies given by this chapter are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, forfeitures and penalties. [Id. sec. 6.]

CHAPTER TEN.

DISSOLUTION OF PRIVATE CORPORATIONS.

Corporation is dissolved, how.....	Article. 1205	Liability of stockholders to creditors and to each other.....	Article. 1208
Unless receiver appointed, president etc., to be trustees, and close business.....	1206	Stockholder may compel contribution.....	1209
Trustees responsible to creditors, etc., to what extent.....	1207	Only liable for unpaid stock.....	1210
		Members or officers of defunct corporation not to do business under old corporate name, etc.....	1211

Article 1205. [680] [604] **Corporation is dissolved, how.**—A corporation is dissolved:

1. By expiration of the time limited in its charter.
2. By a judgment of dissolution rendered by a court of competent jurisdiction.

3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time, place and object of the meeting, served personally, or by mail, at least thirty days next before the meeting. If, at said meeting, four-fifths in interest of all the stockholders of said company shall signify their consent in writing to the dissolution of the corporation, such consent in writing, together with a list of the directors and officers of the company, giving postoffice address and place of residence of each, certified by the president and secretary and treasurer as true and correct action of the stockholders, shall be filed with the secretary of state; or when, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the secretary of state. When any such certificate as above mentioned is filed with the secretary of state, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office. [Acts 1907, p. 311, sec. 4. P. D. 5968.]

4. A corporation is dissolved whenever, under any special provision of law, its charter is forfeited without judicial ascertainment.

5. Where a corporation created under this title or a general law of this state shall fail to commence active operations within three years after filing its charter with the secretary of state, its charter is hereby forfeited, and the corporation is dissolved. [P. D. 5969.]

6. Whenever a corporation upon proper judicial ascertainment is found to be insolvent.

Art. 1206. **Unless receiver appointed, president, etc., to be trustees, and close business.**—Upon the dissolution of any corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle

the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and to this end, and for this purpose they may, in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and to exercise the full power and authority of said company over such assets and properties; and the existence of every corporation may be continued for three years after its dissolution from whatever cause for the purpose of enabling those charged with the duty to settle up its affairs; and, in case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the court so long as in its discretion it is necessary to suitably settle up the affairs of such corporation. [Id. sec. 7.]

Art. 1207. [683] [607] **Trustees responsible to creditors, etc., to what extent.**—The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. [P. D. 5971.]

Art. 1208. [684] [608] **Liability of stockholders to creditors and to each other.**—If any corporation created under this title or any general statute of this state, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable; and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved. [P. D. 5972.]

Art. 1209. [685] [609] **Stockholder may compel contribution.**—If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action. [P. D. 5973.]

Art. 1210. [686] [610] **Only liable for unpaid stock.**—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock. [P. D. 5974.]

Art. 1211. **Members or officers of defunct corporation not to do business under old corporate name, etc.**—When any charter or permit heretofore or hereafter granted under the laws of the state of Texas to any corporation to do business in said state shall have been forfeited, it shall be unlawful for any persons who were members or officers of said defunct corporation at the time of such forfeiture to do business in Texas under the old corporate name of such corporation, or to use the same or like signs or advertisements which were used by such corporation before such forfeiture. [Acts 1905, p. 335.]

CHAPTER ELEVEN.

RELIGIOUS, CHARITABLE AND OTHER CORPORATIONS.

Article.	Article.
Powers and privileges of.....1212	Subordinate bodies subject to grand, etc..1218
Directors, etc., not to usurp spiritual functions .....1213	On demise of subordinate body, property vests in grand body, subject, etc.....1219
Certain orders may incorporate, how...1214	Grand body may loan certain funds, take liens on real estate, etc.....1220
Incorporation of grand body to include what; rights of subordinate bodies...1215	Grand body may provide in charter what, etc. ....1221
Grand and subordinate bodies may elect their own trustees, etc.; other powers...1216	Rights of grand body now chartered....1222
May acquire and hold land and personalty necessary for sites, etc., sell mortgage, etc.....1217	Franchise tax not required.....1223
	Not required to state capital stock in charter .....1224

Article 1212. [713] [637] **Powers and privileges of.**—Any religious society, charitable, benevolent, literary, or social association (other than colleges, universities, academies or seminaries), and also any military or fire company, may, by the consent of a majority of its members, become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. [Acts 1899, p. 236.]

Art. 1213. [713] [637] **Directors, etc., not to usurp spiritual functions.**—Such directors or trustees shall not usurp or exercise the functions of the officers in charge of the spiritual affairs of any society. [Id.]

Art. 1214. **Certain orders may incorporate how.**—The grand lodge of Texas, Ancient, Free and Accepted Masons, the grand Royal Arch chapter of Texas, the grand commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies, expressed by a resolution or otherwise, become bodies corporate under this title. [Id.]

Art. 1215. **Incorporation of grand body to include what; rights of subordinate bodies.**—The incorporation of any such grand body shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body; and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. [Id.]

Art. 1216. **Grand and subordinate bodies may elect their own trustees, etc., other powers.**—Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts and things as are directed or provided by law in the case of other corporations, and shall have full power to make constitutions and by-laws for the government and regulation of their affairs. [Id.]

Art. 1217. **May acquire and hold land and personalty necessary for sites, etc., sell, mortgage, etc.**—Such institutions or orders, grand and subordinate, as are mentioned or included within this chapter shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary and the seal; but the power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions and prerequisites as may be from time to time prescribed or established by the grand body to which the subordinate is attached. [Id.]

Art. 1218. **Subordinate bodies subject to grand, etc.**—Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body. [Id.]

Art. 1219. **On demise of subordinate body property vests in grand body, subject, etc.**—Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority. [Id.]

Art. 1220. **Grand body may loan certain funds, take liens on real estate, etc.**—Any grand body incorporated under this chapter shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect; and upon sale of any real estate under such lien, such grand body may become the purchaser thereof and hold title thereto. [Id.]

Art. 1221. **Grand body may provide in charter, what, etc.**—Any grand body incorporating under this chapter may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of officers and members. [Id.]

Art. 1222. **Rights of grand body now chartered.**—Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this chapter. [Id.]

Art. 1223. **Franchise tax not required.**—Bodies incorporated under this chapter shall not be subject to, or required to, pay a franchise tax. [Id.]

Art. 1224. [714] [638] **Not required to state capital stock in charter.**—No religious, literary, social, scientific, industrial, benevolent or other society, association, company, corporation or institution that does not have a capital stock will be required in its charter to make any statement of the amount of capital stock or amount of each share; but such charter, if it contains the other statements therein required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation will be sufficient. [P. D. 6001.]

CHAPTER TWELVE.

EDUCATIONAL CORPORATIONS.

Faculty of, and their powers.....	Article. 1225	May convert property into stock or scholar-	Article. 1228
Directors, etc., may make by-laws, etc.....	1226	ships	1228
May procure shops, etc., for manual labor		Limitation as to debts, and liability of	
purposes	1227	directors	1229
		May change location, etc.	1230

Article 1225. [707] [631] **Faculty of, and their powers.**—The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary. [P. D. 5994.]

Art. 1226. [708] [632] **Directors, etc., may make by-laws, etc.**—The directors or trustees named in the charter, as required by this title, of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform any and all necessary acts to carry into effect the objects of the corporation. [P. D. 5995.]

Art. 1227. [709] [633] **May procure shops, etc., for manual labor purposes.**—Such corporations may procure, to be used as a part of the course of education, shops, tools and machinery, land for agricultural purposes, and necessary buildings for carrying on their mechanical and agricultural operations. [P. D. 5996.]

Art. 1228. [710] [634] **May convert property into stock or scholarships.**—Any such corporation may convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. Such conversion can only take place by the consent of a majority of the stockholders. [P. D. 5997.]

Art. 1229. [711] [635] **Limitation as to debts and liability of directors.**—The directors of any such corporation, whose property is held not as stock, but upon trust or devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted. [P. D. 5998.]

Art. 1230. [712] [636] **May change location, etc.**—Any such corporation may, by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by a vote of three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to where removed, or may apply the property thereof to other purposes of education than those named in the original charter filed with the secretary of state. [P. D. 5999.]

CHAPTER THIRTEEN.

TELEGRAPH CORPORATIONS.

May set poles, etc., across public roads, etc.	Article. 1231	Company may own line in or out of state, and may join with other company....	Article. 1234
May enter upon lands, etc.	1232	Cities, etc., may direct as to posts, etc.	1235
One company can not contract to exclude another	1233	Manner of consolidating with another company	1236

Article 1231. [698] [622] **May set poles, etc., across public roads.**—Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such road, streets and waters. [P. D. 5984.]

Art. 1232. [699] [623] **May enter upon lands, etc.**—Such companies are also authorized to enter upon any lands, whether owned by private persons in fee or in any less estate, or by any corporation, whether acquired by purchase or by virtue of any provision in the charter of such corporation, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph lines, and from time to time to appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and, when erected, from time to time as may be required, to repair the same, and may proceed to obtain the right of way and to condemn lands for the use of the corporation in the manner provided by law in the case of railway corporations. [Acts 1873, p. 123. P. D. 5985.]

Art. 1233. [700] [624] **One company cannot contract to exclude another.**—No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies. [P. D. 5986.]

Art. 1234. [701] [625] **Company may own line in or out of state, and may join with other company.**—Any corporation created as herein provided may contract, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond, the limits of this state, and shall have power to lease or attach to the line or lines of such corporation other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree. [P. D. 5987.]

Art. 1235. [702] [626] **Cities, etc., may direct as to posts, etc.**—The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed; and, after the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run,

having first given such company or its agents opportunity to be heard in regard to such alteration. [P. D. 5988.]

Art. 1236. [703] [627] **Manner of consolidating with another company.**—Any telegraph company now organized, or which may hereafter be organized under the laws of this state, may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies now organized, or which may hereafter be organized, under the laws of the United States, or of any state or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. [P. D. 5989.]

CHAPTER FOURTEEN.

TELEPHONE AND TELEGRAPH COMPANIES.

Corporations owning or operating lines, etc., shall arrange for transfers, etc., as follows	Article. 1237	City council, etc., to hear and determine whether transfers necessary and just, etc.	Article. 1240
Telephone companies, etc., shall connect lines at common points, how, etc.	1238	Companies to comply with order of council, etc., or forfeit what; provided, etc.; appeal, etc.	1241
Telegraph companies, etc., shall transmit transferred messages, etc., when	1239		

Article 1237. **Corporations owning or operating lines, etc., shall arrange for transfers, etc., as follows.**—All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another are hereby required to arrange for conversations or transfer of messages as hereinafter provided. [Acts 1907, S. S., p. 462.]

Art. 1238. **Telephone companies, etc., shall connect lines at common points, how, etc.**—All companies, individuals, firms or corporations doing a telephone business in this state shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another; such connection to be made through the switchboard of such individuals, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another. [Id. sec. 2.]

Art. 1239. **Telegraph companies, etc., shall transmit transferred messages, etc., when.**—All telegraph companies or persons, firms, corporations or associations of persons, which are now, or shall hereafter be, engaged in the business of accepting and transmitting messages to and from different points in this state, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this chapter; provided, that in no case shall

any message be transferred from one line to another against the will of the company first handling same when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company; and provided, further, that no telegraph or telephone company shall, under the provisions of this chapter, be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines. [Id. sec. 3.]

Art. 1240. City council, etc., to hear and determine whether transfers be necessary and just, etc.—The city council in incorporated cities, and the commissioners' court at points where there is no city council, shall, on the application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary; and, upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines. [Id. sec. 4.]

Art. 1241. Companies to comply with order of council, etc., or forfeit what; provided, etc., appeals, etc.—Whenever the city council or commissioners' court shall enter an order in compliance with article 1239, requiring telephone or telegraph companies to arrange for conversation or transfer or [of] messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and, failing to do so, shall forfeit to the state of Texas, on suit by the county or district attorney, the sum of ten dollars for each and every day they so neglect; provided, that the penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect; provided, further, that any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined. [Id. sec. 5.]

CHAPTER FIFTEEN.

TO CONSTRUCT UNION DEPOTS.

	Article.		Article.
Corporations to construct union passenger depots, how formed	1242	Railway companies may subscribe to and own stock and bonds.....	1246
Powers	1243	Right to condemn, etc., land for depot purposes, etc.; may acquire fee simple.....	1247
Authority of railroad commission.....	1244	Condemnation governed, how.....	1248
Stock and bonds, issuance how governed.....	1245		

Article 1242. [744a] **Corporations to construct union passenger depots, how formed.**—Corporations may be formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies may own or operate a railroad. Such corporations may be formed in the manner provided in this title. [Acts 1895, p. 187. Acts 1897, p. 42.]

Art. 1243. **Powers.**—Such corporations shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town, for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot; and such corporations may also add additional stories to their depot buildings, and rent the same for offices, or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. [Id.]

Art. 1244. **Authority of railroad commission.**—The railroad commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in this state. [Id.]

Art. 1245. [744b] **Stock and bonds, issuance how governed.**—The provisions of chapter 16, title 115, of the Revised Civil Statutes of the state of Texas shall govern and control the issuance of stock and bonds of such companies, as far as the same are applicable. [Id. sec. 2.]

Art. 1246. **Railway companies may subscribe to and own stock and bonds.**—Railway companies existing under the laws of this state, whether under general or special law, and railway companies incorporated under any general or special law of the United States are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds, of any depot company formed under the authority of this act. [Acts 1895, p. 187. Id.]

Art. 1247. **Right to condemn, etc., land for depot purposes, etc., may acquire fee simple.**—Corporations hereafter or heretofore incorporated for the purposes contemplated by this chapter, either under the provisions of this chapter or under any other general law, may secure, by condemnation, such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks, requisite to the convenient use of the depot; and such corporations, by such condemnation, may acquire the fee simple title. [Acts 1899, p. 49.]

Art. 1248. **Condemnation, governed how.**—As far as applicable hereto, the provisions of chapter 8, title 115, of the Revised Civil Statutes of the state of Texas of 1895 [1911] shall apply to, and govern, the proceedings of such corporation in acquiring such land or real estate by condemnation. After the award by commissioners and pending further litigation, the corporation may enter upon, and take possession of, the land sought to be condemned by complying with the terms and conditions of any general laws of this state now or hereafter passed, authorizing any corporation having the right to condemn to so enter upon, and take possession of, such land or real estate. [Id. sec. 2.]

CHAPTER SIXTEEN.

CHANNEL AND DOCK CORPORATIONS.

	Article.		Article.
This chapter embraces, what.....	1249	Corporations created under this chapter,	
Added powers	1250	additional powers granted	1252
Dock corporations, added powers.....	1251	Rates, tolls and charges subject to leg-	
		islative control	1253

Article 1249. [721] [644a] **This chapter embraces, what.**—This chapter shall embrace and include the creation of private corporations for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this state to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating docks on the coast of this state for the protection and accommodation of ships, boats and all kinds of vessels for navigation and their cargoes. [Acts of 1887, p. 91.]

Art. 1250. [722] **Added powers.**—Every such channel corporation shall, in addition to the powers herein conferred, have power:

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officers, agents or servants; to enter upon any of the waters of such bays and upon any of the lands of this state, or of any person.

2. To take and hold such voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel and works pertinent thereto.

3. To construct its channel across, along, through, or upon, any of the waters of the bays within the jurisdiction of this state, and so far into the mainland as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells and tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats adapted to the purpose facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed and established by its by-laws, not to exceed one cent per barrel bulk of the capacity of each vessel for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; provided, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.

6. To enter upon and condemn and appropriate any lands of any persons or corporation that may be necessary for the uses and purposes of such channel corporation; the damages for any property thus appropriated to be assessed and paid for in the same manner as provided by law in the case of railroads; provided, that no damages shall be assessed against or paid by it for any portion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this state, nor for any portion of any island belonging to the state that may be requisite and necessary to the construction and successful operation of its channel; and provided, further, that its right of way shall not be less than the actual width of its channel, and not more than seven hundred feet in width on each side of its channel; provided, that when the land sought to be condemned under this chapter is arable land, such right of way shall not extend further than six

hundred feet on each side of the channel from the edge or boundary of said channel.

7. To construct, own, and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the ingress and egress of such vessels as may navigate the same in so far as this state may have the power to grant such right, which shall be in subordination to that of the government of the United States, in so far as that government has the constitutional power to control the same. [Acts 1895, p. 185. Acts 1887, p. 91. Acts 1897, p. 19.]

Art. 1251. [723] [644c] **Dock corporations; added powers.**—Every such dock corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof; provided, that no such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem meet and proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum or sums for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid. [Acts 1895, p. 185.]

Art. 1252. [724] [644d] **Corporations created under this chapter; additional power granted.**—Every such corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor, approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the state may have the power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States, in as far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor for anchorage, receiving and discharging cargoes and passengers, and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finishing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid. [Id.]

Art. 1253. [725] [644f] **Rates, tolls and charges subject to legislative control.**—All rates, tolls or charges made by any corporation formed under

the provisions of this chapter shall be subject to the right of the legislature from time to time to alter, revise, change or amend the same. [Id.]

CHAPTER SEVENTEEN.

DEEP WATER CORPORATIONS.

Article.	Article
Corporations acting under authority of congress may purchase certain coast land from the state.....1254	Right to construct docks, etc., charge tolls, subject to railroad commission and general laws regulating rights of said corporations .....1258
May purchase certain other lands.....1255	Rights, powers and privileges granted shall not interfere with, what.....1259
Application for purchase, how made.....1256	Shall file release with secretary of state of right of control by congress.....1260
Regulating surveys, payment of purchase money, forfeitures, etc., under foregoing articles .....1257	

Article 1254. [726] **Corporations acting under authority of congress may purchase certain coast lands from the state.**—Any corporation organized under the laws of Texas which is now authorized or which may hereafter be authorized by an act of congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the gulf coast of Texas shall be permitted to purchase from the state of Texas, at two dollars per acre, so much of any public lands, islands, shores or shallow bays belonging to the state of Texas as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea; provided, that in no case shall such strip or body of land be more than one-half mile in width; and such company or corporation may also purchase from the state, at the same price per acre, any lands, shores, islands or shallow bays within one fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work. [Acts of 1891, p. 166.]

Art. 1255. [727] **May purchase certain other lands.**—Any such company or corporation owning, in whole or in part, any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. That the purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile; provided, that the islands known as Tolly island and Lydia Ann islands, situated in Aransas bay, shall not be subject to purchase under the provisions herein; provided, that one-half of the proceeds of the sale of the lands as provided for herein shall belong to the permanent free school fund of this state. [Id.]

Art. 1256. [728] **Applications for purchase, how made.**—All applications of a purchaser to buy under the foregoing articles shall be made in writing to the commissioner of the general land office, accompanied by one-fifth of the purchase money, and also by a copy of the act of congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements; and said plat or map shall also show the public lands, shores,

islands and shallow bays applied for, and the depth of such shallow bays in feet, determined by actual survey or as shown by the United States coast survey map. [Id.]

Art. 1257. [729] **Regulating surveys, payment of purchase money, forfeiture, etc., under foregoing articles.**—Upon the payment of one-fifth of the purchase money as hereinbefore provided, the commissioner of the general land office shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser; which said receipt shall be sufficient authority to the proper county surveyor to survey the lands, shores, islands or shallow bays sold; provided, that the remainder of the purchase money may be paid at any time within five years after the date of first payment; and deferred payments shall bear interest at the rate of five per cent per annum, payable annually. If any company or corporation purchasing any land, island or shallow water bays, under these provisions shall fail to secure twenty feet of water over the bar between the Gulf of Mexico and the main harbor within five years from the date of such purchase and maintain said twenty feet of water continuously for two years, then, all such rights shall revert to the state. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then, all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture; and the commissioner of the general land office shall indorse upon the contract of purchase, that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the state. If any such corporation shall fail to conform to the act of congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico within five years after the twenty-first day of April, 1891, if such corporation then existed, or within five years of the date of the filing of the charter of any such company as hereafter formed, then, all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the state of Texas. [Id.]

Art. 1258. [730] **Right to construct docks, etc., charge tolls subject to railroad commission and general laws regulating rights of said corporations.**—Any corporation organized under the laws of this state, which has such authority as mentioned in article 1254 conferred upon it by act of the congress of the United States, may construct, own and maintain upon the gulf coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accommodation of commerce, and such corporation may charge, demand and receive reasonable and just tolls, and charge for the use of such docks and wharves; but all navigable channels so constructed shall forever remain open and free to all vessels without fee or charge; the tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations, without discrimination as to amount charged or delay in handling the same; and all such tolls and charges shall be under the control of the legislature of the state of Texas; and, until otherwise directed by the legislature, shall be subject to control and regulation by the railroad commission, under the rules prescribed for the regulation of railroads, so far as applicable. Any railroad, or other means of transportation, which may be constructed between the mainland and any deep water harbor or channel shall be a public highway; and all rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the railroad commission as a railroad; such railroad or other means of transportation shall

receive from each and every ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad all freight and passengers and transport and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms, without discrimination as to charges and delay in transportation or delivery thereof. Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the state; that any wilful violation of these provisions or the doing of any act herein prohibited shall work a forfeiture of all rights acquired hereunder, so far as then held or claimed by the person or corporation guilty of such violation. [Id.]

Art. 1259. [731] **Rights, power and privileges granted shall not interfere with, what.**—The privileges and rights granted herein shall never be exercised so as to, in any way, hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted. [Id.]

Art. 1260. [732] **Shall file release with secretary of state of right of control by congress.**—Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the secretary of state a release to the state of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon regulated by any act of congress now existing or hereafter to be passed. [Id.]

CHAPTER EIGHTEEN.

DRAINAGE CORPORATIONS.

Article.	Article.
Authority for incorporation.....1261	May acquire lands for business, how.....1264
Corporation may contract for drainage and charges subject to control of leg- islature; lien .....1262	May borrow money for construction, etc., issue bonds; mortgage property, etc.....1265
Drains, etc., to be reported to and ap- proved by commissioners' court.....1263	Lands to be alienated, except.....1266
	Excepted lands .....1267

Article 1261. **Authority for incorporation.**—Corporations may be formed and chartered under the provisions of this chapter, and under the general incorporation laws of the state of Texas, for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in the state of Texas. [Acts 1897, p. 109, sec. 23.]

Art. 1262. **Corporation may contract for drainage and charges subject to control of legislature; lien.**—Such corporations shall have full power and authority to make contracts for permanent drainage of any tract of land and the charges therefor, said charges subject to the control of the legislature; and the rights therein shall be secured by a lien herein expressly given upon the lands benefited by said drain or canal other than homesteads. [Id.]

Art. 1263. **Drains, etc., to be reported to and approved by commissioners' court.**—All drains and canals, so constructed by such corporations, shall be reported to the commissioners' court of the county wherein constructed, and approved by the same. [Id.]

Art. 1264. **May acquire lands for business, how.**—Any corporation, so organized under the provisions of the general laws of the state of Texas, or the provisions of this chapter for the purpose of drainage, shall have power to acquire lands for the purpose of its business, or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property. [Id. sec. 24.]

Art. 1265. **May borrow money for construction, etc., issue bonds; mortgage property, etc.**—Such corporation may borrow money for the construction, maintenance and operation of its ditches and canals and laterals, and may issue bonds, and mortgage its corporate property and franchises to secure the payment of any debts contracted for the same. [Id.]

Art. 1266. **Lands to be alienated, except.**—Land acquired by such corporations; except such as are designated in the next succeeding article, shall be alienated within fifteen years from the date of acquiring same, or be subject to judicial forfeiture. [Id.]

Art. 1267. **Excepted lands.**—Lands used for the construction, maintenance and operation of canals, drains, ditches and laterals, shall be excepted from the requirements of the last preceding article. [Id.]

CHAPTER NINETEEN.

MACADAM AND PLANK ROAD CORPORATIONS.

<p>May enter upon land, make survey, etc. 1268 May condemn land, etc. 1269 If road is out of repair, charter may be forfeited 1270 Shall not collect tolls when road is out of repair 1271 Width of road and how to be constructed. 1272 No toll gates permitted in towns, etc. 1273</p>	<p style="text-align: right;">Article.</p> <p>Tolls to be regulated by commissioners' court 1274 Persons exempt from tolls 1275 Mile posts and rates of toll 1276 Any person may complain of non-repairs; proceedings in such case 1277 Travelers practicing fraud, may be sued, etc. 1278</p>
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Article 1268. [687] [611] **May enter upon lands, make surveys, etc.**—It shall be lawful for any corporation created for the purpose of constructing a macadam or plank road, by its agents and servants, to enter upon any lands, to make surveys, estimates and locations. [Acts 1873, p. 123. P. D. 5975.]

Art. 1269. [688] [612] **May condemn land, etc.**—If any such corporations shall require, for the construction or repair of its road, or any bridge thereof, any stone, timber or other material, from land adjoining to or near said road, and can not contract for the same with the owner thereof, such corporation may proceed to have the value of the same assessed; and the same proceedings shall be had therefor as is provided by law to be taken by railway corporations in like cases; and all macadam or plank road corporations shall have the right also to condemn, in like manner, and occupy, any quantity of land, not exceeding one acre at any one place, for the purpose of erecting toll-houses thereon. [P. D. 5976.]

Art. 1270. [689] [613] **If road is out of repair, charter may be forfeited.**—If any road, or any part thereof, after it shall have been completed, shall be suffered to be out of repair, so as to be impassable for the space of two months, unless when the same is being repaired, the company owning such road shall be liable to forfeit its corporate powers and privileges; and such forfeiture may be enforced by suit, as in other cases of forfeiture of charter by incorporated companies. [P. D. 5977.]

Art. 1271. [690] [614] **Shall not collect tolls when road is out of repair.**—If any such company shall suffer the road to be out of repair, to the injury, hindrance or delay of travelers, for an unreasonable time, such company shall have no right to collect tolls thereon until the same is again repaired. [P. D. 5977.]

Art. 1272. [691] [615] **Width of road and how to be constructed.**—All macadam or plank roads shall be opened not exceeding sixty feet wide, thirty feet of which shall be cleared of brush and logs; and at least sixteen feet in width shall be made an artificial road, composed of stone, gravel, wood or other convenient material, in such manner as to secure a firm and substantial road. [P. D. 5978.]

Art. 1273. [692] [616] **No toll-gates permitted in town, etc.**—No company, or association of individuals, which has been, or may hereafter be, incorporated, for the purpose of making such road, shall erect or keep any toll-gate, or receive any toll within the corporate limits of any incorporated city, town or village, or within one-half mile of such limits. [P. D. 5978.]

Art. 1274. [693] [617] **Tolls to be regulated by commissioners' court.**—As soon as such road shall have been completed, or any part thereof, not less than five miles together in any part of the road, unless the same is less than five miles long, and so from time to time, as often as five miles in addition shall be completed adjoining any five miles previously constructed, the commissioners' court of the county in which such finished road lies, or, in case the road lies in two or more counties, the commissioners' court of either of said counties, shall, on application of the agent of the company, appoint

three judicious house-holders, who shall, on oath, examine the same, and report their opinion to the court in writing; and, if such report shall state that the road, or such part thereof, be completed agreeably to the provisions of this chapter, the court shall by license, in writing, authorize the company to erect gates at suitable distances and demand and receive of persons traveling such road the toll that may be fixed by the commissioners' court. [P. D. 5979.]

Art. 1275. [694] [618] **Persons exempt from tolls.**—Any person or persons going to or from public worship on the Sabbath, common schools and other institutions of learning, funerals, militia muster, the troops of the United States and of this state, may pass over such road free from toll. [P. D. 5980.]

Art. 1276. [695] [619] **Mile posts and rates of toll.**—All macadam or plank road companies shall put up a post or stone at the end of each mile, with the number from beginning of said road, fairly cut or painted thereon; and also in a conspicuous place near each gate shall be placed a board with the rates of toll painted thereon; and no toll shall be demanded unless such rates are kept up. [P. D. 5981.]

Art. 1277. [696] [620] **Any person may complain of non-repairs; proceedings in such case.**—If any macadam or plank road company shall fail to keep their road in repair for five days successively, any person may file a complaint in writing before any justice of the peace of the county, setting forth the nature of the defect complained of, designating the place in the road where it exists; and it shall be the duty of the justice to appoint two disinterested persons as inspectors, to meet at the place complained of, within five days, and, of the time and place of meeting, reasonable notice shall be given to the gate-keeper nearest to the place of meeting; and the inspectors shall then examine into the truth of the matter complained of; and, if they shall find the complaint to be true, they shall send a certified copy of the complaint and of the finding thereon to the keeper of each of the gates between which such defective place shall be, and thereafter no toll shall be received at such gates for the intermediate distance until the part of the road complained of shall be fully repaired; and the inspectors and justice of the peace shall be entitled to two dollars and a half per day for their services, and shall be paid by the company, if the complaint be sustained, and, if it shall fail, then by the complainant. [P. D. 5982.]

Art. 1278. [697] [621] **Travelers practicing fraud may be sued, etc.**—If any person using any part of said road shall, with intent to defraud such company, falsely represent himself to any toll-gatherer as entitled to exemption from paying toll, or shall make any untrue statement as to the distance he has traveled or intends to travel on the road, or shall practice any fraudulent means, and thereby lessen or avoid the payment of tolls, each and every person concerned in any such fraudulent practices shall, for every such offense, forfeit and pay such company the sum of five dollars, to be recovered by such company in an action of debt before any justice of the peace of the county where the offender may be found. [P. D. 5983.]

CHAPTER TWENTY.

BRIDGE AND FERRY CORPORATIONS.

Article. Distance between bridges and ferries regulated1279		Article. Commissioners' court shall regulate tolls.1280 Owner liable for damages.....1281
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Article 1279. [718] [642] **Distance between bridges and ferries regulated.**—Whenever any person or persons shall file with the secretary of state any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry; and provided, further, that this article shall not be so construed as to prohibit bridges and ferries at the crossings of any road on such stream within such limits declared either before or after the erection of such bridge or ferry to be a public road by the commissioners' court of the county in which such crossing is situated. [Act April 23, 1874, sec. 79. P. D. 6011c.]

Art. 1280. [719] [643] **Commissioners' court shall regulate toll.**—All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners' court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries. [Id. sec. 80. P. D. 6011d.]

Art. 1281. [720] [644] **Owner liable for damages.**—All persons or corporate companies owning any toll-bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry-boat, which damages may be recovered before any court of competent jurisdiction. [Id. sec. 81. P. D. 6011e.]

CHAPTER TWENTY-ONE.

GAS AND WATER CORPORATIONS.

Article. Privileges of such corporations.....1282	|	Article. May contract with cities, etc.....1283
------------------------------------------------------	--	----------------------------------------------------

Article 1282. [705] [629] **Privileges of such corporations.**—Any gas or water corporation shall have full power to manufacture and sell and to furnish such quantities of water or gas as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting gas or water through the streets, alleys, lanes and squares in such city, town or village, with the consent of the municipal authorities thereof, and under such regulations as they may prescribe. [P. D. 5992.]

Art. 1283. [706] [630] **May contract with cities, etc.**—The municipal authorities of any city, town or village, in which any gas, light or water corporation shall exist, are hereby authorized to contract with any such corporation for the lighting or supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. [P. D. 5993.]

CHAPTER TWENTY-TWO.

SEWERAGE COMPANIES.

Corporation may condemn private property for sewers, etc., when, etc.....	Article. 1284	Method same as for railways.....	Article. 1285
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Article 1284. **Corporation may condemn private property for sewers, etc., when, etc.**—Every company or corporation heretofore incorporated under the laws of the state of Texas, or that may hereafter be incorporated under the laws of the state of Texas, for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this state, shall be, and are hereby, authorized and empowered to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it be also made to appear that such sewer system is beneficial to the public use, health or convenience; provided, that the right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation. [Act 1899, p. 263, sec. 1.]

Art. 1285. **Method same as for railways.**—The method of procedure for the condemnation of property for purposes provided in article 1284 shall be the same, so far as applicable, as now provided by law of this state or that may be hereafter provided for entering and condemnation of rights of way for use in the construction and operation of railroads. [Id. 2.]

CHAPTER TWENTY-THREE.

CEMETERY CORPORATIONS.

Article.	Article.
Incorporation and powers; charter to state what .....1286	Meeting of lot owners to create corporation to take title, etc., notice of; majority determines action; selection of directors .....1295
Owners of lots shareholders, etc.....1287	Directors to elect officers .....1296
Directors and officers chosen, how; married woman may be, etc.....1288	Corporation not required to make reports.1297
Power to acquire and hold land, including land dedicated to burial purposes.....1289	City council may control location of cemetery and limit price of lots.....1298
Owners of lots in dedicated land so purchased may participate in organization.1290	Commissioners' court may limit price of lots of cemetery outside of city.....1299
Divisions of dedicated land so purchased, to be preserved, etc. ....1291	Powers of .....1300
Ground to be laid out, plotted, approved, attested and recorded.....1292	May convey lots for purposes of sepulture .....1301
Corporation may make by-laws and regulations .....1293	Owners of lots are members of corporation .....1302
Directors may make rules to keep lots in order, etc., but, etc.....1294	

Article 1286. **Incorporation and powers; charter to state what.**—Corporations for the purpose of owning and maintaining public or private cemeteries, or for the purpose only of maintaining and caring for cemeteries, may be formed under and in accordance with the provisions of this title, and when so organized, shall have and exercise all the powers conferred by this chapter. In framing a charter for such corporation, if desired to confer upon it the powers specified in this chapter, the charter shall state that the corporation is organized in pursuance of this chapter. [Acts 1907, p. 37, sec. 1.]

Art. 1287. **Owners of lots shareholders, etc.**—Each owner of a lot or lots which may be embraced in any cemetery subject to the provisions of this chapter shall be a shareholder in any corporation to which the land may belong, and shall be entitled to all rights and privileges of a shareholder, whether the title to the lot or lots was acquired from the corporation, or was owned before its organization. [Id. sec. 2.]

Art. 1288. **Directors and officers chosen how; married woman may be, etc.**—The directors and officers of any corporation created in pursuance of this chapter shall be chosen under, and in accordance with, the provisions of this title, except that married women may be directors and officers in such corporations, and may perform any duties and execute any deed or contract appertaining to the duties of the office so held, without the concurrence of their husbands. [Id. sec. 3.]

Art. 1289. **Power to acquire and hold land, including land dedicated to burial purposes.**—Every corporation organized under this chapter shall have the power to acquire, own and hold all lands and other property which may be necessary or suitable to the accomplishment of its purposes, and may acquire lands which have been previously dedicated to burial purposes, by conveyance from the person or persons in whom title may be, or from any person who may hold such land in trust, with the power to transfer it to preserve the trust. [Id. sec. 4.]

Art. 1290. **Owners of lots in dedicated land so purchased may participate in organization.**—In case the land purchased as herein specified, or any portion of it, has been used as a cemetery, then the owners of lots therein shall have the right to participate in the organization of the corporation, and shall be shareholders therein after the company has been organized. [Id. sec. 4.]

Art. 1291. **Divisions of dedicated land so purchased, to be preserved, etc.**—Whenever any corporations organized under this chapter shall acquire lands already used for burial purposes, the division of the said ground into lots, streets, etc., existing at the time of its acquisition, shall be preserved so far as is necessary to protect the rights of those who have already acquired lots therein. [Id. sec. 5.]

Art. 1292. **Ground to be laid out, plotted, approved, attested, and recorded.**—It shall be the duty of any such corporation, after its organization, to cause the ground which it may acquire for cemetery purposes to be laid out in proper avenues and alleys, blocks and lots, as may be found convenient and necessary for the proper use thereof; and the corporation shall cause a plot to be made of said cemetery ground, which shall be approved by the board of directors, and shall be attested by the president and secretary of the corporation, after which it shall be recorded in the county clerk's office of the county. [Id. sec. 5.]

Art. 1293. **Corporation may make by-laws and regulations.**—Every corporation organized under this chapter shall have the power to make all necessary by-laws as prescribed by this title, and also to make all rules and regulations necessary to govern in the sale of lots and the use of the same by the purchasers thereof. [Id. sec. 6.]

Art. 1294. **Directors may make rules to keep lots in order, etc., but, etc.**—The board of directors shall have authority to make reasonable rules, requiring the lot owners to keep their lots clean from improper growth, so as to preserve the good order and proper appearance of the grounds, but shall not have power to require of any lot owner a particular character of improvement therein. [Id. sec. 6.]

Art. 1295. **Meeting of lot owners to create corporation to take title, etc.; notice of; majority determines action; selection of directors.**—When it is desired to create a corporation under this chapter to receive the title to lands theretofore dedicated to the purpose of a cemetery, notice of the time and place of a meeting of the lot owners shall be published in a newspaper in the county, if there be one, for thirty days; and printed notices shall be posted at, and upon, such cemetery for thirty days prior to the time fixed for the meeting. When the lot owners and other persons uniting in the formation of the corporation shall assemble, the majority of those present and voting shall decide upon the question of incorporation, and the conveyance of the land to it. Such meeting shall select the board of directors to be named in the charter, which may consist of lot owners alone, or persons may be chosen as directors who are not owners of lots in the cemetery. [Id. sec. 7.]

Art. 1296. **Directors to elect officers.**—The board of directors shall elect the officers of such corporation required by this title. [Id. sec. 7.]

Art. 1297. **Corporation not required to make reports.**—Corporations formed under this chapter shall be exempt from any provision of law requiring periodical reports to be made to any department of the state government. [Id. sec. 8.]

Art. 1298. **City council may control location of cemetery and limit price of lots.**—The city council of any city in which the cemetery is to be located shall have the power to control the location of any such cemetery, and to prescribe the maximum price at which lots therein shall be sold to the public. [Id. sec. 8.]

Art. 1299. **Commissioners' court may limit price of lots of cemetery outside of city.**—When any such cemetery is located without the limits of any city, the commissioners' court of such county shall have the power to prescribe the maximum at which lots therein shall be sold. [Id. sec. 8.]

Art. 1300. [715] [639] **Powers of.**—Cemetery corporations shall have power to divide the land of the cemetery into lots and subdivisions for the purposes of the cemetery, and to tax the property for the purpose of its general improvement. [P. D. 6002.]

Art. 1301. [716] [640] **May convey lots for purposes of sepulture.**—Such corporation shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office

of the clerk of the county court of the county wherein the same are situated, and shall not afterward be changed or altered. No lots shall be sold or disposed of until such plat shall have been recorded. [P. D. 6003.]

Art. 1302. [717] [641] **Owners of lots are members of corporation.**—All owners of lots purchased of any such corporation shall become members thereof, and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations. [P. D. 6004.]

CHAPTER TWENTY-FOUR.

OIL, GAS, SALT, ETC., COMPANIES.

	Article.		Article.
How corporation may be formed.....	1303	Right to borrow money, issue stock, mortgage franchises, etc.	1307
Same subject	1304	Discrimination unlawful	1308
Powers of corporation.....	1305		
Right of condemnation.....	1306		

Article 1303. **How corporation may be formed.**—Any number of persons, not less than three, may organize themselves into a corporation for the purpose of storing, transporting, buying and selling of oil and gas, salt, brine and other mineral solutions in this state. [Acts 1899, p. 202, sec. 1.]

Art. 1304. **Same subject.**—The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations in chapter 2 of this title, and the provisions of this chapter shall apply to all corporations already organized for any of the purposes of this chapter. [Id. sec. 2.]

Art. 1305. **Powers of corporation.**—Such corporations shall have power to store and transport oil and gas, brine and other mineral solutions, and to make reasonable charges therefor; to buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses, and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this state; to own, hold, use and occupy such lands, rights of way, easements, franchises, buildings and structures as may be necessary to the purpose of such corporation. [Id. sec. 3.]

Art. 1306. **Right of condemnation.**—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to lay its pipes and pipe lines across and under any public road or under any railroad, railroad right of way, street railroad, canal or stream in this state, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this state, with the consent and under the direction of the board of aldermen or city council of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads; provided, that such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business or store house, or through or under any building in this state, except by the consent of the owner or owners thereof; and provided, further, that all such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well

buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owner or owners of such land; provided, further, that, if such pipes or pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as hereinbefore provided, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof; and provided, further, that whenever such pipes or pipe lines shall cross any public road or highway, railroad, street railroad, or street or alley, the said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof; and provided, further, that such pipe lines so laid shall not exceed eight inches in diameter. [Id. sec. 4.]

Art. 1307. **Right to borrow money, issue stock, mortgage franchises, etc.**—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this state, wherever the same may be applicable to corporations of this character. [Id. sec. 5.]

Art. 1308. **Discrimination unlawful.**—It shall be unlawful for any corporation organized under this chapter to discriminate against any person, corporation, firm, association, or place in the charge for such storage or transportation, or in the service rendered, but shall receive, store or transfer oil or gas for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms, or associations for like service. [Id. sec. 6.]

CHAPTER TWENTY-FIVE.

BOND INVESTMENT COMPANIES.

<p>Deposit with state treasurer..... Article. 1309</p> <p>Forfeiture of charter in default of de- posit; attorney general to sue for, and receivership; duties of receiver, etc....1310</p>	<p>In case of failure of corporation, receiver appointed how; duties; deposit used; treasurer to pay out how.....1311</p> <p>Interchange of cash and securities in de- posits; approval of attorney general...1312</p> <p>Return of deposit in what case.....1313</p>
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Article 1309. **Deposit with state treasurer.**—Every corporation, company or individual, doing business in this state as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall, and the same is hereby required to, deposit with the state treasurer, in cash or securities approved by the state treasurer, the sum of five thousand dollars; and, in addition thereto, they shall be required to deposit semi-annually with the state treasurer, in cash or securities, to be approved by said officer, ten per cent of all the net premiums received, until the sum deposited shall amount to the sum of one hundred thousand dollars. [Acts 1897, p. 119.]

Art. 1310. **Forfeiture of charter in default of deposit; attorney general to sue for; and receivership; duties of receiver, etc.**—If any such company, being a domestic corporation, shall fail, for sixty days after the passage of this act, or for sixty days after the organization of such company, to make with the state treasurer the deposit required by this act, it shall be considered to have forfeited its charter; and the attorney general shall, immediately upon receiving information thereof, bring suit in the name of the state, in the district court of Travis county, to have such charter or certificate of incorporation declared forfeited and of no effect, and said court shall declare such charter forfeited, and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall, out of the assets of the company, make such allowance for compensation for the receiver as shall be equitable and just. [Id. sec. 2.]

[Note.—For penal provision see P. C. art..... Acts 1897, chapter 94, p. 119.]

Art. 1311. **In case of failure of corporation, receiver appointed how; duties; deposit used; treasurer to pay out how.**—In case of the failure of any company covered by this chapter, the district court of the county or city in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made, to secure the shareholders, with the state treasurer; and the state treasurer is hereby authorized to pay out such deposit in accordance with requisitions made upon the state comptroller by said receiver, and approved by the court, upon the warrant of the state comptroller. [Id. sec. 4.]

Art. 1312. **Interchange of cash and securities in deposit; approval of attorney general.**—At any time, when requested so to do by any company, such as is mentioned in this chapter, the state treasurer is hereby authorized to permit such company to interchange cash for the securities, or securities for the cash, deposited by such company with the state treasurer, under the provisions of this chapter, such securities always to be approved by the state treasurer on the written advice of the attorney general. [Acts 1901, p. 282.]

Art. 1313. **Return of deposit in what case.**—Should any such company, such as is mentioned in this act, cease to do business in this state, and shall

satisfy the comptroller and the attorney general that it has no liabilities in this state, the comptroller shall issue his warrant to the state treasurer; and the state treasurer is authorized, and it is made his duty, upon such warrant of the comptroller, to return to such company the cash or securities deposited by it under the provisions of this chapter. [Id. sec. 6.]

CHAPTER TWENTY-SIX.

FOREIGN CORPORATIONS.

Article.	Article.
Permit to do business, etc., in state must be obtained and how.....1314	Right to purchase, hold, sell, mortgage, etc., real and personal estate; provisos as to alienation.....1317
Permit may be limited to one or more of several purposes of incorporation.....1314	No such corporation can maintain any suit, etc.....1318
Permit to do business, affidavit as condition of issuance; requisites of.....1315	Corporations exempted from provisions hereof.....1319
Secretary of state to require proof in what case.....1316	Permit to extend for period of ten years..1320
Rights under permit.....1317	Evidence.....1321

Article 1314. [745] **Permit to do business, etc., in state must be obtained, and how.**—Hereafter, any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States; or of any municipality of such state or territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be, and the same is hereby, required to file with the secretary of state a duly certified copy of its articles of incorporation; and, thereupon, the secretary of state shall issue to such corporation a permit to transact business in this state. [Acts 1897, p. 167.]

May be limited to one or more purposes.—If such corporation is created for more than one purpose, the permit may be limited to one or more purposes. [Id.]

Showing as to stock by foreign corporations.—Provided, that foreign corporations obtaining permits to do business in this state shall show to the satisfaction of the secretary of state that at least one hundred thousand dollars, in cash, of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent of the authorized capital has been paid in, before such permit is issued. [Acts 1901, pp. 18-19.]

Art. 1315. **Permit to do business, affidavit as condition of issuance; requisites of.**—As a condition precedent to the issuance by the secretary of state of a permit to any foreign corporation, authorizing it to do business in this state, the president, vice-president, secretary, or treasurer, or two of the directors of such corporation, shall make and subscribe an affidavit in writing stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this state, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind or character whatsoever, which would constitute a violation of any anti-trust law of the state existing at the date of such affidavit, and has not, within that time, entered into, or been in anywise a party to, any combination in restraint of trade, within the United States of America, and that no officer of such corporation has, within the knowledge of

affiant, within twelve months next preceding the date of such affidavit, made on behalf of such corporation or for its benefit, any such contract, or entered into, or become a party to, any such combination in restraint of trade. Such affidavit in writing shall be personally subscribed and sworn to by such affiant or affiants before some officer who is by law duly authorized to administer oaths, and the jurat of such officer shall be attested by his official signature and seal of office; and such affidavit in writing so attested shall be filed in the office of the secretary of state before the issuance of any such permit. [Acts 1909, S. S. pp. 267-8. Id.]

Art. 1316. **Secretary of state to require proof in what case.**—It shall be the duty of the secretary of state to require satisfactory proof as to the amount of capital actually invested in this state before issuing any permit to any foreign building and loan company to do business in this state. [Id. p. 267.]

Art. 1317. **Rights under permit.**—Such corporation, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this state on corporations organized under the laws of this state. [Acts 1897, p. 167.]

Right to purchase, hold, sell, mortgage, etc., real and personal estate; provisions as to alienation.—Such corporations, under such permits, shall be authorized and empowered to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also, to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire, in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation; provided, that, if such corporation so obtaining a permit to do business in this state, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition, and provided, further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed, or such corporation be otherwise authorized to carry on business in this state, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this state; and provided, further, that, if such corporation shall cease to carry on business in this state, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this state. [Id.]

Art. 1318. [746] **No such corporation can maintain any suit, unless.**—No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of state for the purpose of procuring its permit. [Id.]

Art. 1319. [747] **Corporations exempted from provisions hereof.**—The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the commissioner of insurance and banking. [Id.]

Art. 1320. [748] **Permit to extend for period of ten years.**—No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state. [Id.]

Art. 1321. [749] **Evidence.**—Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance on

the part of any corporation with the terms of this chapter. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter. [Id.]

TITLE 26.

COTTON—BALING OF.

Baling of cotton regulated; penalty.....	Article. 1322	Duty of commissioner of labor.....	Article. 1324
Person, firm, etc., receiving for storage, transportation, etc., cotton not baled as required, liable for injuries to employe, duty of inspection.....	1323		

Article 1322. **Baling of cotton regulated; penalty.**—That every person, firm, corporation or association of persons, owning or operating a compress in this state, and their agents and employes, are hereby required, in compressing, recompressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employes, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. And any such person, firm, corporation or association of persons, who shall fail to bind or tie any bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver, or cause to be delivered, any such bale of cotton, to any railroad company, or other common carrier, such person, firm, corporation or association of persons, shall forfeit and pay to the state of Texas the sum of not less than fifty dollars nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the state of Texas in a court of competent jurisdiction. [Acts 1910, 4 S. S. p. 118, sec. 1.]

Art. 1323. **Person, firm, etc., receiving for storage, transportation, etc., cotton not baled as required, liable for injuries to employe; duty of inspection.**—Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this state, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not on the employe. [Id. sec. 1.]

Art. 1324. **Duty of commissioner of labor.**—It shall be especially the duty of the commissioner of labor and his deputies to see that the provisions of articles 1322 and 1323 hereof are observed and enforced; and, in pursuance thereof, he shall obtain and collect evidence of all violations of said provisions upon the part of persons, firms, corporations and associations of persons engaged in the business of compressing cotton, who shall fail to comply with the said provisions. The commissioner of labor shall file annual statements with the governor, showing in detail all expenses incurred by him in connection with his duties under this act. [Id. sec. 2.]

TITLE 27.

COUNTER CLAIM.

	Article.		Article.
Counter claim may be pleaded, when.....	1325	Certain and uncertain damages not to	
Requisites of the plea.....	1326	be set off against each other.....	1329
Judgment in defendant's favor, when.....	1327	Matters incident to plaintiff's demand	
Judgment for costs determined, how.....	1328	may be set off.....	1330

Article 1325. [750] [645] **Counter claim may be pleaded, when.**—Whenever any suit shall be brought for the recovery of any debt due by judgment, bond, bill or otherwise, the defendant shall be permitted to plead therein any counter claim which he may have against the plaintiff, subject to such limitations as may be prescribed by law. [Act Feb. 5, 1840, p. 62. P. D. 3443.]

Art. 1326. [751] [646] **Requisites of the plea.**—The plea setting up such counter claim shall state distinctly the nature and the several items thereof, and shall conform to the ordinary rules of pleading. [P. D. 3444.]

Art. 1327. [752] [647] **Judgment over in defendant's favor, when.**—On the trial of such issue, if the defendant shall establish a demand against the plaintiff exceeding that established against him by the plaintiff, the court shall render judgment for the defendant for such excess. [P. D. 3446.]

Art. 1328. [753] [648] **Judgment for costs, how determined.**—Whenever a counter claim is pleaded under the provisions of this chapter, the party in whose favor final judgment is rendered shall also recover his costs, unless it should be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a cause of action existing at the commencement of the suit, he shall recover his costs. [Id. and Act Jan. 2, 1860, p. 5. P. D. 3445-6.]

Art. 1329. [754] [649] **Certain and uncertain damages not to be set off against each other.**—If the plaintiff's cause of action be a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set off any debt due him by the plaintiff; and, if the suit be founded on a certain demand, the defendant shall not be permitted to set off unliquidated or uncertain damages founded on a tort or breach of covenant on the part of the plaintiff. [P. D. 3447.]

Art. 1330. [755] [650] **Matters incident to plaintiff's cause of action may be set off.**—Nothing in the preceding article shall be so construed as to prohibit the defendant from pleading in set off any counter claim founded on a cause of action arising out of, or incident to, or connected with, the plaintiff's cause of action.

TITLE 28.

COUNTIES AND COUNTY SEATS.

Chapter.

1. Creation of Counties.
2. Organization of Counties.
3. Corporate Rights and Powers.

Chapter.

4. County Lines.
5. County Seats.
6. County Boundaries.

CHAPTER ONE.

CREATION OF COUNTIES.

	Article.
Legislature may create counties.....	1331
Must have nine hundred square miles, unless, etc.	1332
Exterior territory may be divided into counties at any time.....	1333
Counties created out of other counties must have seven hundred square miles.....	1334
Line of new county shall not approach nearer than twelve miles to an established county seat.....	1335
Counties with less than nine hundred square miles may be created, how.....	1336
Existing counties may be reduced to seven hundred square miles, how.....	1337
New county shall pay its part of the liabilities of the old county.....	1338
New counties to pay pro rata of indebtedness.....	1339
Such indebtedness, how apportioned.....	1340
Suits to have precedence; special tax to pay judgments.....	1341
Non-residents to pay to comptroller.....	1342

	Article.
When territory is added, duty of commissioners in organized counties.....	1343
Tax for pro rata indebtedness.....	1344
Tax collected in unorganized counties by comptroller.....	1345
County bonds held by school funds apportioned between counties, when.....	1346
Commissioners' court to levy tax for, prorated.....	1347
Part of existing county shall not be detached, etc., except, etc.....	1348
Election shall be ordered, when, etc.....	1349
Application shall show, what.....	1350
Notices of such election shall contain, what.....	1351
Question to be voted upon.....	1352
Law governing other elections shall govern this.....	1353
Returns of election, how and to whom made.....	1354
Another election for the same purpose shall not be held for five years.....	1355

Article 1331. [756] [651] **Legislature may create counties.**—The legislature shall have power to create counties for the convenience of the people, subject to the following provisions of this chapter: [Const., art. 9, sec. 1.]

Art. 1332. [757] [652] **Must have 900 square miles, unless, etc.**—In the territory of the state, exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the state lines render this impracticable in border counties, the area may be less. [Id.]

Art. 1333. [758] [653] **Exterior territory may be divided at any time.**—The territory referred to in the preceding article may at any time, in whole or in part, be divided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties. [Id.]

Art. 1334. [759] [654] **Counties created out of other counties must have 700 square miles.**—Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles; nor shall any such county now existing be reduced to a less area than seven hundred square miles. [Id.]

Art. 1335. [760] [655] **Line of new county shall not approach nearer than 12 miles to an established county seat.**—No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. [Id.]

Art. 1336. [761] [656] **Counties with less than 900 square miles may be created, how.**—Counties of a less area than nine hundred, but of seven hundred or more, square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1337. [762] [657] **Existing counties may be reduced to 700 square miles, how.**—Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1338. [763] [658] **New county shall pay its part of the liabilities of the old county.**—When any part of a county is stricken off and attached to, or created into, another county, the part stricken off shall be holden for, and obliged to pay, its proportion of all the liabilities then existing of the county from which it was taken, in such manner as the law shall provide. [Id.]

Art. 1339. [764] **New counties to pay pro rata of indebtedness.**—Any county which has heretofore been created, or may hereafter be created, by the legislature of the state of Texas, out of any other county or counties, shall be held liable for, and bound to pay its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation of such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county; and a suit to recover the same may be brought by the parent county, either in the district court of such parent county, or in the district court of the newly created county; and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein; provided, that the provisions of this article shall not apply to any county, the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional. [Acts of 1893, p. 124.]

Art. 1340. [765] **Such indebtedness, how apportioned.**—Where any suit has been, or shall be, brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county and in the excised territory at the date of the creation of such new county; provided, that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county; and the assessment rolls of the parent county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county. [Id.]

Art. 1341. [765a] **Suits to have precedence; special tax to pay judgments.**—All suits brought under this law are hereby declared to be of general public interest, and shall be given precedence upon the dockets of the courts of this state; and, if the plaintiff shall recover, it shall be the duty of the commissioners' court of the newly created county to levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and, if the first levy be insufficient, to make said levy annually till said judgment is satisfied, and the judgment of the court shall order said commissioners' court to make such levies. [Id.]

Art. 1342. [766] **Non-residents to pay to comptroller.**—It shall be the duty of the comptroller of public accounts to assess and collect from the non-residents of unorganized counties such rate of taxation, to pay the pro rata share of the debt due by such unorganized county, as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners' court making the levy in the parent county, giving the amount of the levy, shall be authority for his action. [Acts of 1889, p. 136.]

Art. 1343. [767] **When territory is added, duty of commissioners in organized counties.**—When the territory taken is added to, and made a part of, an organized county, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in such territory a tax sufficient to pay their pro rata of the indebtedness, said tax not to exceed the constitutional limit; and it shall be the duty of the commissioners' court of the county to which any unorganized county may be attached for judicial purposes to levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness. [Id.]

Art. 1344. [768] **Tax for pro rata indebtedness.**—When any county has organized, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt. [Id.]

Art. 1345. [769] **Tax collected in unorganized counties by comptroller.**—All county taxes due unorganized counties collected by the comptroller shall be kept by him to the credit of such unorganized county until the same shall have been organized; then he shall, upon demand of the treasurer of the former unorganized county, pay the same over to the said treasurer; provided, that in case any unorganized county is indebted to any county from which the same has been created, and which debt existed at the time of its creation, the comptroller shall use so much of said fund as may be necessary to pay the pro rata share of such debt due by such unorganized county; and an order of the commissioners' court of the parent county stating the amount due from the unorganized county shall be authority for the comptroller to draw his warrant for said amount; and the provisions of this article shall apply to all money now held by the comptroller for unorganized counties and to all money hereafter collected. [Id.]

Art. 1346. [770] **County bonds held by school funds apportioned between counties, when.**—When any new county has been created wholly and entirely out of any existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of the state of Texas shall be apportioned between the parent county and the county or counties created out of the parent county, by the comptroller of public accounts, on the basis now provided by law. [Acts of 1891, p. 39.]

Art. 1347. [771] **Commissioners' court to levy tax for pro rated.**—It shall be the duty of the commissioners' court of the parent county, or any county created out of the parent county, which has now or may hereafter be organized, to levy and have collected on all property in such county a tax to pay such county's pro rata share of the debt. It shall be the duty of the commissioners' court of any county to which any unorganized county may be attached for judicial purposes to levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt; and it shall be the duty of the comptroller of public accounts to assess and collect on all property in such unorganized counties owned by non-residents a tax to pay said counties' pro rata part of said debt; provided, that nothing herein shall be construed to authorize the levy and collection of any tax in excess of that now allowed by the constitution of this state. [Id.]

Art. 1348. [772] [659] **Part of existing county shall not be detached, etc., except, etc.**—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change

shall have been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each. [Const., art. 9.]

Art. 1349. [773] [660] **Election shall be ordered, when, etc.**—An election for the purpose named in the preceding article shall be ordered by the county judge, or county judges, of the county or counties from which it is proposed to detach any portion thereof, or to attach any portion thereto, upon the application in writing of not less than fifty qualified voters of said county or counties.

Art. 1350. [774] [661] **Application shall show, what.**—The application provided for in the preceding article shall designate particularly, by metes and bounds, the portion of territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties from the nearest boundary line of the territory which it is proposed shall be detached.

Art. 1351. [775] [662] **Notices of such election shall contain what.**—The notices of such election shall contain, substantially, the boundaries and statements contained in the application, and in the order of election.

Art. 1352. [776] [663] **Question to be voted upon.**—The question to be voted upon at such election shall be, for or against the proposition, and the ballots shall be, "For the proposition," or "Against the proposition."

Art. 1353. [777] [664] **Law governing other elections shall govern this.**—Such election shall be governed by the law governing other elections so far as the same may be applicable, and not in conflict with any of the provisions of this chapter.

Art. 1354. [778] [665] **Returns of elections, how and to whom made.**—The returns of such election shall be made to the county judge, or county judges, of the county or counties in which the election takes place; and such county judge, or county judges, shall estimate the vote and make duplicate statements of the same, and shall certify to such statements officially; and one of said statements, together with a copy of the application certified to by him officially, he shall seal in an envelope, writing his name across the seal, and indorsing upon the package "Election returns of county," and direct and transmit the same by mail or other safe conveyance to the speaker of the house of representatives at the seat of government, in time for the same to be received at as early a day as practicable during the next session of the legislature.

Art. 1355. [779] [666] **Another election for same purpose shall not be held for five years.**—When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held for the period of five years thereafter.

CHAPTER TWO.

ORGANIZATION OF COUNTIES.

	Article.		Article.
Old county shall organize new one.....	1356	County attached to another may be or-	1361
Election to be ordered, when and by		ganized, how	1361
whom	1357	Certificates of election in such cases....	1362
County commissioners may act, when.....	1358	Books, etc., shall be delivered to such	
New county subject to old until or-		officer	1363
ganized	1359	Elections in unorganized counties.....	1364
Disorganized county is to be attached to			
other county, until, etc.....	1360		

Article 1356. [780] [667] **Old county shall organize new one.**—Whenever any new county shall hereafter be established, it shall be the duty of the county commissioners' court of the county from which the territory of such new county, or the greater part thereof, was taken, at least one month previous to the general election of county officers next after such new county shall have been established, to lay off and divide such new county into convenient precincts for the election of justices of the peace, county commissioners and constables, defining particularly the boundaries of such precincts; and also to designate convenient places in such new county where elections shall be held; of all which they shall cause a record to be made by the clerk, and a copy thereof shall be transmitted to the county judge of such new county when elected. [Act March 20, 1848, P. D. 1063.]

Art. 1357. [781] [668] **Election to be ordered when and by whom.**—It shall be the duty of the county judge of every county from which any new county has been so taken, at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county, on said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county, for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected. [Id. P. D. 1064.]

Art. 1358. [782] [669] **County commissioners may act, when.**—In all cases where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform all the duties required of the county judge by the provisions of this chapter. [Id. P. D. 1065.]

Art. 1359. [783] [670] **New county subject to old until organized.**—Until a new county is organized in accordance with law, the territory thereof shall remain in all respects subject to the county from which the same has been taken. [9 Texas, 336; 12 Tex. 397.]

Art. 1360. [784] [671] **Disorganized counties to be attached to other counties, until, etc.**—All legally organized counties that, from any cause, may have lost, or may hereafter lose, their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now, or may hereafter be, required or permitted by law to be recorded, attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized. [Act Nov. 5, 1866, p. 90.]

Art. 1361. [785] [672] **County attached to another may be organized, how.**—When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or

reorganized, a petition expressing such desire, signed by not less than one hundred and fifty qualified voters residing in such unorganized or disorganized county, may be presented to the commissioners' court of the county to which such unorganized or disorganized county is attached, and thereupon it shall be the duty of said court to proceed without delay to the organization or reorganization of such county, as the case may be, in the same manner as hereinbefore provided for the organization of new counties. [Act May 1, 1874, p. 188, sec. 2.]

Art. 1362. [786] [673] **Certificates of election in such cases shall be issued by whom and bonds taken, etc.**—It shall be the duty of the county judge of the county conducting the organization of another county to issue the certificates of election to the officers elected in such organized or reorganized county, and to approve the bonds of such officers, and administer to them the oath of office in accordance with law. [Id. sec. 3.]

Art. 1363. [787] [674] **Books, etc., shall be delivered to such officers.**—It shall be the duty of all officers of the county from which any new county has been created, or to which any such newly organized or reorganized county has been attached, and the duty also of all other persons who may have in their possession any books, records, maps or other property belonging to such newly organized or reorganized county, to deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified as such; and any officer or person who shall wilfully fail to make such delivery upon demand made therefor, shall be guilty of a misdemeanor and punished as provided in the Penal Code. [Id. sec. 4.]

Art. 1364. [788] [675] **Elections in unorganized counties.**—In all cases where a county is not organized, and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such disorganized county, and appoint the presiding officers and managers and clerks of election, as prescribed by law in other cases. [Act March 26, 1848. P. D. 3624.]

CHAPTER THREE.

CORPORATE RIGHTS AND POWERS.

	Article.		Article.
County a body corporate.....	1365	Commissioner to sell real estate of.....	1370
Suits against	1366	Contracts with county valid.....	1371
Inhabitants of, may be jurors, etc., in		Suits on notes, etc., by county.....	1372
such suits	1367	Agents to contract for county may be	
Execution shall not issue against county.....	1368	appointed	1373
Deeds, grants, etc., to counties valid, etc.....	1369	Costs in suit against county.....	1374

Article 1365. [789] [676] **County a body corporate.**—Each county which now exists, or which may be hereafter established, shall be a body corporate and politic. [Act May 11, 1846. P. D. 1044.]

Art. 1366. [790] [677] **Suits against.**—No county shall be sued unless the claim upon which such suit is founded shall have first been presented to the county commissioners' court for allowance, and such court shall have neglected or refused to audit and allow the same, or any part thereof. [P. D. 1045.]

Art. 1367. [791] [678] **Inhabitants may be jurors, etc., in such suits.**—In all suits instituted by or against any county, the inhabitants of the county so suing or being sued may be jurors or witnesses, if otherwise competent and qualified according to law. [P. D. 1049.]

Art. 1368. [792] [679] **Execution shall not issue against county.**—No execution shall be issued on any judgment against any county; but, when a judgment shall be rendered against a county, it shall be the duty of the county commissioners' court of such county to settle and pay such judgment in like manner and pro rata as other claims of a similar description are settled and paid by said court. [P. D. 1050.]

Art. 1369. [793] [680] **Deeds, grants, etc., to counties valid, etc.**—All deeds, grants and conveyances heretofore made, or which may be hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance, to any county, or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such deed or conveyance had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed. [P. D. 1051.]

Art. 1370. [794] [681] **Commissioners to sell real estate of.**—The county commissioners' court may, by an order to be entered in the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county at public auction; and the deed of such commissioner, made in conformity to the order of said court, under his proper hand and seal, for and in behalf of the county, duly acknowledged and proven and recorded, shall be sufficient, to all intents and purposes, to convey to the purchasers all the right, title and interest and estate whatever which the county may have in and to the premises to be conveyed; provided, however, that nothing contained in this article shall authorize the county commissioners' court of any county to dispose of any lands given, donated or granted to such county for the purposes of education in any other manner than shall be directed by law. [P. D. 1052.]

Art. 1371. [795] [682] **Contracts with a county valid.**—All notes, bonds, bills, contracts, covenants, agreements or writings, made, or to be made, whereby any person is, or shall be, bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any mat-

ter or thing to the use of any county, shall be valid and effectual, to all intents and purposes, to vest in said county all rights, interests and actions which would be vested in any individual, if any such contract had been made directly to him. [P. D. 1053.]

Art. 1372. [796] [683] **Suits on notes, etc., by county.**—Suits may be commenced and prosecuted on such notes, bonds, bills, contracts, covenants, agreements and writings, in the name of such county, or in the name of the person to whom they were made, for the use of the county, as fully and effectually as any person may or can sue on like notes, bills, contracts, covenants, agreements or writing made to him. [P. D. 1054.]

Art. 1373. [797] [684] **Agents to contract for county may be appointed.**—The county commissioners' court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law; and the contract or acts of such agent or agents, duly executed and done, for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county, to all intents and purposes. [P. D. 1055.]

Art. 1374. [798] [685] **Costs in suit against county.**—When the plaintiff in any suit against a county shall fail to recover a greater amount than the county commissioners' court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit. [P. D. 1056.]

CHAPTER FOUR.

COUNTY LINES.

Article.	Article.
Survey made	Expense to be divided between the coun-
Boundary, how marked	ties
Natural objects to be named	Land district to be surveyed
Notice to other counties	Suit to establish boundary; venue; juris-
Oath and bond of surveyors	diction and powers of court; rule for
Field-notes to be returned and reported	determination of matter
In absence of one surveyor the other	Land commissioner not to place line on
shall act	map until filing of certified copy of
Commissioner of the land office to direct	judgment and field-notes
survey in case of disagreement	

Article 1375. [799] **Survey made.**—Whenever it shall appear to the satisfaction of the county court of any county in this state, or notice shall be given such court by the commissioner of the general land office, that the boundary, or any part thereof, of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain, by actual survey, the boundary, or any part thereof, of said county, and to make and establish the lines and corners in a manner herein prescribed; and the court, in the order making the appointment, shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county. [Acts of 1879, p. 137.]

Art. 1376. [800] **Boundary how marked.**—The initial corners of the surveys herein provided for shall be designated by posts, mounds, or stone monuments; the posts shall be of hewn cedar, cypress or bois d'arc, at least eight inches in diameter, five feet long, and set in the ground not less than three

feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; that at the end of each mile in said boundary a like post, mound, or stone monument shall be established; the initial corners shall be described on the post or monument established there.

Art. 1377. [801] **Natural objects to be named.**—In the field-notes of the surveys of the lines ordered to be run, the surveyor shall give an accurate description of all prominent natural objects crossed by, or adjacent to, said lines, as well as of the corners and lines of surveys on or near said boundaries.

Art. 1378. [802] **Notice to other counties.**—It shall be the duty of the court making such order to cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey, and such notice shall be given at least ten days before the meeting of said county court; and it shall be the duty of the court so notified to appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line.

Art. 1379. [803] **Oath and bond of surveyors.**—The surveyors herein provided for shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond with two or more sureties to be approved by the county court, in the sum of one thousand dollars, payable to the county judge, or his successors in office, conditioned for the faithful performance of his duty.

Art. 1380. [804] **Field-notes to be returned and recorded.**—When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due return of the field-notes and map to the county court; which field-notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office.

Art. 1381. [805] **In the absence of one surveyor the other shall act.**—If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned him, and make his report to the county court of the county employing him, which, being approved by such court, shall be recorded as evidence of the line in question; and the line so surveyed and marked shall thereafter be regarded as the true boundary line between the counties.

Art. 1382. [806] **Commissioner of the land office to direct survey in case of disagreement.**—Should the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the commissioner of the general land office, whose duty it shall be to examine the disputed matter at once; and from such data as the maps and archives of his office furnish, shall designate to such surveyors the line to be run, stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instruction shall be authority for said surveyors to run such line; and the line so run as above directed shall thereafter be the true dividing line between said counties. [Acts of 1879, p. 137.]

Art. 1383. [807] **Expense to be divided between counties.**—The expense of surveying and marking such line shall be divided between the counties interested, in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services the sum of three dollars per mile for each mile run. The expense of establishing the posts, mounds, or stone monuments

shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor.

Art. 1384. [808] **Land districts to be surveyed.**—Before any county in this state, not already organized as a separate land district under existing law, shall be recognized as such, the county court shall cause the boundary lines of the county to be surveyed and marked and the field-notes and map of such survey, duly recorded, returned to the general land office as provided in this chapter.

Art. 1385. **Suit to establish boundary; venue; jurisdiction and powers of court; rule for determination of matter.**—Notwithstanding the preceding articles of this chapter, any county in this state may bring suit against any adjoining county or counties, for the purpose of establishing the boundary line between them. Such suit shall be brought in the district court of the county in an adjoining judicial district whose boundaries are not affected by the suit, and whose county seat is nearest the county seat of the county suing. And said court shall try said cause as other causes, and shall have full and complete jurisdiction to determine where such boundary line is located, and, if necessary, shall order the same to be remarked and resurveyed. And if, in the trial of any such cause, it shall be found that the boundary line between the counties involved has never been established and marked, or, if marked, has become indefinite and undefined, said court shall have power to re-establish the same and order it marked. And any boundary line so established by such judgment shall thereafter be regarded as the true boundary line between the counties in question; provided, that if it shall be found in any such cause that the boundary line in question has been heretofore established under the law then in force, the same shall be declared to be the true line, and shall be resurveyed and established as such. [Acts 1897, p. 222.]

Art. 1386. **Land commissioner not to place line on map until filing of certified copy of judgment and field-notes.**—Provided, further, that it shall be unlawful for the commissioner of the general land office to mark, fix or place on any of the maps in said office any contested county line at any definite point thereon, until a certified copy of the final judgment of the court, herein provided, is filed in the general land office, together with a certified copy of the field-notes of the line so established by such judgment. [Id.]

CHAPTER FIVE.

COUNTY SEATS.

Election for county seats.....	Article. 1387	County seats removed, when.....	Article. 1394
Two-thirds vote necessary, when, to create	1388	No change by election until after five years	1395
Election for removal of, when.....	1389	Courts held at county seats.....	1396
Proceedings for removal of county seat.....	1390	Court house and jail provided.....	1397
Geographical center, how designated.....	1391	When commissioners' court may fix place of holding court.....	1398
Who may vote, and form of ballot.....	1392	County offices at county seat.....	1399
Election, how conducted and ordered.....	1393		

Article 1387. [809] **Election for county seats.**—In the organization of any county or counties now existing, or hereafter to be created by the legislature, it shall be the duty of the county judge holding the election in such new county for county officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers of such new county; and the place receiving a majority of all the votes cast by the electors voting on the location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats; provided, that when any county has been organized, and no county seat has been located, the county judge of such county shall order an election for the location of a county seat. [Acts of 1883, p. 82.]

Art. 1388. [810] **Two-thirds vote necessary, when, to create.**—No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this state, unless by a two-thirds vote of all the electors voting on the subject in said county. [Acts of 1881, p. 67.]

Art. 1389. [811] **Election for removal of, when.**—Hereafter, no county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject; provided, that no person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center; in either event the center to be determined by a certificate from the commissioner of the general land office, in the manner hereinafter set forth. [Acts of 1879, p. 84.]

Art. 1390. [812] **Proceedings for removal of county seat.**—When it becomes desirable to remove the county seat of any county, it shall be the duty of the county judge of said county, or, in case of his failure or inability to act, then two of the county commissioners of said county, upon the written application of not less than one hundred freeholders and qualified voters, who are resident citizens of said county thereof, to make an order in writing upon the minutes of said commissioners' court for the holding of an election at the various voting precincts in said county, on a day therein named, which shall not be less than thirty nor more than sixty days from date of said order, for the purpose of submitting the question to the electors of said county; provided, that, when a county seat has been established for a longer term than ten years, it shall require two hundred freeholders and qualified voters to make said application; provided, further, that in counties having less than

three hundred and fifty legal voters, to be determined by the number of votes cast at the last preceding election for the state and county officers, such application may be made by one hundred resident freeholders and qualified voters of said county; and provided, further, that, when a county seat has been established for a longer term than forty years, it shall require a majority of the resident freeholders and qualified voters of said county to make the application, said majority of freeholders and qualified voters to be ascertained by the county judge, or, in case of his failure or inability to act, then by any two of the county commissioners of said county, from the assessment rolls thereof. [Acts 1893, p. 164. Acts 1903, p. 118.]

Art. 1391. [813] **Geographical center, how designated.**—The commissioner of the general land office, upon being notified by the county judge of any county that a proposition is submitted to the people of such county, or that it is desirable on the part of the people thereof, that the center of such county should be designated, preliminary to the removal of any county seat, shall, from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to the county judge of such county, who shall cause the same to be spread upon the records of deeds of his county. [Acts of 1879, p. 84.]

Art. 1392. [814] **Who may vote and form of ballot.**—All persons who are qualified electors under the constitution and laws of the state shall be entitled to vote at said election; and, on each ticket, the voter shall write or cause to be written or printed: "For removal to" [inserting the name of the place]; or, should the voter be in favor of the county seat remaining where the same is already located, he shall write or cause to be written or printed on his ticket: "For remaining at" [inserting the name of the place]. [Id.]

Art. 1393. [815] **Election how conducted and ordered.**—The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted, as near as may be, as elections for county officers; and the officers holding the election shall make return thereof to the officer ordering said election, within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners' court, and shall also state the name of the place from which the same is removed, and the name of the place to which the same is removed; and a certified copy of such entry shall thereupon be, by the county clerk of said county, recorded in the proper record deeds of such county. [Id.]

Art. 1394. [816] **County seats removed, when.**—When the entry mentioned in the preceding article has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the subject; and such place shall thereafter be the county seat of such county. But, if the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. [Id.]

Art. 1395. [817] **No change by election until after five years.**—Whenever an election for the location or removal of a county seat shall have been voted on by the electors of any county and the question settled by said electors, it shall not be lawful for a like application to be made for the same purpose within five years thereafter. [Id.]

Art. 1396. [818] [704] **Courts shall be held at county seat.**—All terms of the district, county and county commissioners' courts shall be held at the county seat. [R. S. 1879, 704.]

Art. 1397. [819] [705] **Court house, jail, etc., to be provided.**—It shall be the duty of the county commissioners' court of each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, to provide a court house and jail for the county, and offices for county officers at such county seat, and keep the same in good repair. [R. S. 1879, 705.]

Art. 1398. [820] **When commissioners' court may fix place of holding court.**—Until the county seats of new counties are established, as required by the provisions of this chapter, the courts of such new counties shall be held at such place as may be appointed by the county commissioners' court of such county. [Acts of 1879, p. 84.]

Art. 1399. [821] [706] **Officers shall keep offices at county seats.**—The county judge, sheriff, clerks of the district and county courts, county treasurer, assessor of taxes and collector of taxes, county surveyor and county attorney of the several counties of this state shall keep their several offices at the county seats of their respective counties. [Act March 16, 1848. Act May 13, 1848. R. S. 1879, 706. O. & W., 282, 284.]

CHAPTER SIX.

COUNTY BOUNDARIES.

Boundaries as established, adopted, and acts creating, continued in force.....1400 Article.

Article 1400. [822] **Boundaries as established, adopted, and acts creating continued in force.**—The county boundaries of the counties in this state as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

TITLE 29.

COUNTY FINANCES.

Chapter.
1. General Provisions.

Chapter.
2. County Auditor.

CHAPTER ONE.

GENERAL PROVISIONS.

	Article.
Duty of commissioners' court to procure ledger, etc.	1401
Duty of county clerk to keep accounts.	1402
Same	1403
Same	1404
Compensation of clerk.	1405
Accounts shall be opened, how, and shall be indexed	1406
Account with the tax collector.	1407
Receipt of collector for tax rolls.	1408
How collector may discharge his indebtedness	1409
Collector shall make separate lists of indigent and delinquent taxpayers.	1410
No credit shall be entered for delinquents until allowed by the court.	1411
Taxes for each year shall be kept separate	1412
Tax collector going out of office shall deliver tax rolls to successor, etc.	1413
Collector shall collect occupation tax and receipt for same.	1414
County clerk shall issue occupation license, when	1415
County clerk shall make two reports of licenses issued at end of each month.	1416
What the reports shall state, etc.	1417
Clerk shall keep occupation tax account with collector	1418
Clerk shall keep account with sheriff.	1419
How sheriff may free himself from liability under preceding article.	1420
Clerks and justices of the peace shall report fines, judgments and jury fees monthly	1421
What reports shall show.	1422
Fines imposed and judgments rendered by justices shall be charged against them, etc.	1423
District attorney shall make report, etc.	1424
County attorney shall make report, etc.	1425
Judgments not collectible may be sold.	1426
Any officer collecting money for county shall report the same.	1427
Money collected by officer shall be charged to him, etc.	1428
Estray account	1429
Same subject	1430
Clerk shall keep account with county treasurer	1431

	Article.
County treasurer shall register claims against the county.	1432
Claims shall be classified.	1433
Manner of registering claims.	1434
What shall be written on registered claim	1435
Claims shall be numbered, in what order	1436
Order in which claims shall be paid.	1437
Classification of county funds.	1438
Commissioners' court may create other classes of funds.	1439
Said court may transfer one class of funds to another, except, etc.	1440
County treasurer shall report registered claims each month.	1441
Clerk shall enter report upon ledger, etc.	1442
Party receiving payment of claim shall receipt thereon	1443
Officer receiving claims in payment of debt to county shall report list of same	1444
Claims received by other officer than county treasurer shall be reported to county treasurer	1445
County treasurer shall keep accurate accounts and accompany same with vouchers	1446
Claim shall be canceled, when and how.	1447
Report of treasurer, order approving; to recite what; credit.	1448
Commissioners to inspect and count cash, etc., in hands of treasurer, etc.	1449
Affidavit of compliance, etc.; filing, record, and publication of, etc.	1450
Commissioners' court shall examine and correct all accounts and reports, etc.	1451
Reports and vouchers shall be filed and preserved in county clerk's office.	1452
District judge shall appoint committee to examine into finances of county.	1453
Duty of such committee.	1454
Report of committee.	1455
Pay of committee.	1456
All reports shall be sworn to.	1457
Monthly reports shall be filed, when.	1458
Warrants issued against county by judge or court shall be attested by clerk, etc.	1459

Article 1401. [823] [934] **Duty of commissioners' court to procure ledger, etc.**—The several county commissioners' courts shall each procure a well-bound ledger and index, and shall cause to be entered in said book a full, complete and orderly statement of the condition of the finances of the county.

Art. 1402. [824] [935] **Duty of county clerk to keep accounts.**—It is hereby made the duty of the clerk of the county court to open and keep in said book, which shall be known as a finance ledger, an account with each and every officer of the county, district, or state, who is now, or may hereafter be authorized or required by law to receive or collect any money or other property for the use of, or belonging to, the county. The clerk shall also keep such other accounts as may be necessary to carry out the purposes of this title; that all items shall be entered daily under their respective heads, and

said finance ledger shall be at all times subject to the inspection of the public. [Act 1893, p. 160.]

Art. 1403. [824a] [935a] **Same.**—It shall be the duty of the said clerk to balance each account so kept, and make a tabular statement, under oath, at each regular term of the commissioners' court for the three months next preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each; the names of persons from whom moneys have been received, with the date of receipt, and for what account received, during the quarter for which such statement is prepared; said statement shall also show the amount to the credit or debit of each fund separately. [Id.]

Art. 1404. [824b] [935a] **Same.**—It shall be the duty of said clerk, immediately after the first regular term of the commissioners' court in each year, to publish for one time in some weekly newspaper published in his county (or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners' precinct, one of which shall be at the court house door, the other three at public places in such precincts), an exhibit showing the aggregate amount received and the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of the commissioners' court out of the general fund of the county. [Id.]

Art. 1405. [824c] [935b] **Compensation of clerk.**—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger as provided for in article 1402, and making the quarterly statement as provided for in article 1403, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners' court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum.

Art. 1406. [825] [936] **Accounts shall be opened how, and shall be indexed.**—Said accounts shall be opened by stating at the top of the page the name of the officer and his office; and all of said accounts shall be properly indexed for convenient reference.

Art. 1407. [826] [937] **Account with the tax collector.**—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed.

Art. 1408. [827] [938] **Receipt of collector for tax rolls.**—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the clerk of the county court, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector.

Art. 1409. [828] [939] **How the collector may discharge his indebtedness.**—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission due the collector.
2. The assessor's receipt for commissions due such assessor, if any are to be paid by the county.
3. Proper vouchers for such payments as he is now, or may hereafter be required to pay out of any money on hand.
4. The receipt of the county treasurer for the money paid into the treasury.

Art. 1410. [829] [940] **Collector shall make separate lists of indigent and delinquent taxpayers, etc.**—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer; and the court shall carefully examine said indigent and delinquent list, and shall make an order and enter the same upon the minutes of the court, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper accounts.

Art. 1411. [830] [941] **No credit shall be entered for delinquent taxes until allowed by the court.**—No credit for indigent or delinquent taxes shall be entered in said collector's accounts until an order of the court has been made and entered allowing the same.

Art. 1412. [831] [942] **Taxes for each year shall be kept separate.**—In keeping accounts with the collector, the taxes assessed for each year shall be kept separate and distinct.

Art. 1413. [832] [943] **Tax collector going out of office shall deliver tax rolls to successor, etc.**—Whenever a tax collector shall go out of office, he shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a receipt in writing for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; which receipts he shall deliver to the clerk of the county court, who shall enter them to the credit of the collector presenting them, to the extent that the same are allowed by the court as hereinbefore provided, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Art. 1414. [833] [944] **Collector shall collect occupation tax, and receipt for same.**—All occupation taxes due the county shall be collected by the tax collector of the county without assessment, and the collector shall give to the party paying the tax a receipt in writing, stating the name of the person paying the same, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the state and for the county.

Art. 1415. [934] [945] **County clerk shall issue occupation license, when.**—Upon the presentation of the receipts provided for in the preceding article to the clerk of the county court of the county in which such tax has been paid, such clerk shall issue a license in the name of the state or county, or both, in accordance with the tax paid, to the person paying such tax, authorizing him to pursue the occupation named in such receipt during the time for which he has paid the tax.

Art. 1416. [835] [946] **County clerk shall make two reports of licenses issued at end of each month.**—Said clerk shall, at the end of every month, make two reports in writing, one of licenses issued on taxes paid to the state, which he shall forward to the comptroller of public accounts, by mail; the other of licenses issued on taxes paid to the county, and file the same in his office.

Art. 1417. [836] [947] **What the reports shall state, etc.**—The reports required by the preceding article shall state the name of the licensee, the

occupation, the time for which the license is issued and the amount of taxes paid therefor, and shall be dated and signed officially by such clerk and attested by his seal of office.

Art. 1418. [837] [948] **Clerk shall keep occupation tax account with collector.**—The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county; and the collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk.

Art. 1419. [838] [949] **Clerk shall keep account with sheriff.**—An account shall be kept by the clerk with the sheriff of each county, in which such sheriff shall be charged with all judgments, fines, forfeitures and penalties, payable to the county, rendered in the district or county courts of the county, or any other court of his county, and with the collection of which he is, by law, made chargeable.

Art. 1420. [839] [950] **How sheriff may free himself from liability under preceding article.**—The sheriff may free himself from liability from the charge required in the preceding article by—

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.

2. By showing to the satisfaction of the commissioners' court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect; and none of the credits herein provided for, except those on the receipts of the treasurer, shall be entered without an order of the commissioners' court allowing the same.

Art. 1421. [840] [951] **Clerks, etc., shall report fines, judgments and jury fees monthly.**—Clerks of the district and county courts, county judges, county treasurers, sheriffs, district and county attorneys, constables and justices of the peace, who shall collect or handle any money for the use of the county, shall make a full and complete report, under oath, in writing, to the commissioners' court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of, the county; and at the same time to present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered; which reports, receipts and vouchers shall be carefully examined by the said commissioners' court, and, if found to be correct, shall cause the clerk to enter the same on the financial ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected; and said reports, receipts and vouchers shall be filed in the county clerk's office. [Acts 1887, p. 36.]

Art. 1422. [841] [952] **What the reports shall show.**—The reports required by the preceding article shall state fully—

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment, as the case may be.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Art. 1423. [842] [953] **Fines imposed and judgments rendered by justices shall be charged against them, etc.**—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice of the peace imposing or rendering the same; and he may discharge said indebtedness by filing with the clerk of the county court the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners' court that he

has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

Art. 1424. [843] [954] **District attorney shall make report, etc.**—The district attorney of each district shall, at each term of the district court for each county in his district, make a report in writing, to the clerk of the county court, of all moneys received by him since the last term of the district court for such county, for the use of such county.

Art. 1425. [844] [955] **County attorney shall make report.**—The county attorney of each county in the state shall make a similar report to the one required in the preceding article to the clerk of the county court of his county, at the end of each month.

Art. 1426. [845] **Judgment not collectible may be sold.**—Whenever the principal and sureties upon any judgment, the proceeds of which revert to, and belong to, any county, are insolvent so that under any existing process of law said judgment or any part thereof can not be collected, the commissioners' court of said county are hereby constituted a board to dispose of such judgment, and are hereby empowered and authorized, by such advertising as they may deem necessary, to offer for sale, as they may deem to be the best interests of the county, all the right of the county to such judgment. And, if by public sale, if the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the county, and, upon sale, shall make a proper assignment of said judgment to the purchaser. [Acts of 1879, p. 9.]

Art. 1427. [846] [956] **Any officer collecting money for county shall report the same.**—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same in writing to the clerk of the county court of the county to which such money belongs, stating fully in such report from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected.

Art. 1428. [847] [957] **Money collected by officer shall be charged to him, etc.**—When any officer reports to the clerk of the county court any money collected by such officer for the use of the county, the amount of money so collected shall be charged to such officer, and he may discharge himself from such indebtedness by producing the receipt of the proper county treasurer therefor.

Art. 1429. [848] [958] **Estray account.**—There shall also be kept in the ledger, provided for in article 1401, an estray account, in which shall be entered on the debit side of each application made to the clerk of the county court to estray any animal in his county by entering the date of the application, the name of the person estraying, and a brief description of the animal, or animals, to be estrayed; and the amount of such charge shall be left blank until said person shall file his account of the sale of said animal or animals; and, upon the filing of said account, the net amount due the county from such sale shall be entered in the blank.

Art. 1430. [849] [959] **Same subject.**—When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of the sale of an estray, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Art. 1431. [850] [960] **Clerk shall keep account with county treasurer.**—An account shall also be kept in said ledger by the clerk with the county treasurer, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other per-

son paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners' court has approved his reports of the same, and for his legal commissions.

Art. 1432. [851] [961] **County treasurer shall register claims against the county.**—The county treasurer of each county shall keep a well-bound book in which he shall register all claims against his county, when presented to him for registration; and no claim, or any part thereof, against a county shall be paid by such county treasurer, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title.

Art. 1433. [852] [962] **Claims shall be classified.**—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.
2. All scrip issued under the provisions of the road law or for work done on roads and bridges.
3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims.

Art. 1434. [853] [963] **Manner of registering claims.**—Each claim shall be entered in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued.

Art. 1435. [854] [964] **What shall be written on registered claim.**—When a claim has been registered, the treasurer shall write on the face of the same its registered number, the word "registered," the date of such registration, and shall sign his name officially thereto.

Art. 1436. [855] [965] **Claims shall be numbered, in what order.**—Claims shall be numbered in the order presented, and, if more than one claim is presented at one and the same time, they shall be numbered in the order of their date.

Art. 1437. [856] [966] **Order in which claims shall be paid.**—The treasurer shall pay off the claims in each class in the order in which they are registered.

Art. 1438. [857] [967] **Classification of county funds.**—The funds received by the county treasurer shall be classed as follows:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes; and this class of funds shall be appropriated to the payment of all claims registered in class first, described in article 1433.
2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, prescribed in article 6494, and all fines and forfeitures; and this fund shall be appropriated to the payment of all claims registered in class second.

3. All money received, not otherwise appropriated herein or by the commissioners' court; and the funds of this class shall be appropriated to the payment of all claims registered in class third. [Const., art. 16, sec. 24.]

Art. 1439. [858] [968] **Commissioners' court may create other classes of funds, etc.**—The commissioners' court shall have power to cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Art. 1440. [859] [969] **Said court may transfer one class of funds to another, except, etc.**—The commissioners' court shall have power, by an order to that effect, to transfer the money in hand from one fund to another, as in its judgment is deemed necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims

to which the same are appropriated by article 1438, unless there is an excess of such funds.

Art. 1441. [860] [970] **County treasurer shall report registered claims each month.**—The county treasurer shall, at the end of each month, file in the office of the clerk of the county court of his county a report in writing, showing the total amount of claims registered by him during said month, stating each class separately.

Art. 1442. [861] [971] **Clerk shall enter report upon ledger, etc.**—The clerk with whom the report required by the preceding article is filed shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Art. 1443. [862] [972] **Party receiving payment of claim shall receipt thereon.**—The county treasurer, or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Art. 1444. [863] [973] **Officer receiving claim in payment of debt to county shall report list of same.**—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county, in claims against the county, shall keep a descriptive list of such claims, and shall when he reports such collection file with his report a list stating the party in whose favor each claim was issued, the class and registered number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received.

Art. 1445. [864] [974] **Claims received by other officer than county treasurer shall be reported to county treasurer.**—Claims received for the county by any officer other than the treasurer shall be turned over together with the list mentioned in the preceding article to the county treasurer, who shall give a proper receipt for the same, and the county treasurer shall file said list with his report in the office of the clerk of the county court.

Art. 1446. [865] [975] **County treasurer shall keep accounts, etc.**—The county treasurer shall keep accurate accounts showing all the transactions of his office in detail; and all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners' court with the corresponding report, when it shall be the duty of said court to compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. [Acts of 1889, p. 6.]

Art. 1447. [866] [976] **Claim shall be canceled, when and how.**—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the face thereof the word "canceled," and the clerk shall attest the same by his official signature.

Art. 1448. [807] [977] **Report of treasurer, order approving; to recite what; credit.**—When the commissioners' court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately, the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands, and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. [Acts 1897, p. 27.]

Art. 1449. [867] [977] **Commissioners to inspect and count cash, etc., in hands of treasurer, etc.**—Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. [Id.]

Art. 1450. [867] [977] **Affidavit of compliance, etc.; filing, record and publication of, etc.**—Prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of articles 1448 and 1449 have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices. [Id.]

Art. 1451. [868] [978] **Commissioners' court shall examine and correct all accounts and reports, etc.**—The commissioners' court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports.

Art. 1452. [869] [979] **Reports and vouchers shall be filed and preserved in county clerk's office.**—All reports and vouchers shall be filed in the office of the clerk of the county court, and shall be carefully preserved therein, and shall be briefly noted in the proper account upon the ledger.

Art. 1453. [870] [980] **District judge shall appoint committee to examine into the finances of county.**—At each term of the district court, the district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county.

Art. 1454. [871] [981] **Duty of such committee.**—It shall be the duty of the committee provided for in the preceding article to examine all the books, accounts, reports, vouchers and orders of the commissioners' court relating to the finances of the county that have not been examined and reported upon by a previous committee; to count all the money in the office of the county treasurer belonging to the county, and to make such other examination as to them may seem necessary and proper in order to ascertain the true condition of the finances of the county, and the court shall, if necessary, upon the application of said committee, send for persons and evidence to aid them in their investigation.

Art. 1455. [872] [982] **Report of committee.**—Said committee shall, at the earliest practicable day after their appointment, make to said district court a report in writing, in detail, stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions or malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the clerk of said district court, and the attention of the grand jury called thereto as soon after the filing of the same as practicable.

Art. 1456. [873] [983] **Pay of committee.**—Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, which fees shall be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Art. 1457. [874] [984] **All reports shall be sworn to.**—All reports required under any of the provisions of this title shall be sworn to by the officer making the same, before some officer authorized to administer oaths.

Art. 1458. [875] [985] **Monthly reports shall be filed, when.**—All monthly reports required by any of the provisions of this title shall be filed in the office of the clerk of the county court of the proper county within five days after the end of each month.

Art. 1459. [876] [986] **Warrants issued against county by judge or court shall be attested by clerk, etc.**—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal; and no justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in article 1117 [1170] of the Code of Criminal Procedure.

CHAPTER TWO.

COUNTY AUDITOR.

	Article.
1. Appointment, Qualifications, Bond.	
County auditor appointed in what counties; title; term; salary.....	1460
Appointment by whom; reported to commissioners; recorded.....	1461
Qualifications.....	1462
Bond; oath; requisites of.....	1463
2. Assistant and Clerical Help.	
May appoint assistant, with consent of county judge.....	1464
May appoint clerical help, with consent of county judge.....	1465
3. Books and Stationery.	
Books and stationery.....	1466
4. Duties and Powers of Auditor.	
General duties of auditor.....	1467
Access to and right to examine accounts, orders of commissioners, etc.....	1468
Reports, monthly under art. 1421, examination of.....	1469
Reports, and books, of officers, quarterly examination and checking of.....	1470
Report, quarterly, of treasurer, examination of.....	1471
Count, etc., cash in hands of treasurer or depository; how, when, etc.....	1472
Law, see to enforcement of.....	1473
Balances, see that all to credit of funds are on hand.....	1474
Investment of funds, see that none unauthorized.....	1475
Forms for collection, mode of keeping, etc., accounts; time for reports, shall prescribe.....	1476

	Article.
Regulations for collecting, accounting, etc., may adopt and enforce.....	1477
Deposits in treasury to be made, how.....	1478
Bids for stationery, etc.; purchase from lowest bidder.....	1479
Bids for supplies, etc.....	1480
Claims, etc., to be filed in what time; not to be paid until, etc.....	1481
Shall examine and approve claims, to be verified.....	1482
May administer oaths, when.....	1483
Restrictions and requirements in audit and approval of claims, requisition, etc., bids for supplies, etc.....	1484
Warrants, to countersign, except jury.....	1485
Register, shall keep, of warrants issued by clerks and judges; who shall report, etc.....	1486
Accounts, shall keep with officers named, relieving clerk of finance ledger.....	1487
Statements to be required from persons receiving money or property of county.....	1488
Books, general set of, showing transactions of county, shall keep.....	1489
Report tabulated, shall make, for each regular meeting of commissioners.....	1490
Reports, quarterly and annual, to be made to commissioners, showing what, etc.....	1491
Estimate, shall prepare for commissioners; who shall prepare budget.....	1492
Expenses, shall see that do not exceed appropriations.....	1493
Account with each appropriation, shall open, etc.....	1494
5. Miscellaneous Provisions.	
Provisions of this chapter cumulative, but controlling.....	1495
County clerk's duties, how affected.....	1496
Removal of auditor, grounds, mode.....	1497
Bell county exempt from provisions.....	1498

1. APPOINTMENT, QUALIFICATIONS, BONDS.

Article 1460. **County auditor appointed in what counties; title; term; salary.**—In any county of this state, having a population of forty thousand inhabitants or over, or having therein a city with a population of twenty-five thousand or over, according to the last United States census, there shall be appointed an auditor of accounts and finances, the title of said office to be county auditor, who shall hold his office for a term of two years and until his successor is appointed and qualified; and who shall receive an annual salary of twenty-four hundred dollars, to be paid out of the general fund of the county upon the order of the commissioners' court. [Acts 1907, p. 315. Acts 1905, p. 381.]

Art. 1461. **Appointment by whom; reported to commissioners; recorded.**—The county judge shall convene a special meeting of the judges of the county and district courts, or courts having jurisdiction in the county, who shall jointly appoint the auditor, a majority vote ruling. The action shall then be reported by the county judge to the commissioners' court in regular or special session, which shall have said appointment entered upon the minutes of said court. [Acts 1905, p. 381, sec. 2.]

Art. 1462. **Qualifications.**—The auditor to be appointed must be a man of unquestionably good moral character and intelligence, thoroughly competent in business details; he must be a competent accountant who has actually had practical experience in auditing and accounting. The judges empowered with this appointment must carefully investigate and consider the qualifications of said person before appointment. [Id. sec. 3.]

Art. 1463. **Bond; oath, requisites of.**—The auditor shall, within twenty days of his appointment, and before he enters upon the duties of his office, make a bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge or his successors in office, conditioned for the faithful performance of his duties, to be approved by the commissioners' court. In addition to said bond, he shall make the usual oath of office and an additional one in writing, stating that he is in every way qualified under the provisions and requirements of this chapter, and giving fully the positions of private or public trust he has heretofore held, and the length of service under each of said employments or appointments. He shall further include in his oath that he will not personally be interested in any contract with the county. [Id. sec. 4.]

2. ASSISTANT AND CLERICAL HELP.

Art. 1464. **May appoint assistant, with consent of county judge.**—The auditor may, at any time, appoint an assistant to act in his stead, and who may discharge the duties of the auditor during his absence or unavoidable detention, said appointment to be made with the consent of the county judge, who shall require said assistant to take the usual oath of office for faithful performance of duty. [Id. sec. 18.]

Art. 1465. **May appoint clerical help, with consent of county judge.**—The auditor shall also have the power to appoint additional clerical help when needed, with the consent of the county judge, or of the commissioners' court. [Id. sec. 5.]

3. BOOKS AND STATIONERY.

Art. 1466. **Books and stationery.**—The auditor shall, at the expense of the county, provide himself with all necessary ledgers, books, records, blanks and stationery. [Id. sec. 5.]

4. DUTIES AND POWERS OF AUDITOR.

Art. 1467. **General duties of auditor.**—It shall be the duty of the auditor to have a general oversight of all the books and records of all the officers of the county, district or state, who are now, or who may hereafter be, authorized or required by law to receive or collect any money, funds, fees or other property for the use of, or belonging to, the county. [Id. sec. 6.]

Art. 1468. **Access to and right to examine accounts, orders of commissioners, etc.**—He shall have continual access to, and shall examine, all the books, accounts, reports, vouchers and other records of any of the officers, and also the orders of the commissioners' court relating to the finances of the county. [Id. sec. 6.]

Art. 1469. **Reports, monthly, under article 1421, examination of.**—All reports required under article 1421 shall also be carefully examined and reported on by him. [Id. sec. 6.]

Art. 1470. **Reports and books of officers, quarterly examination and checking of.**—He shall at least once in each quarter check the books and examine all the reports of the tax collector, the treasurer and all other officers, in detail, verifying the footings and correctness of same, and shall stamp his approval thereon, or note any differences, errors or discrepancies. [Id. sec. 6.]

Art. 1471. **Report, quarterly, of treasurer, examination of.**—He shall carefully examine the quarterly report of the treasurer, of all the disbursements, together with the canceled warrants which have been paid, and shall verify the same with the register of warrants issued as shown on the books of the auditor. [Id. sec. 13.]

Art. 1472. **Count, etc., cash in hands of treasurer or depository, how, when, etc.**—It shall be the duty of the auditor, without giving any notice beforehand, to examine fully into the condition of, or to inspect and count the cash in the hands of, the county treasurer, or in the bank in which he may have placed same for safe keeping, not less than once in each quarter, and oftener as desired. [Id. sec. 7.]

Art. 1473. **Law, see to enforcement of.**—The auditor shall see that the law is strictly enforced. [Id. sec. 7.]

Art. 1474. **Balances, see that all to credit of funds are on hand.**—The auditor shall see that all balances to the credit of the various funds are actually on hand in cash. [Id. sec. 7.]

Art. 1475. **Investment of funds, see that none unauthorized.**—He shall fully investigate and see that none of said funds are invested in any manner, except as the law may otherwise authorize. [Id. sec. 7.]

Art. 1476. **Forms for collection, mode of keeping, etc., accounts; time for reports, shall prescribe.**—He shall prescribe and prepare the forms to be used by all persons in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating their accounts, and the time, mode and manner of making their reports to the auditor, also the mode and manner of making their annual report of office fees collected and disbursed, and the amount refunded to the county in excess of those allowed under the general fee bill law. [Id. sec. 8.]

Art. 1477. **Regulation for collecting, accounting, etc., may adopt and enforce.**—He shall have the power to adopt and enforce such regulations not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper collection, checking and accounting of the revenues and other funds and fees belonging to the county. [Id. sec. 8.]

Art. 1478. **Deposits in treasury to be made how.**—All deposits that are made in the county treasury shall be upon a deposit warrant issued by the county clerk in triplicate; said warrants shall authorize the treasurer to receive the amount named, for what purpose, and to which fund the same shall be applied. The treasurer shall retain the original; the duplicate shall be signed and returned to the county clerk for the county auditor, and the triplicate signed and returned to the depositor. The auditor shall then enter same upon his books, charging the amounts to the county treasurer and crediting the party depositing same. The treasurer shall not, under any circumstances, receive any money in any other manner than that named herein. [Id. sec. 14.]

Art. 1479. **Bids for stationery, etc.; purchase from lowest bidder, etc.**—Bids shall be hereafter asked for all supplies of stationery, books, blanks, records, and other supplies for the various officers for which the county is required to pay, and the purchase made from the lowest bidder, after filing said bid with the auditor for record. [Id. sec. 16.]

Art. 1480. **Bids for supplies, etc.**—Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments or institutions, must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners' court, has submitted the lowest and best bid. It shall be the duty of the county auditor to advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisement shall state where the specifications are to be found, and shall give time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge

and to the commissioners' court; and when the bids received are not satisfactory to the said judge, or county commissioners, it shall be the duty of the county auditor to reject said bids and readvertise for new bids; provided, that in cases of emergency, purchases not in excess of fifty dollars may be made upon requisition, to be approved by the commissioners' court, without advertising for competitive bids. [Id. sec. 17.]

Art. 1481. Claims, etc., to be filed in what time; not to be paid until, etc.—All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners' court; and no claim, bill or account shall be allowed or paid until same shall have been examined and approved by the county auditor. [Id. sec. 15.]

Art. 1482. Shall examine and approve claims; to be verified.—It shall be the duty of the auditor to examine such claims, bills and accounts, and stamp his approval thereon. If deemed necessary by the auditor, all such accounts, bills, or claims must be verified by affidavit touching the correctness of the same, before some person authorized to administer oaths. [Id. sec. 15.]

Art. 1483. May administer oaths, when.—The auditor is hereby authorized to administer oaths for the purposes of this chapter. [Id. sec. 15.]

Art. 1484. Restrictions and requirements in audit and approval of claims, requisition, etc., bids for supplies, etc.—He shall not audit or approve any claim against the county, unless the same has been contracted as provided by law, nor any account for the purchase of supplies or material for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge; which said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made. [Id. sec. 17.]

Art. 1485. Warrants, to countersign, except jury.—All warrants on the county treasurer, except warrants for jury service, must be countersigned by the county auditor. [Id. sec. 12.]

Art. 1486. Register, shall keep, of warrants issued by clerks and judges; who shall report, etc.—He shall keep a register of all warrants issued by the judges or clerks on the county treasurer, and their dates of payment by the treasurer. In order that he may do so, the clerks of the county and district courts, or the judges therefor, who are authorized to issue any warrant on the county treasurer, shall on forms prepared by the auditor daily furnish to the auditor an itemized report specifying the warrants that have been issued, their numbers, their several amounts, the names of the persons to whom payable, and for what purpose. [Id. sec. 12.]

Art. 1487. Accounts, shall keep, with officers named, relieving clerk of finance ledger.—It shall be his duty to keep an account with each and every person named in the preceding sections [articles] and in doing so he shall relieve the county clerk of keeping the finance ledger required in article 1402. His books shall show the detailed items of the indebtedness against all of said officers and the manner of discharging same. [Id. sec. 9.]

Art. 1488. Statements to be required from persons receiving money or property of county.—He shall require all persons who shall have received any moneys belonging to the county, or having the disposition or management of any property of the county, to render statements to him. [Id. sec. 9.]

Art. 1489. Books, general set of, showing transactions of county, shall keep.—He shall keep a general set of books, which shall show all the transactions of the county relating to accounts, contracts, indebtedness of the county, and its receipts and disbursements of all kinds. [Id. sec. 9.]

Art. 1490. **Report tabulated, shall make for each regular meeting of commissioners.**—He shall make tabulated reports of said funds and accounts for each regular meeting of the commissioners' court. [Id. sec. 9.]

Art. 1491. **Reports, quarterly and annual, to be made to commissioners, showing what, etc.**—He shall make quarterly and annual reports to the commissioners' court, setting forth all the facts of interest, and showing the aggregate amounts received and disbursed out of each fund, the condition of each and every account on the books, the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper, or the commissioners' court may require. This annual report shall be made to include all transactions during the year ending July 31 of each year, and shall be completed and filed at a special term of the commissioners' court in September. [Id. sec. 11.]

Art. 1492. **Estimate, shall prepare for commissioners; who shall prepare budget.**—He shall prepare an estimate of all the revenues and expenses, and annually furnish same to the commissioners' court, which court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. [Id. sec. 10.]

Art. 1493. **Expenses, shall see that do not exceed appropriations.**—He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriation, and keep the commissioners' court advised of the condition of said appropriation accounts from time to time. [Id. sec. 10.]

Art. 1494. **Account with each appropriation, shall open, etc.**—He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. [Id. sec. 10.]

5. MISCELLANEOUS PROVISIONS.

Art. 1495. **Provisions of this chapter cumulative, but controlling.**—The provisions of this chapter are cumulative, and, where conflicting with any existing law, the provisions of this chapter shall control. [Id. sec. 20.]

Art. 1496. **County clerks duties, how affected.**—Where the provisions of this chapter impose upon the auditor like duties as are now required of the county clerk, the provisions of this chapter shall prevail, and to such extent only is the county clerk relieved of his duties. [Id. sec. 20.]

Art. 1497. **Removal of auditor, grounds, mode.**—Whenever an auditor, appointed under the provisions of this act, has been sufficiently proven guilty of official misconduct, or has proven to be incompetent to faithfully discharge the duties required of him, he may, after due investigation by the same power which appointed him, be removed, and his successor appointed as provided in articles 1461 and 1462. [Id. sec. 19.]

Art. 1498. **Bell county exempt from provisions.**—Bell county shall be exempt from the provisions of this chapter. [Acts 1909. p. 238.]

TITLE 30.

COUNTY TREASURER.

Article	Article
Election and term of office.....1499	Shall keep true accounts and superintend collection of moneys, etc.....1506
Oath and bond of.....1500	Shall report to commissioners' court.....1507
Shall give new bond, when.....1501	Shall deliver money, etc., to successor.....1508
Office to be declared vacant, when.....1502	Shall not pay out money, except, etc.....1509
Vacancy, how filled.....1503	Shall examine docketts, accounts, etc.....1510
Appointee's oath, bond.....1504	Shall perform such other duties as may be required by law.....1511
Shall receive moneys belonging to counties, etc. ....1505	

Article 1499. [919] [987] **Election and term of office.**—At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county treasurer, whose term of office shall be two years and until his successor is qualified. [Const., art. 16, sec. 44. Act Aug. 19, 1876, p. 199.]

Art. 1500. [920] [988] **Oath and bond of.**—The county treasurer, before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall take the oath of office prescribed by the constitution of this state and shall give a bond payable to the county judge of his county, with at least two good and sufficient sureties, to be approved by the commissioners' court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a just and true account thereof to said court at each regular term of said court, which oath and bond shall be filed and recorded in the office of the clerk of the county court of such county and safely preserved. [Act May 13, 1846. P. D. 1096.]

[Note.—Old art. 921 substituted by Act 1905, p. 263, sec. 31; for which see title "Education, Public," art. 2768. Also see Acts 1909, p. 22, sec. 154a.]

Art. 1501. [922] [990] **Shall be required to give new bond, when.**—It shall be the duty of the county commissioners' court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, to require such treasurer to give another bond or bonds, or to give additional bond or bonds, as the case may be.

Art. 1502. [923] [991] **Office to be declared vacant, when.**—Should the person elected treasurer fail to give the bonds required by this title and take the oath of office within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and, should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

Art. 1503. [924] [992] **Vacancy, how filled.**—Whenever there shall be a vacancy in the office of the county treasurer, it shall be the duty of the commissioners' court of the county in which such vacancy occurs to fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court, and such appointment shall continue in force until the next general election and until a successor is qualified. [Act Aug. 19, 1876, p. 217.]

Art. 1504. [925] [993] **Appointee shall take oath and give bonds.**—The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office. [Id.]

Art. 1505. [926] [994] **Shall receive moneys belonging to county, etc.**—It shall be the duty of the county treasurer to receive all moneys belonging to the county from whatever source they may be derived, and to pay and apply the same as required by law, in such manner as the commissioners' court of his county may require and direct. [Act May 13, 1846. P. D. 1097.]

Art. 1506. [927] [995] **Shall keep true accounts and superintend collection of money, etc.**—The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof. [Id. P. D. 1098.]

Art. 1507. [928] [996] **Shall report to commissioners' court.**—The county treasurer shall render a detailed report at every regular term of the commissioners' court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. [Id. P. D. 1099.]

Art. 1508. [929] [997] **Shall deliver money, etc., to successor in office.**—He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of, the county to his successor in office, and perform all such other acts as may be required of him by said commissioners' court. [Id. P. D. 1100.]

Art. 1509. [930] [998] **Shall not pay out money except, etc.**—The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and, if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners' court for their consideration and direction. [Id. P. D. 1101.]

Art. 1510. [931] [999] **Shall examine docket, accounts, etc.**—It shall be the duty of the county treasurer to examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners' court at their next term, to the end that suit may be instituted for the recovery thereof. [Id. P. D. 1102.]

Art. 1511. [932] [1000] **Shall perform such other duties as may be required by law.**—The county treasurer shall perform all such other duties as may be required of him by law.

TITLE 31.

COURT—SUPREME.

Chapter.		Chapter.
1. Judges of the Supreme Court.		7. Proceedings in Cases in the Supreme Court.
2. Terms of the Supreme Court.		8. Hearing Causes.
3. Jurisdiction of the Supreme Court.		9. Judgment of the Court.
4. The Clerk of the Supreme Court.		10. Rehearing.
5. Stenographer.		11. Execution of Judgment.
6. The Writ of Error; Proceedings to Obtain, etc.		12. Reporter to the Supreme Court.

CHAPTER ONE.

JUDGES OF THE SUPREME COURT.

	Article.		Article.
Chief and associate justices.....	1512	Vacancies, how filled.....	1515
Election and tenure of office.....	1513	Disqualification of judges.....	1516
Qualifications of judges.....	1514	Equal division of judges.....	1517

Article 1512. [933] [1001] **One chief and two associate justices.**—The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. [Const. art. 5, sec. 2.]

Art. 1513. [934] [1002] **Election and tenure of office.**—The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the state at a general election. The judges of said court now in office shall hold their office until the expiration of the term for which they were elected, and until their successors are elected and qualified. As soon as practicable after the election of the successors to the present incumbents, the newly elected judges shall cast lots for the term of office. That one who shall draw number one shall hold his office for two years; the one drawing number two shall hold his office for four years, and the one drawing number three shall hold his office for six years; each to hold his office until his successor is elected and qualified; and each justice of the supreme court elected thereafter shall hold his office for six years and until his successor is elected and qualified, and shall each receive an annual salary of four thousand dollars. [Acts of 1892, p. 19.]

Art. 1514. [935] [1003] **Qualifications of judges.**—No person shall be eligible to the office of chief justice or associate justice of the supreme court, unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years. [Id.]

Art. 1515. [936] [1004] **Vacancies, how filled.**—In case of a vacancy in the office of chief justice or associate justice of the supreme court, the governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. [Id.]

Art. 1516. [969] [1040] **Disqualification of judges.**—No judge of the supreme court shall sit in any cause wherein he may be interested in the question to be determined, or where either of the parties may be connected with him by affinity or consanguinity, within the third degree, or where he shall have been of counsel in the cause; and, when the court or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, the same shall be certified to the governor, who shall immedi-

ately commission the requisite number of persons, learned in the law, for the trial and determination of said cause or causes. [Const. art. 5, sec. 11; Act May 12, 1846. P. D. 1575.]

Art. 1517. [970] [1041] **Equal division of judges.**—Whenever the supreme court shall be equally divided in opinion on hearing any appeal or other matter, it shall be the duty of the chief justice or presiding judge of the court to certify the same to the governor; also, all other causes of disability of said court, as prescribed in the preceding article; whereupon, the governor shall immediately commission the required number of persons learned in the law for the determination of said case or cases; provided, that the person or persons so commissioned shall possess all the qualifications hereinbefore and hereinafter prescribed for judges of the supreme court. [P. D. 1576.]

CHAPTER TWO.

TERMS OF THE SUPREME COURT.

	Article		Article.
Terms of supreme court.....	1518	|	Bailliff; appointment and compensation... 1520
Adjournments	1519		

Article 1518. [937] [1005] **Terms of supreme court.**—The supreme court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and may continue until the last Saturday in the next June. [Acts of 1892, p. 19.]

Art. 1519. [938] [1010] **Adjournment from day to day; want of quorum.**—The said court may adjourn from day to day, or for such period as they may think necessary to the ends of justice and the determination of the business before them; and there shall be no discontinuance of any suit, process or matter returned to, or depending in, the supreme court, although a quorum of the court may not be in attendance at the commencement or any other day, of the term; but if a sufficient number of the judges shall not attend on the first day of the term to hold said court, or shall not attend at any day of the term, any judge of the court, or the sheriff attending the same, may adjourn the said court from time to time, for thirty days, at which time, if a majority or quorum shall not attend, it shall be the duty of the judge or sheriff in attendance to adjourn the court to the next regular term time. [Act May 12, 1846. P. D. 1574.]

Art. 1520. [939] **Bailliff, appointment and compensation.**—The supreme court may appoint a bailliff to attend the sitting of the court, who shall receive an annual salary of three hundred dollars.

CHAPTER THREE.

JURISDICTION OF THE SUPREME COURT.

Appellate jurisdiction	Article.	1521	May punish contempt.....	Article.	1527
Writs of error, in what cases.....	1522	May mandamus district judge to proceed	to trial	1528	
Court to make rules, etc.....	1523	May issue writs of habeas corpus when,	and admit to bail.....	1529	
To prescribe rules of practice.....	1524				
May ascertain jurisdictional facts.....	1525				
May issue writs	1526				

Article 1521. [940] [1011] **Appellate jurisdiction of supreme court.**—The supreme court shall have appellate jurisdiction co-extensive with the limits of the state, which shall extend to questions of law arising in all civil cases of which the courts of civil appeals have appellate but not final jurisdiction. [Acts' of 1892, p. 19.]

Art. 1522. [941] [1011a] **Writs of error, in what cases.**—All causes shall be carried up to the supreme court by writs of error upon final judgment and not on judgments reversing and remanding causes, except in the following cases, to-wit:

1. Where the state is a party or where the railroad commissioners are parties.
2. Cases which involve the construction and application of the constitution of the United States, or of the state of Texas, or of an act of congress.
3. Cases which involve the validity of a statute of the state.
4. Cases involving the title to a state office.
5. Cases in which a civil court of appeals overrules its own decisions or the decision of another court of civil appeals or of the supreme court.
6. Cases in which the judges of any court of civil appeals may disagree.
7. Cases in which any two of the courts of civil appeals may hold differently on the same question of law.
8. When the judgment of the court of civil appeals reversing a judgment practically settles the case, and this fact is shown in the petition for writ of error, and the attorneys for petitioners shall state that the decision of the court of civil appeals practically settles the case, in which case, if the supreme court affirms the decision of the court of civil appeals, it shall also render final judgment accordingly. [Id. Amend. 1895, p. 145.]

Art. 1523. [944] [1011d] **Court to make rules, etc.**—The supreme court shall, from time to time, make and promulgate suitable forms, rules and regulations for carrying into effect the articles of this title relating to the jurisdiction and practice of the supreme court. [Acts 1892, p. 19.]

Art. 1524. [947] [1014] **To prescribe rules of practice.**—The supreme court shall have power to make, establish and enforce all necessary rules of practice and procedure, not inconsistent with the laws of this state, for the government of said court and all other courts of the state, so as to expedite the dispatch of business in said courts. [Id.]

Art. 1525. [945] [1011e] **May ascertain jurisdictional facts.**—The supreme court shall have the power, upon affidavit or otherwise, as the court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. [Id.]

Art. 1526. [946] [1012] **May issue writs.**—The supreme court, or any justice thereof, shall have power to issue writs of habeas corpus as may be prescribed by law; and the said court, or the justices thereof, may issue writs of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said court; and, in term time or vacation, may issue writs of quo warranto or mandamus against any district judge or officer of the state government, except the governor of the state. [Id.]

[Note.—See title “Mandamus.”]

Art. 1527. [948] [1015] **May punish contempt.**—The supreme court shall have power to punish any person for a contempt of said court, according to the principles and usages of law in like cases, not to exceed one thousand dollars fine, and imprisonment not exceeding twenty days. [Act May 12, 1846. P. D. 1577.]

Art. 1528. [949] [1016] **May issue mandamus to compel district judge to proceed to trial.**—The said court, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, agreeably to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the same, or before any judge of the said court, as the nature of the case may require. [P. D. 1579.]

Art. 1529. **May issue writs of habeas corpus when, and admit to bail.**—The supreme court of Texas, or any one of the justices thereof, shall have power, either in term time or vacation, to issue writs of habeas corpus in all cases where any person is restrained in his liberty by virtue of any order, process or commitment, issued by any court or judge, on account of the violation of any order, judgment or decree, theretofore made, rendered or entered by such court or judge in any civil cause; and said supreme court, or any one of the justices thereof, shall have power, either in term time or vacation, pending the hearing of the application for such writ, to admit to bail any person to whom the writ of habeas corpus may be so granted. [Acts 1905, p. 20.]

CHAPTER FOUR.

THE CLERK OF THE SUPREME COURT.

Article.	Article.
Appointment, qualification and bond.....1539	Shall record proceedings.....1535
Vacancy in vacation, how filled.....1531	Deputies, appointment, etc., bond, com- pensation, duties.....1536
Term of office and salary.....1532	Clerk to be librarian.....1537
Seal of court, clerk to procure.....1533	His duties as such.....1538
Shall file and preserve transcripts, docket causes.....1534	

Article 1530. [950] [1017] **Appointment, qualification and bond.**—There shall be appointed for the supreme court one clerk, who shall reside at the place of holding court, which appointment shall be made by the court, or the judges thereof, and shall be entered of record in the proceedings of the court; and each person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath prescribed by the constitution, before some officer authorized to administer oaths generally, and shall enter into a bond with two good and sufficient sureties, to be approved by the court or judges thereof, payable to the governor and his successors in office, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he correctly record the judgments, decrees, decisions and orders of the said court, and deliver over to his successor in office all records, minutes, books and papers, and whatever belongs to his said office of clerk; which bond and oath shall, without delay, be deposited in the office of the secretary of state, and shall not be void on first recovery, but may be put in suit and prosecuted by any party injured until the amount thereof be recovered. [Acts of 1892, p. 19.]

Art. 1531. [951] [1018] **Vacancy in vacation, how filled.**—If, in vacation, the office of clerk may become vacant, the appointment shall be made by the chief justice and the associates of said court, or any one of said associates and chief justice; and the person so appointed shall give bond and take the oath as prescribed in the preceding article, the bond to be approved by any judge of the court; which bond and oath shall be deposited in the same manner as though the appointment had been made in term time, and may be prosecuted and put in suit in like manner; copies of said bond, certified under the hand of the secretary of state and the seal of state, shall be received in evidence in any court in this state, in the same manner as the original would be were it presented in court; and the said appointment shall continue until the next regular term of the said court, or until a regular appointment shall be made. [Act May 12, 1846. P. D. 1564.]

Art. 1532. [952] [1019] **Term of office and salary.**—The clerk of the supreme court shall hold his office for the term of four years from his appointment, but may be removed therefrom for neglect of duty or misconduct in office, by the supreme court, on motion, of which the clerk against whom complaint is made shall have ten days previous notice, specifying the particular charges of negligence or misconduct in office preferred; and in every such case the court shall determine the law and the facts; and whenever the necessity occurs, the supreme court may appoint a clerk pro tempore. The clerk of the supreme court shall receive as compensation for his services a salary of twenty-five hundred dollars per annum, and he shall collect and pay into the treasury of the state all fees and costs to be collected by him over and above the salaries allowed him and his deputies, under such further rules and regulations as shall be prescribed by the comptroller, not in conflict with this chapter; such rules and regulations to be subject to the approval of the judges of the supreme court, to be entered of record in the minutes of said court. [Acts 1892, p. 19.]

Art. 1533. [953] [1020] **Seal of court, clerk to procure.**—It shall be the duty of the clerk of the supreme court to procure a seal for the use of the court, which shall have a star of five points, with the words "Supreme Court of the State of Texas" engraved thereon. [Act May 12, 1846. P. D. 1569.]

Art. 1534. [954] [1021] **Shall file and preserve transcripts and docket causes.**—The clerk of the supreme court shall file and carefully preserve the transcripts of all records certified to said court, and all papers relative thereto, and shall docket all causes in the order in which the court shall direct. [P. D. 1583.]

Art. 1535. [955] [1022] **Shall record proceedings.**—The said clerk shall faithfully record the proceedings and decisions of said court, and certify their judgments to the courts from which the causes were brought. [P. D. 1584.]

Art. 1536. [956] [1023] **Deputies, appointment, etc.; bond, compensation, duties.**—The clerk of the supreme court may appoint one deputy when authorized to do so by a majority of the judges of the supreme court, which authority shall appear of record in the minutes of said court. Said deputy may discharge all the duties required by law of said clerk, and shall be required to give bond in the same manner and amount as the clerk of said court, and to be approved by the judges of said court. Said deputy shall receive as compensation for his services such sum as shall be unanimously agreed on by the judges of the supreme court, this action to appear of record in the minutes of the court, not to exceed the sum of two thousand dollars per annum, to be paid out of the fees collected by the clerk of said court. If the business of the court shall require it, the judges may, by order entered upon the minutes, authorize the clerk of said court to appoint another deputy who shall have like powers as

the first, and shall give bond in such sum as may be specified by the court. The court shall, in its order, fix the compensation of the additional deputy at a sum per month, not to exceed one thousand dollars per annum, to be paid out of the fees of the office collected by the clerk; and the court in said order shall specify the time for which the appointment may be made. The judges of the supreme court may dispense with the services of either or both of said deputies, or for any length of time as in their discretion they may deem to the public interest. [Acts 1903, p. 115.]

Art. 1537. [957] [1024] **Clerk to be librarian.**—The clerk of the supreme court shall be librarian in charge of the library of said court. [Acts 1892, p. 19.]

Art. 1538. [958] [1025] **His duties as such.**—It shall be the duty of such librarian to take charge of and keep together and in good order and make catalogues of the books of said libraries, which shall be open to the public use under such rules as may be prescribed by the court for the safe keeping thereof; provided, the books shall not be removed from the library room, except by the judges of the court and by members of the legislature during the session of the legislature, upon their receipt for the same to the clerk. [Id.]

CHAPTER FIVE.

STENOGRAPHER.

Court stenographer and salary.....	Article. 1539
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Article 1539. [952] [1019] **Court stenographer and salary.**—The supreme court shall appoint a stenographer for said court, at an annual salary of fifteen hundred dollars. [Acts 1892, p. 22.]

CHAPTER SIX.

THE WRIT OF ERROR—PROCEEDINGS TO OBTAIN, ETC.

Petition for writ of error; requisites of and bond	Article. 1540	Conclusions of fact, may suspend action on petition to obtain.....	Article. 1542
Filing; time of, etc.....	1541	Writ granted, when, etc.....	1544
Petition with record, etc., to be for- warded; provided deposit, etc.....	1542	Bond required, when.....	1543

Article 1540. [942] [1011b] **Petition for writ of error; requisites of and bond.**—Any party desiring to sue out a writ of error before the supreme court shall present his petition addressed to said court, stating the nature of his case and the grounds upon which the writ of error is prayed for, and showing that the supreme court has jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the supreme court. [Id. Amend. 1895. p. 144.]

Art. 1541. [942] [1011b] **Filing, time of, etc.**—The petition shall be filed with the clerk of the court of civil appeals within thirty days from the overruling of the motion for rehearing, and thereupon the said clerk of the court of civil appeals shall note upon his record the filing of said application. [Id.]

Art. 1542. [942] [1011b] **Petition with record, etc., to be forwarded; provided deposit, etc.**—The clerk of the court of civil appeals shall forward to the clerk of the supreme court the said petition, together with the original record in the case, and the opinions of the court of civil appeals, and the motion filed therein, and certified copies of the judgments and orders of the court of civil appeals; provided, that the party applying for the writ of error shall deposit with the clerk of the court of civil appeals a sum sufficient to pay the expressage or carriage of the said record to and from the clerk of the supreme court, which sum shall be charged as costs in the suit. [Id.]

Art. 1543. [943] [1011c] **Conclusions of fact, may suspend action on petition to obtain.**—If, upon an inspection of the petition for writ of error and the record of the cause, it shall appear that a court of civil appeals has failed to file conclusions of fact, or that it has not complied with the requirements of the law, in filing its conclusions of fact, and, if it shall further appear that such conclusions of fact are necessary to enable the supreme court to properly determine the rights of the parties, then the supreme court may suspend action on the petition for writ of error, and return the record to the court of civil appeals, with the instructions to make and return conclusions of fact upon the points indicated by the supreme court. [Acts 1901, p. 122.]

Art. 1544. [943] [1011c] **Writ granted, when.**—If, upon examination of a petition for writ of error the supreme court shall find that there is error in the judgment of the court of civil appeals, it shall grant a writ of error, returnable within the time and in the manner prescribed by the rules of that court. [Id.]

Art. 1545. [942] [1011b] **Bond required, when.**—If the writ of error be granted and the plaintiff in error has given no bond, then the supreme court in granting the writ shall specify what bond shall be given; and the plaintiff in error shall file said bond in the trial court, to be approved by the clerk of said court, and a certified copy thereof shall at once be transmitted to the supreme court; and, upon the filing of said certified copy, the clerk of the supreme court shall issue the citation in error as may be prescribed by the rules of the supreme court. [Acts 1895, p. 144.]

CHAPTER SEVEN.

PROCEEDINGS IN CASES IN THE SUPREME COURT.

	Article.		Article.
Trial on questions of law only.....	1546	Briefs filed	1547

Article 1546. [967] [1033] **Trial to be on questions of law only.**—In all cases of writs of error or questions certified to the supreme court, the trial shall be only upon the question of law upon which the writ of error was allowed, or which was certified to the supreme court from a court of civil appeals; but the supreme court may require at any time the original transcript to be sent up. [Acts of 1892, p. 19.]

Art. 1547. [968] [1039] **Briefs filed.**—When any cause or suit may be taken to the supreme court by writ of error, the briefs and arguments filed in the courts of civil appeals shall be submitted to the supreme court; and, in addition thereto, the attorney for either party may file additional briefs, under such rules and regulations as may be prescribed by the supreme court. [Id.]

CHAPTER EIGHT.

HEARING CAUSES.

	Article		Article.
Order of trial of causes.....	1548	Death of parties no abatement, when.....	1549

Article 1548. [971] [1042] **Order of trial of causes.**—Causes on the docket of said court may be tried by districts, or in such order as to the judges of said court may seem best calculated to promote the interest and convenience of the parties or their attorneys. [Act Feb. 11, 1850. P. D. 1585.]

Art. 1549. [973] [1044] **Death of parties no abatement, when.**—If any party to the record, in any cause now pending in, or hereafter taken to, the supreme court or court of civil appeals, by appeal or writ of error, shall have died heretofore, or shall hereafter die, after the appeal bond has been filed and approved, or after the writ of error has been served, and before such cause has been decided by the supreme court or courts of civil appeals, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. [Id.]

CHAPTER NINE.

JUDGMENT OF THE COURT.

Article.	Article.		
Judgments in open court; opinions in writing	1550	Same subject	1556
Judgment on affirmance or rendition, etc.	1551	Affidavit of inability to pay or secure costs	1557
If judgment reversed, may remand to court of civil appeals or district court.	1552	Mandate to issue to what court.	1558
No reversal or dismissal for want of form	1553	No mandate to be taken out after twelve months, in case of reversal and remand; certificate and dismissal.	1559
When judgment shall become final.	1554	Mandate recalled where judgment set aside	1560
Mandate to issue, when.	1555		

Article 1550. [974] [1047] **Judgments in open court; opinions in writing.**—In all cases decided by the supreme court, the judgment or decree of the court shall be pronounced in open court; and the opinion of the court shall be reduced to writing in those cases which the court, in its discretion, may deem of sufficient importance to be reported, and such opinions shall be recorded by the clerk of the court in a book kept by him for that purpose. [Act. Nov. 10, 1866, p. 134. P. D. 6417.]

Art. 1551. [975] [1049] **Judgment on affirmance or rendition, etc.**—Whenever the supreme court, on the trial of a cause brought from any court of civil appeals, shall affirm the judgment or decree of such court, or when said court shall proceed to render such judgment or decree as should have been rendered by the court of civil appeals, and such judgment shall be for the same or a greater amount, or of the same nature as rendered in the court below, said supreme court shall render judgment against plaintiff in error and his sureties on his bond, a copy of which shall always accompany the transcript of the record. [Acts 1892, p. 19. Acts 1907, S. S., p. 467.]

Art. 1552. [975] [1049] **If judgment reversed, may remand to court of civil appeals or district court.**—If the judgment of a court of civil appeals shall be reversed, the supreme court may remand the case to the court of civil appeals from which it came for another trial, or the district court, as to the supreme court may seem proper. [Id.]

Art. 1553. [972] [1043] **No reversal or dismissal for want of form.**—There shall be no reversal or dismissal for want of form; provided, that the requirements of the law and the rules of the court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. In each case, the supreme court shall affirm the judgment, reverse and render the judgment which the courts of civil appeals ought to have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial. [Acts of 1892, p. 19.]

Art. 1554. [976] [1050] **When judgment shall become final.**—The judgment of the supreme court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed. [Acts 1897, p. 200. Acts 1892, p. 19. Acts 1901, p. 122.]

Art. 1555. [976] [1050] **Mandate to issue, when.**—Upon the rendition of final judgment, the clerk of the supreme court, or court of civil appeals, upon payment of costs, shall issue the mandate in the case. [Id.]

Art. 1556. [984] [1058] **Same subject.**—The clerk of the supreme court shall not deliver the mandate of said court until all costs of said court and of the court of civil appeals shall have been paid; subject, however, to the provisions of the next succeeding article. [Acts 1892, p. 19.]

Art. 1557. [976] [1050] **Affidavit of inability to pay or secure costs.**—If the party against whom the costs are adjudged by the supreme court, or the court of civil appeals, shall make affidavit of his inability to pay

the costs, or give security therefor, he may apply to the supreme court, or the court of civil appeals, as the case may be, for an order to require the clerk of the court to issue the mandate in the cause; which motion shall be sustained, unless the clerk of the court, or a party to the record, shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. [Acts 1897, p. 200. Acts 1901, p. 122.]

Art. 1558. [976] [1050] **Mandate to issue to what court.**—All mandates from the said court shall issue to the court in which the original judgment was rendered. [Acts 1897, p. 200, Id. p. 123.]

Art. 1559. **No mandate to be taken out after twelve months, in case of reversal and remand; certificate and dismissal.**—In cases which are, by the supreme court, or courts of civil appeals, reversed and remanded, no mandate shall be taken out of either of said courts and filed in the court wherein said cause originated, unless such mandate shall be so taken out within the period of twelve months after the rendition of final judgment of the supreme court, or court of civil appeals, or the overruling of a motion for rehearing. And if any cause is reversed and remanded by the supreme court, or court of civil appeals, and if the mandate is not taken out within twelve months as hereinbefore provided, then, upon the filing in the court below of a certificate of the clerk of the supreme court, or court of civil appeals, that no mandate has been taken out, the case shall be dismissed from the docket of said lower court. [Id. p. 123.]

Art. 1560. [976] [1050] **Mandate recalled where judgment set aside.**—If, for any cause, the supreme court or court of civil appeals should set aside its judgment, after the mandate has been issued, the clerk of the court shall at once notify the party to whom the mandate was directed to return it at once. [Acts 1897, p. 200. Id. p. 123.]

CHAPTER TEN

REHEARING.

	Article.		Article.
Motion for, when and how made.....	1561	Service on one of several parties.....	1564
Notice of	1562	When motion heard.....	1565
Service and return of officer.....	1563		

Article 1561. [977] [1051] **Motion for, when and how made.**—Any party desiring a rehearing of any matter determined by said court may, within fifteen days after the date of entry of the judgment or decision of the court, file with the clerk of said court his motion in writing for a rehearing thereof, in which motion the grounds relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known, then the name and residence of the opposing party as shown in the record; provided, that should the court adjourn within less time than fifteen days after the rendition of the judgment, it may make such rules and regulations in reference to the filing of the motion as to it may seem best for the promotion of the interest of all the parties concerned. [Act May 2, 1874, p. 216, sec. 2. P. D. 6463q.]

Art. 1562. [978] [1052] **Notice to opposing party or attorney.**—Upon the filing of such motion with the clerk of said court, he shall make a certified copy of such motion and transmit the same by mail to the sheriff or any

constable of the county in which the attorney, or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept. [Act May 2, 1874, p. 216, sec. 4. P. D. 6463r.]

Art. 1563. [979] [1053] **Service and return of officer.**—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the court, by mail, stating thereon at what time, and to whom, he delivered the copy of the motion, or that the party named in the precept is not to be found in his county, as the case may be. [Id. P. D. 6463p.]

Art. 1564. [980] [1054] **Service on one of several parties.**—Service of said motion on any one of several parties or their attorneys to a cause shall be sufficient service on all.

Art. 1565. [981] [1055] **When motion heard.**—At any time, after five days from the return of such precept served, it shall be lawful for said supreme court to hear and determine such motion for rehearing, and not sooner. [Id. P. D. 6463p.]

CHAPTER ELEVEN.

EXECUTION OF JUDGMENT.

Article.	Article.		
Process, how tested, directed and executed	1566	Officer failing to make return; remedy	1570
Judgment enforced, how	1567	Money due clerk of court of civil appeals to be paid by clerk of supreme court; remedy	1571
Execution issued, when	1568		
Execution returnable, when	1569		

Article 1566. [982] [1056] **Process, how tested, directed and executed.**—All writs and process issuing from the supreme court shall bear the test of the chief justice or presiding judge of said court, and be under the seal of said court and signed by the clerk thereof, and may be directed to the sheriff or any constable of any county in the state, and shall be by such officer executed according to the demand thereof, and returned to the court from which they emanated; and whenever such writs or process shall not be executed, the clerk of the said court is hereby authorized and required to issue another like process or writ, upon the application of the party suing out the former writ or process to the same or any other county. [Acts of 1892, p. 19.]

Art. 1567. [983] [1057] **Judgment enforced, how.**—Upon the rendition by the supreme court of any such judgment or decree as is contemplated by article 1551, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the mandate of the supreme court or court of civil appeals, shall proceed to issue execution thereon as in other cases. [Id.]

Art. 1568. [984] [1058] **Execution issued, when.**—If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the said clerk may issue an execution for the costs of the supreme court and the court of civil appeals, specifying the amount of each, and attaching to said execution a correct list of all costs accruing in each of said courts. Said execution shall be directed to the sheriff or any constable of the county from which the cause was removed, or to any

county in which the person or persons, liable under such execution, or either of them, may have property. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations and liabilities as provided for executions from the district court. [Acts 1892, p. 23.]

Art. 1569. [985] [1059] **Execution returnable, when.**—All executions for costs of the supreme court, as authorized by law, shall be returned by the sheriff or constable to whom they are directed, within four months from the date thereof. [Act March 9, 1875, p. 70, sec. 2.]

Art. 1570. [986] [1060] **Officer failing to make return; remedy by motion.**—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said supreme court may issue citation returnable forthwith to such officer to appear before the said supreme court, and show cause, if any he can, why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for twice the amount of said costs, together with the cost of such proceeding. [Id.]

Art. 1571. [986] [1060] **Money due clerk of court of civil appeals to be paid by clerk of supreme court; remedy by motion.**—It shall be the duty of the clerk of the supreme court, when he shall receive any money due the clerk of any court of civil appeals, to pay the same over to such clerk of the courts of civil appeals; and, if he refuses to do so upon demand, the clerk of the said courts of civil appeals may file in the supreme court a motion against the said clerk so failing; and, upon ten days' notice given to him, the said supreme court may enter judgment against said clerk of the supreme court and the sureties on his official bond for double the amount of the costs so collected by him and due to said clerk of the courts of civil appeals. [Id.]

CHAPTER TWELVE.

REPORTER TO THE SUPREME COURT.

Appointment and removal of.....	Article. 1572	Duties of printing board.....	Article. 1576
Stationery, how furnished.....	1573	Requisites of volume.....	1577
Records and manuscripts; duties of re- porters.....	1574	Sale of reports.....	1578
Court to designate the cases to be re- ported.....	1575	Reports, how printed.....	1579

Article 1572. [959] **Appointment and removal of reporters.**—The judges of the supreme court, after their election to each term of office, shall appoint some person or persons learned in the law, being a licensed attorney, to report the decisions of the supreme court, and of the courts of civil appeals, who shall be removable at the pleasure of the court, and who shall be paid for the services required three thousand dollars per annum, payable monthly on the certificate of the chief justice; provided, however, that he may be allowed such additional compensation for reporting the decisions of the courts of civil appeals as the supreme court may deem just. [Acts of 1882, p. 71.]

Art. 1573. [960] **Stationery, how furnished.**—The reporter shall be furnished by the state printing board with the necessary stationery for the performance of the duties imposed by the provisions hereof. [Id.]

Art. 1574. [961] **Records and manuscript; duties of reporter.**—The reporter shall obtain from the clerks of the courts the records of cases to be reported, with the briefs and opinions in such cases as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall, without delay, under the direction of the court, prepare such decisions, with appropriate syllabus, and statements when necessary, for publication in book form, and shall, from time to time, deliver the same to the secretary of state for the board of public printing as hereinafter provided. The secretary of state shall receipt for the same and deliver to the expert printer appointed by the board of public printing for publication. [Id.]

Art. 1575. [962] **Court to designate the cases to be reported.**—The supreme court shall designate, by orders or otherwise, the cases to be reported; and only such cases as are designated shall be reported and published; and only the main propositions made in the briefs and considered by the court in the opinion, with the authorities cited in support of such propositions, shall be incorporated in the report. [Id.]

Art. 1576. [963] **Duties of printing board.**—As fast as the board of public printing shall receive through the secretary of state the manuscript copy of reported cases for the reporter, said board shall cause the same to be printed, with proper index, tables of cases cited, and of cases reported, at the printing office at the deaf and dumb asylum of Texas, and have one thousand copies bound of each volume of reports. The index, tables of cases cited, and of cases reported shall be prepared by the reporter. The expert printer appointed by the printing board shall, after revising the printing, deliver a revise as the work progresses to the reporter, who shall correct and return to said expert. [Id.]

Art. 1577. [964] **Requisites of volume.**—The decisions of said courts shall be printed and bound. Each volume shall not contain less than seven hundred pages nor more than eight hundred pages. Each page shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long primer and minion of the same size used in volume twenty-three, Wallace's United States supreme court reports. The lines shall be leaded with not thicker than eight to pica leads. The paper, presswork and binding shall be of the same

style and at least equal quality in every respect with the volumes of Moore & Walker's reports heretofore published. The volumes containing the supreme court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the state. It shall be electrotyped, and the plates shall be owned by the state and preserved by the secretary of state. [Id.]

Art. 1578. [965] **Sale of reports by secretary of state.**—When printed and bound, the reports shall be delivered to the secretary of state, who shall sell single copies for two dollars, exclusive of postage or express charges; and he shall also, for the same price, sell single copies of any former volume of reports for either of said courts heretofore published under the state's copyright and now owned by the state. The secretary of state shall deliver to the state treasurer the proceeds of all sales so made by him, of which and of his operations hereunder and of the transactions of the said board hereunder he shall make a full statement and showing in his biennial report. [Id.]

Art. 1579. [966] **Reports, how printed.**—Should the expert printer, whose duty it is to supervise and have promptly executed the printing, binding and delivering of the reports to the secretary of state, fail to have the work executed with promptness and in accordance with the provisions hereof, he shall be removed from his trust and another appointed; and whenever the board of public printing shall ascertain that the work of printing and binding the reports can be done more speedily, better and more economically by contract, or that ample material and means to carry out the provisions hereof are not at their control, they shall at once let the printing and binding of the reports out by contract, requiring security for the performance of the work, and the delivery to the state of the electrotype plates. No copies of reports shall be furnished to any county except upon payment made by such county to the secretary of state, as in sale to private parties. The secretary of state may transmit advance sheets of the reports as the publishing progresses on receiving two dollars for the volume, the purchaser to have the right on returning all the forms of the volume to the secretary of state to have the same bound without further expense, on his paying the expense of transmitting the same to and from the state department. [Id.]

TITLE 32.

COURTS OF CIVIL APPEALS.

- Chapter.
1. Judges of the Courts of Civil Appeals.
 2. Terms of the Courts of Civil Appeals.
 3. Jurisdiction of the Courts of Civil Appeals.
 4. Clerks of the Courts of Civil Appeals.
 5. Stenographers.
 6. Proceedings in Cases in the Courts of Civil Appeals.

- Chapter.
7. Hearing Causes.
 8. Certification of Questions to Supreme Court, etc.
 9. Judgment of the Court.
 10. Conclusions of Fact and Law.
 11. Rehearing.
 12. Execution of Judgment.
 13. Reporter to the Courts of Civil Appeals.

CHAPTER ONE.

JUDGES OF THE COURTS OF CIVIL APPEALS.

	Article.		Article.
Chief and associate justices.....	1580	Vacancies, how filled.....	1583
Election and term of office.....	1581	Disqualification of judges.....	1584
Qualifications of judges.....	1582		

Article 1580. [987] **One chief and two associate justices.**—Each of the courts of civil appeals now or hereafter organized in this state shall consist of a chief justice and two associate justices, and the concurrence of two justices shall be necessary to the decision of a case. [Acts of 1892, S. S., p. 25.]

Art. 1581. [988] **Elected alternately, how; term of office.**—The chief justice and associate justices of each of the courts of civil appeals shall be elected by the qualified voters of their respective districts, composed of the counties returnable to the several courts, at a general election. Upon their qualification, after the first election after the creation of any court of civil appeals in this state, the justices thereof shall draw lots for the terms of office; and those drawing number one shall hold their offices for the term of two years; those drawing number two shall hold their offices for a term of four years, and those drawing number three shall hold their offices for the term of six years from the date of their election and until their successors are elected and qualified. Each of said offices shall be filled by election at the next general election at which terms as aforesaid would expire; and the person elected shall thereafter hold his office for six years and until his successor is elected and qualified, and shall receive each an annual salary of thirty-five hundred dollars, and no more. [Id.]

Art. 1582. [989] **Qualifications of judges.**—No person shall be eligible to the office of chief justice or associate justice of the courts of civil appeals, unless he be at the time of his election a citizen of the United States and of this state and a resident of the district for which he is elected, and unless he shall have attained the age of thirty years and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years. [Id.]

Art. 1583. [990] **Vacancies, how filled.**—In case of a vacancy in the office of chief justice or associate justice of any court of civil appeals the governor shall fill the vacancy until the next general election for state officers; and, at such general election, the vacancy for the unexpired term shall be filled by election by the qualified voters of the district composed of counties returnable to said court. [Id.]

Art. 1584. [1021] **Disqualification of judges.**—No judge of the courts of civil appeals shall sit in any cause wherein he may be interested in the question to be determined, or where either of the parties may be connected with him by affinity or consanguinity within the third degree, or where he shall have been of counsel in the cause; and where the court, or any two of its members, shall thus be disqualified to hear and determine any cause or causes in said courts, that fact shall be certified to the governor, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said cause or causes. [Id.]

CHAPTER TWO.

TERMS OF THE COURTS OF CIVIL APPEALS.

Terms of court.....	Article.....1585	Transfer of causes.....	Article.....1587
Places where courts of civil appeals shall be held	1586	Quorum, what, and court adjourned, when	1588

Article 1585. **Terms of court.**—The terms of the courts of civil appeals, in and for the several supreme judicial districts in the state of Texas, shall commence on the first Monday in October of each year and shall continue in session until the first Monday in July of each succeeding year. [Acts 1892, S. S., p. 25. Acts 1897, p. 132.]

[Note.—For division of the state into supreme judicial districts, see title “Apportionment,” article 29.]

Art. 1586. [993] **Places where courts of civil appeals shall be held.**—The courts of civil appeals shall be held at the following places, respectively:

1. One of the courts of civil appeals shall be held in the first supreme judicial district, in the city of Galveston, in the county of Galveston.
2. One of the courts of civil appeals shall be held in the second supreme judicial district, in the city of Fort Worth, in the county of Tarrant.
3. One of the courts of civil appeals shall be held in the third supreme judicial district, in the city of Austin, in the county of Travis.
4. One of the courts of civil appeals shall be held in the fourth supreme judicial district, in the city of San Antonio, in the county of Bexar.
5. One of the courts of civil appeals shall be held in the fifth supreme judicial district, in the city of Dallas, in the county of Dallas. [Acts 1892, S. S., p. 25.]
6. One of the courts of civil appeals shall be held in the sixth supreme judicial district, in the city of Texarkana, in the county of Bowie; provided, that if said court is located at Texarkana, the citizens thereof will furnish, provide, and equip a suitable room or rooms for said court and the members thereof, and the necessary law library therefor, without cost or expense to the state. [Acts 1907, p. 324, sec. 3.]

Art. 1587. [994a] **Transfer of causes.**—It shall be the duty of the supreme court to equalize, as nearly as practicable, the amount of business upon the dockets of the different courts of civil appeals, by directing the transfer of cases from such of said courts as may have the greater amount of business upon their dockets to those having a less amount of business upon their dockets; such transfers to be made as soon as practicable after the passage of this article, and thereafter at least once each year, in such manner and under

such rules and regulations as the supreme court shall provide. And said courts of civil appeals, to which such cases shall be transferred, shall have jurisdiction of all such cases transferred without regard to the districts in which cases were originally tried and returnable on appeal; provided, that cases transferred from any court of civil appeals shall be taken from cases appealed from the counties nearest to the place where the court to which the cases are transferred is held. [Acts 1895, p. 79. Acts 1893, p. 171. Acts 1909, p. 88.]

Art. 1588. [995] **Quorum, what, and court adjourned, when.**—A majority of the judges of the several courts of civil appeals shall constitute a quorum for the transaction of business. The said courts may adjourn from day to day or for such time as may be deemed proper by the judges thereof. But, if a sufficient number of the judges shall not be present at the first or any day of the term, any judge of the court, or the sheriff attending the same, may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term. [Acts 1895, p. 79.]

CHAPTER THREE.

JURISDICTION OF THE COURTS OF CIVIL APPEALS.

	Article.		Article.
Jurisdiction defined	1589	Inquire into facts of jurisdiction.....	1593
Judgment conclusive, when	1599	May punish for contempt.....	1594
Same subject	1591	May mandamus district courts.....	1595
Issue writs of mandamus, etc.....	1592		

Article 1589. [996] **Jurisdiction defined.**—The appellate jurisdiction of the courts of civil appeals shall extend to civil cases within the limits of their respective districts:

1. Of which the district courts have original or appellate jurisdiction.
2. Of which the county court has original jurisdiction.
3. Of which the county court has appellate jurisdiction, when the judgment, or amount in controversy, or the judgment rendered, shall exceed one hundred dollars, exclusive of interest and costs. [Id.]

Art. 1590. [996] **Judgment conclusive, when.**—The judgments of the courts of civil appeals shall be conclusive in all cases on the facts of the case. [Id.]

Art. 1591. [996] **Same subject.**—The judgments of the courts of civil appeals shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the supreme court in the following cases, to-wit:

1. Any civil case appealed from a county court or from a district court, when, under the constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the state or the validity of a statute.
2. All cases of boundary.
3. All cases of slander.
4. All cases of divorce.
5. All cases of contested elections of every character, other than for state officers, except where the validity of the statute is attacked by the decision.
6. The judgments of said courts of civil appeals shall be final in all appeals from interlocutory orders appointing receivers or trustees or such other interlocutory appeals as may be allowed by law.

7. The judgment of said court shall be final in all other cases as to law and facts, except where appellate jurisdiction is given to the supreme court and not made final in said courts of civil appeals.

Art. 1592. [997] **May issue writs of mandamus, etc.**—The said courts and the judges thereof shall have power to issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts. [Id.]

Art. 1593. [998] **May inquire into facts touching jurisdiction.**—The said courts shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction. [Id.]

Art. 1594. [999] **May punish for contempt.**—The said courts shall have power to punish any person for a contempt of said court, according to the principles and usages of law in like cases, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days. [Id.]

Art. 1595. [1000] **May mandamus district courts.**—The said courts, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, agreeably to the principles and usages of law, returnable on or before the first day of the next term or during the session of the same, or before any judge of the said court, as the nature of the case may require. [Id.]

[Note.—For further provisions as to jurisdiction of courts of civil appeals, see chapter 20, title 37.]

CHAPTER FOUR.

CLERKS OF THE COURTS OF CIVIL APPEALS.

Article	Article.
Clerk; appointment, qualification and bond 1596	To record judgments, etc.; certify decisions to lower court 1601
Temporary appointment to fill vacancy 1597	Deputy clerks 1602
Term of office and how removed 1598	Shall be librarian, except, etc. 1603
Seal of court 1599	Library regulations 1604
Duties as to records, transcripts, dockets, etc. 1600	Semi-annual report of costs collected . . . 1605

Article 1596. [1001] **The clerk, his appointment, qualification and bond.**—There shall be appointed for each of the courts of civil appeals one clerk, who shall reside at the place of holding court, which appointment shall be made by the court, or the judges thereof, and shall be entered of record in the proceedings of the court; and each person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath prescribed by the constitution before some officer authorized to administer oaths generally, and shall enter into a bond, with two good and sufficient sureties, to be approved by the court, or any judge thereof, payable to the governor and his successors in office, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he will correctly record the judgments, decrees, decisions and orders of said courts, and deliver over to his successor in office all records, minutes, books and papers and whatever belongs to his said office of clerk; which bond and oath shall, without delay, be deposited in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit and prosecuted by any party injured, until the amount thereof is recovered. [Id.]

Art. 1597. [1002] **Temporary appointment to fill vacancy, how and when made.**—If, in vacation, the office of clerk may become vacant, the appoint-

ment shall be made by the chief justice and the associates of said courts, or by any one of said associates and chief justice; and the person so appointed shall give bond and take the oath as prescribed in the preceding article, the bond to be approved by any judge of the court; which bond and oath shall be deposited in the same manner as though the appointment had been made in term time, and may be prosecuted and put in suit in like manner; copies of said bond, certified under the hand of the secretary of state and the seal of state, shall be received in evidence in any court in the state, in the same manner as the original would be were it presented in court; and the said appointment shall continue until the next regular term of the said court, and until a regular appointment shall be made. [Id.]

Art. 1598. [1003] **Term of office, and how removed.**—The clerk of each of said courts shall hold his office for a term of two years from his appointment, but may be removed therefrom for neglect of duty or misconduct in office, by the courts of civil appeals, on motion of which the clerk against whom complaint is made shall have ten days' previous notice, specifying the particular charges of negligence or misconduct in office preferred; and in every such case the court shall determine both the law and the facts; and, whenever the necessity occurs, the court may appoint a clerk pro tempore. [Id.]

Art. 1599. [1004] **Seal of court.**—It shall be the duty of the clerk of each court of civil appeals to procure a seal for the use of the court, which shall have a star of five points, with the words: "Court of Civil Appeals of the state of Texas," engraved thereon. [Id.]

Art. 1600. [1005] **Duties as to records, transcripts, dockets, etc.**—The clerks of said courts shall file and carefully preserve the transcripts of all records certified to said court, and all papers relative thereto, and shall docket all causes in the order in which they are filed. [Id.]

Art. 1601. [1006] **To record judgments, etc., and to certify decisions to lower court.**—The said clerk shall faithfully record the proceedings and decisions of said courts, and certify their judgments to the court from which the causes were brought. [Id.]

Art. 1602. [1007] **Deputy clerks, appointment of, and fees.**—The clerk of each court may appoint deputies, who, in the name of said clerk, may discharge all the duties required by law of said clerk, and said deputies may be required to give bonds, with sureties, to said clerk, for the faithful discharge of their duties; which deputies shall be paid out of the fees collected by the clerk, not to exceed twelve hundred dollars per annum to each deputy. [Id.]

Art. 1603. [1008] **Shall be librarian, except, etc.**—The clerk of each of said courts shall be librarian in charge of the libraries of said court, except the library at Austin, which shall be under the control of the supreme court. [Id.]

Art. 1604. [1009] **Library regulations.**—It shall be the duty of such librarian to take charge of, and keep together in good order and make catalogues of, the books of such library, which shall be open to the public use, under such rules as may be prescribed by the courts for the safe keeping thereof; provided, the books shall not be removed from the library room, except by the judges of the courts. [Id.]

Art. 1605. [1010] **Semi-annual report of costs collected.**—The clerks of each of the courts of civil appeals shall, within ten days after the first day of January and July, make a report under oath to said courts showing the amount of costs collected by him during the preceding six months, and also the cases in which the same was collected, and the disposition made of such cause. Such report shall be filed and recorded in the minutes of the court. [Id.]

CHAPTER FIVE.

STENOGRAPHER.

Court stenographer and salary.....	Article. 1606
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Article 1606. [1012] **Court stenographer and salary.**—Each court of civil appeals shall be authorized to appoint one stenographer, who shall be a typewriter, who shall discharge such duties as may be required by the court, shall be sworn to keep secret all matters which may come to his knowledge as such stenographer and typewriter, and who shall receive a salary of nine hundred dollars per annum, and shall give bond with two or more sureties in the sum of two thousand dollars, to be approved by the presiding judge of said court, payable to the state of Texas, conditioned for the faithful performance of his duties as such stenographer and typewriter. [Acts 1899, p. 115. Acts 1895, p. 79. Acts 1893, p. 165. Acts 1905, p. 19.]

CHAPTER SIX.

PROCEEDINGS IN CASES IN THE COURTS OF CIVIL APPEALS.

<table border="0"> <tr> <td>Cases, how brought before the courts for trial</td> <td style="text-align: right;">Article. 1607</td> </tr> <tr> <td>Transcript filed, when.....</td> <td style="text-align: right;">1608</td> </tr> <tr> <td>New appeal bond allowed, when.....</td> <td style="text-align: right;">1609</td> </tr> <tr> <td>Certificate of affirmance, proceedings.....</td> <td style="text-align: right;">1610</td> </tr> </table>	Cases, how brought before the courts for trial	Article. 1607	Transcript filed, when.....	1608	New appeal bond allowed, when.....	1609	Certificate of affirmance, proceedings.....	1610	<table border="0"> <tr> <td>Transcript filed, and cause heard after affirmance on certificate, when.....</td> <td style="text-align: right;">Article. 1611</td> </tr> <tr> <td>Assignment of error, requisite of.....</td> <td style="text-align: right;">1612</td> </tr> <tr> <td>Docket of causes and disposition of same.....</td> <td style="text-align: right;">1613</td> </tr> <tr> <td>Appearance by brief, etc.....</td> <td style="text-align: right;">1614</td> </tr> <tr> <td>Notices to attorneys, how given.....</td> <td style="text-align: right;">1615</td> </tr> </table>	Transcript filed, and cause heard after affirmance on certificate, when.....	Article. 1611	Assignment of error, requisite of.....	1612	Docket of causes and disposition of same.....	1613	Appearance by brief, etc.....	1614	Notices to attorneys, how given.....	1615
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Article 1607. [1014] **Case, how brought before the court for trial.**—In all cases of appeal or writ of error to the courts of civil appeals, the trial shall be on a statement of facts or agreed statement of the pleadings and proof as agreed upon by the parties or their attorneys, or the conclusions of law and fact, as the case may be, certified to by the judge of the court below; or should the parties fail to agree, then the judge of the court below shall certify the facts; or on a bill of exceptions to the opinion of the judge; or on a special verdict; or on an error in law, either assigned or apparent on the face of the record; and, in the absence of all these, the case shall be dismissed with costs alone, or with costs and damages, at the discretion of the court. And the court shall admit, as part of the record to be examined by them in the trial of a cause, every bill of exceptions not signed by the judge trying the cause below, upon its appearing to the satisfaction of the court that the facts are fairly stated therein; that said bill was prepared in accordance with the law governing the preparation of such bills, and that the judge trying the cause refused to sign the same; and the truth of any such bill of exceptions shall be determined by the court on the copies of the affidavits required by law to be made in such case, such copies to be contained in, and to form a part of, the record transmitted to the court of civil appeals. [Id.]

Art. 1608. [1015] **Transcript filed, when.**—In any appeal or writ of error as provided for in this chapter, the appellant or plaintiff in error shall file the transcript with the clerk of the courts of civil appeals within ninety days from the performance of the appeal or service of the writ of error; provided.

that, for good cause, the court may permit the transcript to be thereafter filed upon such terms as it may prescribe.

Art. 1609. [1025] **New appeal bond allowed, when.**—When there is a defect of substance or form in any appeal or writ of error bond, on motion to dismiss the same for such defect, the court may allow the same to be amended by filing in the said courts of civil appeals a new bond, on such terms as the court may prescribe. [Id.]

[Note.—See art. 2104, amendment of appeal bonds and recognizances generally.]

Art. 1610. [1016] **Certificate of affirmance, and proceedings thereon.**—In case the appellant or plaintiff in error shall fail to file a transcript of the record, as directed in this chapter, then it shall be lawful for the appellee or defendant in error to file with the clerk of said court a certificate of the clerk of the district or county court in which any such appeal or writ of error may have been taken, attested by the seal of his court, stating the time when such appeal was perfected or such citation was served; whereupon, it shall be the duty of the courts of civil appeals to affirm the judgment of the court below, unless good cause can be shown why such transcript was not filed by the appellant or plaintiff in error. If a copy of the bond accompanies such certificate of the clerk of the district or county court, the judgment shall, in like manner, be affirmed against the sureties on such bond. [Id.]

Art. 1611. [1017] **Transcript filed and cause heard after affirmance on certificate, when.**—In all cases where the courts of civil appeals shall have affirmed the judgment of the court below, under the provisions of the preceding article, said court may, at any time within fifteen days after such affirmance, permit the transcript to be filed by the appellant or plaintiff in error, and the case to be tried on its merits; provided, that appellant or plaintiff in error shall show to the court good cause why the transcript was not filed by him in accordance with the provisions of article 1608, and shall also show to said court that he has given the appellee or defendant in error notice of his intentions to apply for such permission to file said transcript; and, in cases where the court shall adjourn within fifteen days after any judgment shall have been affirmed under the provisions of the next preceding article, the court may permit the appellant or plaintiff in error to file said transcript at such time as may be deemed proper, and have said cause tried on its merits; provided, said appellant or plaintiff in error shall show good cause why said transcript was not filed as herein directed, and shall show to the court that he has given the appellee or defendant in error notice of his intention to apply for permission to file said transcript. [Id.]

Art. 1612. [1018] **Assignment of error; requisite of.**—The appellant or plaintiff in error shall in all cases file with the clerk of the court below all assignments of error, distinctly specifying the grounds on which he relies, before he takes the transcript of the record from the clerk's office; all errors not distinctly specified are waived. [Id.]

Art. 1613. [1022] **Docket of causes and disposition of same.**—When a cause is carried to the courts of civil appeals by writ of error, it shall be docketed in the order of the date received; and the clerk shall transfer the said cause to the trial docket thirty days after the same has been received and docketed; provided, that the court may, upon motion of either party, of which notice shall be given to the adverse party, extend the time for placing said cause on the trial docket for good cause shown. [Id.]

Art. 1614. [1019] **Appearance by brief, etc.**—When any cause or suit may be taken up from any inferior court to the court of civil appeals, whether by appeal, writ of error, or otherwise, it shall be lawful for the attorney for both the plaintiff and defendant to file, in the papers of said suit or cause, written or printed briefs or argument, if written not to exceed fifteen

pages; and the said court shall be required to notice the same as if it were the personal appearance of said attorney, and shall not dismiss any suit or cause where such brief or argument of counsel is filed with the papers for want of other or further prosecution. [Acts 1909, S. S. p. 270.]

Art. 1615. [1020] **Notices to attorneys, how given.**—All notices required herein to be given by the court of civil appeals to the parties or their attorneys of record in any case shall be served by the clerk of said court, transmitting said notice to said attorneys by registered letter through the mail properly directed. Registration receipts shall be filed and kept by the clerk with the record of the cause. [Id.]

CHAPTER SEVEN.

HEARING CAUSES.

Hearing of cases, order of.....	Article. 1616	Death does not abate, when.....	Article. 1618
Order of decision, etc.....	1617		

Article 1616. [1022] **Hearing of cases, order of.**—Causes on the trial docket of said court shall be heard in the order of the date of filing, except as hereinafter provided, unless continued to some future time for good cause shown; and it shall be the duty of the clerk, under the directions of the court, to notify the parties or the attorneys of record of the date when the cause is set for hearing. [Id.]

Art. 1617. [1023] **Cases decided in their order, except, etc., and disposed of, how.**—The cases filed in the courts of civil appeals shall be decided in the order in which they are filed at each term of the court, but the following cases shall have precedence of all others in the order named:

1. All cases in which the railway commission is a party.
2. Cases in which the state is a party.
3. Cases which shall be submitted on oral argument for all parties to the cause.
4. Such other cases as the court, by order or rule, may direct.

On the call of cases, the court shall set down the causes for argument for such time as the same can be heard, and notice of which shall be given to counsel as heretofore provided; and said cause shall be determined upon argument or as soon thereafter as practicable, or it shall be set down for further argument, but may be postponed by order of the court to a later day in the term. [Id.]

Art. 1618. [1026] **Death does not abate, when.**—If any party to the record in any cause hereafter taken to the courts of civil appeals, by appeal or writ of error, or transferred from the supreme court or courts of appeals, shall have died heretofore, or shall hereafter die, after the appeal bond has been filed and approved, or after the writ of error has been served, and before such cause has been decided, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all parties thereto were still living; and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. [Id.]

CHAPTER EIGHT.

CERTIFICATION OF QUESTIONS TO SUPREME COURT, ETC.

Article.	Article.
Questions of law certified to supreme court	Conflict with decision of another court of civil appeals; question and record transmitted and certified to supreme court, etc.
1619	1623
Dissenting opinion; point of dissent certified to supreme court	Proceedings on same in supreme court.
1620	1624
Proceedings on certificate of dissent	Action of supreme court on; effect and finality of
1621	1625
Decision of supreme court certified back, judgment on	
1622	

Article 1619. [1043] **Questions of law certified to supreme court.**—Whenever, in any case pending before the court of civil appeals, there should arise an issue of law which said court should deem it advisable to present to the supreme court for adjudication, it shall be the duty of the presiding judge of said court to certify the very question to be decided by the supreme court; and, during the pendency of the decision by the supreme court, the cause in which the issue is raised shall be retained for final adjudication in accordance with the decision of the supreme court upon the issue submitted. [Acts 1893, p. 100.]

Art. 1620. [1040] **Dissenting opinion; point of dissent certified to supreme court.**—When any one of said courts of civil appeals shall, in any cause or proceeding, render a decision in which any one of the judges therein sitting shall dissent as to any conclusions of law material to the decision of the case, said judge shall enter the grounds of his dissent of record; and the said court of civil appeals shall, upon motion of the party to the cause, or on its own motion, certify the point or points of dissent to the supreme court. [Acts 1893, p. 89.]

Art. 1621. [1041] **Proceedings on certificate of dissent.**—When a certificate of dissent is sent up by any court of civil appeals, it shall be the duty of the clerk to send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, and the original transcript, if so ordered by the supreme court; and, thereupon, if the supreme court so direct, the clerk shall set down the same for argument, and notify the attorneys of record. [Id.]

Art. 1622. [1042] **Decision of supreme court certified back; judgment on.**—After the question is decided, the supreme court shall immediately notify the court of civil appeals of their decision, and the same shall be entered as the judgment of said court of civil appeals. [Id.]

Art. 1623. **Conflict with decision of another court of civil appeals; question and record transmitted and certified to supreme court.**—Wherever, in any cause at any time pending in any of the courts of civil appeals of the several supreme judicial districts of the state of Texas, any one of said courts may arrive at an opinion in the decision of any such cause that may be in conflict with the opinion heretofore rendered, or hereafter rendered, by some other court of civil appeals in this state on any question of law, and such court of civil appeals refuses to concur with the opinion so rendered by such other court of civil appeals, it shall be the duty of such court failing to concur with the opinion in conflict with the opinion so arrived at by such court, through its clerk, to transmit the question of law, duly certified to, involved in the cause wherein said conflict of opinion has arisen, together with the record or transcript in such cause, to the supreme court of the state of Texas for adjudication by the supreme court. [Acts 1899, p. 170.]

Art. 1624. **Proceedings on same in supreme court.**—When said record shall have been received by the clerk of the supreme court, he shall docket the same; and the supreme court shall set such cause down for hearing at some future day; and the clerk of the supreme court shall at once notify the parties

or their attorneys of record of such setting, and such case shall be set for a time sufficiently far in the future to give such attorneys reasonable time to prepare briefs and arguments if they so desire. [Id.]

Art. 1625. **Action of supreme court on; effect and finality of.**—It shall be the duty of the supreme court, on receiving such record, together with such certified question of law, from the court of civil appeals transmitting the same, to examine such record and such certified question of law, and render an opinion in such cause, as in other cases; which opinion, when so rendered by said supreme court, on the record and question of law presented therein, shall be final, and shall be the law on the question involved, until said opinion shall have been overruled by the said supreme court, or abrogated by legislative enactment, and the courts of civil appeals shall be governed thereby. [Id. sec. 2.]

CHAPTER NINE.

JUDGMENT OF THE COURT.

	Article.		Article.
If judgment reversed, when reformed	1626	Suggestion of remittitur.....	1631
and when remanded	1626	Refusal to remit not subject to comment	1632
Judgment on affirmance or rendition, etc.	1627	on subsequent trial.....	1632
Damages adjudged, when.....	1627	Mandate issued, when	1633
Finality	1627	No mandate to issue until costs paid.....	1634
No reversal for want of form.....	1628	Affidavit of inability to secure or pay	1635
Affirmance with damages in case of delay.....	1629	costs	1635
Remittitur	1630		

Article 1626. [1027] **If judgment reversed, when reformed, when remanded.**—When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained or the damage to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial in the court below. [Id.]

Art. 1627. [1028] **Judgment on affirmance or rendition, etc. Damages adjudged, when. Finality.**—Whenever the courts of civil appeals, on the trial of cases brought from an inferior court, shall affirm the judgment or decree of such inferior court, or when said courts shall proceed to render such judgment or decree as should have been rendered by the court below and such judgment shall be for the same or a greater amount, or of the same nature, as rendered in the court below, said courts shall render judgment against the appellant or plaintiff in error and his sureties on the appeal bond, a copy of which shall always accompany the transcript of the record; and said courts of civil appeals shall in their discretion include in their said judgment or decree such damages, not exceeding ten per cent on the amount of the original judgment, as the court may deem proper; and the judgment or decree of said courts rendered as contemplated in this article shall be final. [Acts 1892, S. S. p. 25, sec. 37, Id.]

Art. 1628. [1024] **No reversal for want of form.**—There shall be no reversal on appeal or writ of error, nor shall the same be dismissed for want of form, provided sufficient matter or substance be contained in the record to enable the court to decide the cause upon its merits. [Acts 1892, S. S. p. 25, sec. 29.]

Art. 1629. [1024] **Affirmance with damages in case of delay.**—Where the court shall be of opinion that an appeal or writ of error has been taken for delay, and that there was no sufficient cause for taking such appeal, then, and in that case, the appellant or plaintiff in error, if he be the defendant in the court below, shall pay ten per cent on the amount in dispute as damages, together with the judgment, interest and cost of suit thereon accruing. [Id.]

Art. 1630. [1024] **Remittitur.**—If, in any judgment rendered in the district or county court, there shall be an excess of damages rendered, and before the plaintiff has entered a release of the same in such court in the manner provided by law, such judgment shall be removed to the courts of civil appeals; it shall be lawful for the party in whose favor such excess of damages has been rendered to make such release in the courts of civil appeals in the same manner as such release is required to be made in the district or county court; and, upon such release being filed in the said court, after revising said judgment, said courts of civil appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein. [Id.]

Art. 1631. [1029a] **Suggestion of remittitur.**—In all civil cases, now pending, or that may hereafter be appealed to any court of civil appeals of this state, and such court shall be of the opinion that the verdict and judgment of the trial court is excessive, and for that reason only, said cause should be reversed, then it shall be the duty of such court of civil appeals to indicate to the party in whose favor such judgment was rendered, or his attorneys of record, the amount of the excess of such verdict and judgment; and said court shall, at the same time, indicate to such party, or his attorney, within what time he may file a remittitur of such excess; and, if such remittitur shall be so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated, then to be reversed. [Acts 1893, p. 89.]

Art. 1632. [1029b] **Refusal to remit not subject to comment on subsequent trial.**—Whenever any court of civil appeals shall indicate that a verdict is excessive, as provided in the preceding article, and no remittitur shall be filed, as provided in said article, no evidence shall be allowed nor allusion made, in any subsequent trial, of the action of such court of civil appeals in reference to the amount of excess of such verdict. [Id.]

Art. 1633. [1029] **Mandate issued when.**—If no writ of error be sued out, or motion for rehearing be filed, within thirty days after the conclusion or decision of the court has been entered in any court of civil appeals, the clerk of the court shall, upon application of either party and the payment of all costs, issue a mandate upon said judgment. [Id.]

Art. 1634. [1036] **No mandate to issue until costs paid.**—On the rendition of any final judgment or decree in the court of civil appeals, the clerk of said court shall not issue and deliver the mandate of the court, nor certify the proceedings to the lower court, until all the costs accruing in the case in the court of civil appeals shall have been paid, subject, however, to the provisions of the next succeeding article. [Acts 1897, p. 18.]

Art. 1635. [1036] **Affidavit of inability to pay or secure costs.**—If the party against whom the costs are adjudged shall make affidavit of his inability to pay the same or give security therefor, he may apply to the court of civil appeals in which the case is pending for an order to require the clerk to issue the mandate or to certify the proceedings, as the case may be; which motion shall be granted by said court, unless the clerk or a party to the record shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. [Acts 1897, p. 18.]

[Note.—For limitation upon time for taking out mandates in cases of reversal and remanding, in supreme court and courts of civil appeals, see art. 1559.]

CHAPTER TEN.

CONCLUSIONS OF FACT AND LAW.

Conclusions of law and fact to be filed, when	Article. 1636	Court shall decide all issues of fact or law, and announce conclusions.....	Article. 1639
Reason for judgment to be stated, when.....	1637	Supreme court shall return record for supplemental conclusions, when.....	1640
Supplemental findings, motion for refusal assignable as error.....	1638		

Article 1636. [1039] **Conclusions of fact and law to be filed, when.**—In all cases hereafter decided by the courts of civil appeals, in which the supreme court has jurisdiction of an application for writ of error, it shall be the duty of the court of civil appeals, within thirty days after the decision of the case, to make and file a conclusion of fact and law upon each material point assigned as error in that court. The evidence need not be stated, except when necessary to determine upon the correctness of some ruling of the court. [Acts 1901, p. 121.]

Art. 1637. [1039] **Reason for judgment to be stated, when.**—In cases where the judgment of the trial court shall be reversed and the cause remanded, the court of civil appeals shall state its reason for the judgment. [Id.]

Art. 1638. **Supplemental findings, motion for; refusal assignable as error.**—If either party to a case, hereafter decided by a court of civil appeals, shall be of the opinion that the findings of fact are insufficient upon any material issue assigned in that court as error, such party may, in his motion for rehearing, specify the point upon which there is no finding of fact, or upon which the finding made by the court is insufficient, and ask the court of civil appeals to make and file conclusions of fact upon the points indicated in the motion. If that court shall refuse to make such finding, or if the finding made be insufficient, such action may be assigned as error in the application to the supreme court for a writ of error. [Id.]

Art. 1639. **Court shall decide all issues of fact or law, and announce conclusions.**—It shall be the duty of the courts of civil appeals to decide all issues presented to them by proper assignments of error by either party in all causes now pending, or which may hereafter be pending before them, whether such issues be of fact or of law, and announce in writing their conclusions so found. [Acts 1905, p. 71.]

Art. 1640. **Supreme court shall return record for supplemental conclusions, when.**—If the court of civil appeals has failed to file a conclusion of fact upon any material issue in the case properly assigned in that court, and in the supreme court, and, by reason of such failure, the supreme court is not able to pass upon such assignment, it shall be the duty of said supreme court to return the record to the court of civil appeals, from which it came, with directions to make and file a conclusion of fact upon each of such issues, and to return the same with the record to the supreme court. [Id.]

CHAPTER ELEVEN.

REHEARING.

Motion for rehearing, requisites and notice of	Article. 1641	| Service of notice and return.....	Article. 1643
Notice, how given.....	1642		| When motion determined.....	1644

Article 1641. [1030] **Motion for rehearing; requisites and notice of.**—Any party desiring a rehearing of any matter determined by said courts may, within fifteen days after the date of entry of the judgment or decision of the courts, or the filing of the findings of fact and conclusions of law, file with the clerk of said courts his motion in writing for a rehearing thereof, in which motion the ground relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known then the name and residence of the opposing party as shown in the record; provided, that, should the court adjourn within less than fifteen days after the rendition of the judgment, the motion may be made at such time and in such manner as may be prescribed by rules to be made by the supreme court. [Id.]

Art. 1642. [1031] **Notice, how given.**—Upon the filing of such motion with the clerk of said courts, he shall make a certified copy thereof and transmit the same by mail to the sheriff or any constable of the county in which the attorney or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept. [Id.]

Art. 1643. [1032] **Service of notice and return.**—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the court from which it issued, by mail, stating thereon in what manner he executed the same or that the party named in the precept is not to be found in his county, as the case may be. [Id.]

Art. 1644. [1033] **When motion determined.**—At any time, after five days from the return of such precept served, it shall be lawful for said courts to hear and determine motion for rehearing, and not sooner. [Id.]

CHAPTER TWELVE.

EXECUTION OF JUDGMENT.

	Article.		Article.
Writ, how tested, directed, executed and returned, and alias issued, when.....	1645	Appellant on reversal to recover costs of appeal	1648
Judgment enforced, how.....	1646	Return of execution, when.....	1649
Execution to issue, when; mandate.....	1647	Officer failing to make return, remedy by motion	1650

Article 1645. [1034] **Writ, how tested, directed, executed and returned; and alias issues, when.**—All writs and process issuing from the courts of civil appeals shall bear the test of the chief justice or presiding judge of said court, under the seal of said court and signed by the clerk thereof, and shall be directed to the sheriff or any constable of any county in the state, and shall be, by such officer, executed according to the command thereof and returned to the court from which they emanated; and, whenever such writ or process shall not be executed, the clerk of said court is hereby authorized and required to issue another like process or writ upon the application of the party suing out the former writ or process to the same or any other county. [Id.]

Art. 1646. [1035] **Judgment enforced, how, when.**—Upon the rendition by the courts of civil appeals of any such judgment or decree as is contemplated by article 1627, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein; but the clerk of said lower court, on receipt of the mandate of the supreme court or courts of civil appeals, shall proceed to issue execution thereon as in other cases. [Id.]

Art. 1647. [1036] **Execution to issue, when; mandate.**—If neither party shall pay the costs and take out the mandate within thirty days after the time when the same can be issued by law, then it shall be the duty of the clerk to issue execution for the costs accruing in his court against the party or parties against whom such costs have been adjudged, and to send such execution by mail to the proper officer for collection; but he shall retain the mandate until the costs have been paid or collected, subject, however, to the provisions of article 1635. [Acts 1897, p. 18.]

Art. 1648. [1029] **Appellant on reversal to recover costs of appeal.**—In any cause reversed by a court of civil appeals, the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, including costs for the transcript, said costs to be taxed by the clerk of the said court. [Id.]

Art. 1649. [1037] **Return of execution, when.**—All executions for costs of the courts of civil appeals, as authorized by law, shall be returned by the sheriff or constable to whom they are directed within four months from the date thereof. [Id.]

Art. 1650. [1038] **Officer failing to make return; remedy by motion.**—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said costs and execution; and, failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for twice the amount of said costs, together with the costs of such proceedings. [Id.]

CHAPTER THIRTEEN.

REPORTER TO THE COURTS OF CIVIL APPEALS.

The reporter of the supreme court shall be..... **Article.**
1651

Article 1651. [1013] **The reporter of the supreme court shall be.**—The reporter to the supreme court shall also be reporter to the courts of civil appeals; and the decisions of said courts of civil appeals shall be published and sold by the state in the same manner as is now provided by law for the publication and sale of the supreme court decisions. [Id.]

TITLE 33.

COURT OF CRIMINAL APPEALS.

Chapter.

1. Judges of the Court of Criminal Appeals.
2. Terms of the Court of Criminal Appeals.
3. Jurisdiction of the Court of Criminal Appeals.

Chapter.

4. Clerks of the Court of Criminal Appeals.
5. Reporter to the Court of Criminal Appeals.
6. Special Provisions Relating to the Court of Criminal Appeals.

CHAPTER ONE.

JUDGES OF THE COURT OF CRIMINAL APPEALS.

Judges, qualifications, compensation, and quorum	Article. 1652
Election and term of office	1653
Presiding judge chosen and writs, etc., how tested	1654

Proceedings on disqualification of	Article. 1655
Vacancies, how filled	1656
Terms of office—long and short terms at first election	1657

Article 1652. [1044] **Number of judges, qualifications, compensation, and what constitutes a quorum.**—The court of criminal appeals shall consist of three judges, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to a decision of said court; said judges shall have the same qualifications and receive the same salaries as judges of the supreme court. [Acts of 1892, S. S., p. 34.]

Art. 1653. [1045] **Election and term of office.**—The judges of said court shall be elected by the qualified voters of the state at a general election, and shall hold their offices for a term of six years. [Id.]

Art. 1654. [1046] **Presiding judge chosen and writs, etc., how tested.**—The judges of said court shall choose a presiding judge for said court from their number at such times as they shall think proper; and all writs and process issuing from said court shall bear test in the name of said presiding judge and the seal of the court. [Id.]

Art. 1655. [1047] **Proceedings on disqualification of judge.**—When said court, or any member thereof, shall be disqualified under the constitution and laws of this state to hear and determine any case or cases in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. [Id.]

Art. 1656. [1048] **Vacancies, how filled.**—In case of a vacancy in the office of a judge of said court, the governor shall fill the vacancy by appointment for the unexpired term. The judges of the court of appeals who may be in office at the time when this law takes effect shall continue in office as judges of the said court of criminal appeals until the expiration of their term of office. [Id.]

Art. 1657. [1049] **Terms of office, long and short terms at first election.**—At the first session of said court, after the first election of judges thereof under this law, the terms of office of the said judges shall be divided into three classes, and the judges thereof shall draw for the different classes. The judge who shall draw class number one shall hold his office two years from the date of his election and until the election and qualification of his successor; the judge drawing class number two shall hold his office for four years from the date of his election and until the election and qualification of his successor; and the judge who may draw class number three shall hold his office for six years from the date of his election and until the election and qualification of his successor; and thereafter each of the judges of said court shall hold his office for six years, as provided in the constitution of this state. [Id.]

CHAPTER TWO.

TERMS OF THE COURT OF CRIMINAL APPEALS.

Terms of court, when and where held.....	Article. 1658
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Article 1658. [1050] **Terms of court, when and where held.**—Said court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and shall continue until the last Saturday in June next succeeding; and appeals in criminal cases shall be filed with the clerk of said court at Austin upon the same conditions and same rules as now obtain. [Acts 1909, p. 51.]

CHAPTER THREE.

JURISDICTION OF THE COURT OF CRIMINAL APPEALS.

Jurisdiction of the court.....	Article. 1659	} Jurisdictional facts may be ascertained..	Article. 1661
Writs of habeas corpus, etc., power to			
issue	1660		

Article 1659. [1052] **Jurisdiction of the court.**—Said court shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law. [Id.]

Art. 1660. [1053] **Writs of habeas corpus, etc., power to issue.**—Said court and the judges thereof shall have the power to issue the writ of habeas corpus, and, under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. [Id.]

Art. 1661. [1054] **Jurisdictional facts may be ascertained.**—Said court shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. [Id.]

CHAPTER FOUR.

CLERKS OF THE COURT OF CRIMINAL APPEALS.

Terms of office.....	Article. 1662	Deputies, how appointed and to whom responsible	Article. 1665
Shall qualify and give bond.....	1663	Seal of court.....	1666
Duties and liabilities.....	1664		

Article 1662. [1055] **Terms of office.**—Said court shall appoint a clerk for said court, who shall hold his office for four years, unless sooner removed by the court for good cause, entered of record in the minutes of said court. [Id.]

Art. 1663. [1056] **Shall qualify and give bond.**—Said clerk shall, before entering upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, and shall give the same bond, to be approved by the court of criminal appeals, as is now, or may hereafter be, required of the clerk of the supreme court. [Id.]

Art. 1664. [1057] **Duties and liabilities.**—Said clerk shall perform as clerk of the court of criminal appeals the like duties as are now, or may hereafter be, required by law of the clerk of the supreme court, and shall be subject to the same liabilities as are now, or may hereafter be, prescribed for the clerk of the supreme court. [Id.]

Art. 1665. [1058] **Deputies, how appointed, and to whom responsible.**—Said clerk may appoint deputies, who shall perform all the duties of said clerk and who shall be responsible to said clerk for the faithful discharge of the duties of their office. [Id.]

Art. 1666. [1059] **Seal of court.**—It shall be the duty of the court of criminal appeals to procure a seal for said court, said seal to have a star with five points with the words, "Court of Criminal Appeals of Texas," engraved thereon. [Id.]

CHAPTER FIVE.

REPORTER TO THE COURT OF CRIMINAL APPEALS.

Reporter, removal of, compensation and duties; reports, etc., how published....	Article. 1667	Clerk to furnish reporter with opinions, records, etc.....	Article. 1668
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Article 1667. [1060] **Reporter, removal of, compensation and duties, and reports, how published, etc.**—Said court is hereby authorized and required to appoint a reporter of such of its decisions as may be required by law to be published. Said reporter may be removed by the court for inefficiency or neglect of duty. Said reporter shall receive an annual salary of three thousand dollars, payable monthly upon the certificate of the presiding judge of said court. The volume of the decisions of said court shall be styled, Texas Criminal Reports, and shall be numbered in continuation of the present number of the court of appeals reports. Said volumes shall be printed and disposed of as is now, or may hereafter be, provided by law for the printing and distribution of the reports of the supreme court. [Id.]

Art. 1668. [1061] **Clerk to furnish reporter with opinions, records, etc.**—As soon as the opinions are recorded, the originals, together with the records and papers in each case to be reported, shall be delivered to the reporter by the clerks of said court, who shall take the reporter's receipt for the same, but the reporter shall return to said clerks the said opinions, records and papers when he shall have finished using them. [Id.]

CHAPTER SIX.

SPECIAL PROVISIONS RELATING TO THE COURT OF
CRIMINAL APPEALS.

Article.	Article.
Proceedings when jurisdiction of lower court has been changed pending appeal. 1669	Cost to be taxed, how, on disposition of case, in the court of criminal appeals. 1670

Article 1669. [1062] **Proceedings when jurisdiction of lower court has been changed, pending appeal.**—When the court from which an appeal has been, or may hereafter be, taken has been or shall be deprived of jurisdiction over any case pending such an appeal, and when such case shall have been, or may hereafter be, determined by the court of criminal appeals, the mandate of said court of criminal appeals shall be directed to the court to which jurisdiction has been, or may hereafter be, given over such case. [Id.]

Art. 1670. [1063] **Costs to be taxed, how, on disposition of case in the court of criminal appeals.**—In every state case of a less grade than felony in which an appeal is taken to the court of criminal appeals, and the judgment of the court below is affirmed against the defendant, all fees due the clerk of said court in said case shall be adjudged against the defendant and his sureties on his recognizance, for which execution shall issue as in other cases of appeal to the court of criminal appeals. Should such case be reversed by the court of criminal appeals and a new trial be had in the court below and the defendant convicted, then the costs aforesaid in favor of the clerk of the court of criminal appeals shall be taxed by the court below against the defendant; and a certified copy of said bill of costs by the clerk of the court of criminal appeals, filed in the court below, shall be sufficient to require said costs to be taxed and collected as other costs against the defendant in the court below. [Id.]

TITLE 34.

COURTS—DISTRICT.

Chapter.

1. The Judge of the District Court.
2. The Clerk of the District Court.
3. The Powers and Jurisdiction of the District Court and of the Judge Thereof.

Chapter.

4. The Terms of the District Court.
5. Miscellaneous Provisions Relating to the District Court.

CHAPTER ONE.

THE JUDGE OF THE DISTRICT COURT.

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Article 1671. [1604] [1086] **District judge, election of; qualification; residence.**—There shall be elected for each judicial district by the qualified voters thereof at a general election for members of the legislature. a judge, who shall be at least twenty-five years of age, shall be a citizen of the United States, shall have been a practicing attorney or a judge of a court in this state for the period of four years, and shall have resided in the district in which he is elected for two years next before his election, and shall reside in his district during his term of office. [Const., art. 5, sec. 7.]

Art. 1672. [1065] [1087] **Term of office.**—The judge of the district court shall hold his office for the term of four years, and until his successor shall have duly qualified. [Id. and art. 16, sec. 17.]

Art. 1673. [1066] [1088] **Oath of office.**—The judge of the district court, and each special judge hereinafter provided for, shall, before entering upon the duties of his office, take the oath of office prescribed by the constitution. [Const., art. 16, sec. 1.]

Art. 1674. [1067] [1089] **Vacancy in office, how filled.**—Any vacancy in the office of a judge of the district court shall be filled by the governor until the next succeeding general election. [Id. art. 5, sec. 28. R. S. 1879, 1089.]

Art. 1675. [1068] [1090] **Disqualification, causes of.**—No judge of the district court shall sit in any cause wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree. [Id., art. 5, sec. 11.]

Art. 1676 [1069] **Disqualification; exchange of district judges; or special judge agreed upon, when.**—Whenever any case or cases, civil or criminal, are pending, in which the district judge is disqualified from trying the same, no change of venue shall be made necessary thereby; but the judge presiding shall immediately certify that fact to the governor, whereupon, the governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and the governor shall also notify both of said judges of such order; and it shall be the duty of said judges to exchange districts for the purpose of disposing of such case or cases, and, in case of sickness or other reasons rendering it impossible to exchange, then the parties or their counsel shall have the right to select or agree upon an attorney of the court for the trial thereof. [Acts 1879, p. 1. Acts 1897, S. S. p. 39.]

Art. 1677. [1070] **Record to be made where special judge is agreed on or appointed.**—Whenever a special judge is agreed upon by the parties for the trial of any particular cause, as above provided, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause; and
2. That such special judge (naming him) was, by consent, agreed upon by the parties to try the cause; and
3. That the oath prescribed by law has been duly administered to such special judge. [Acts 1876, p. 141. Id.]

Art. 1678. [1071] [1094] **Special judge, when and how elected.**—Whenever, on the day appointed for a term of the district court, or at any time before the expiration of the term, or the completion of all the business of the court, the judge thereof shall be absent, or shall be unable or unwilling to hold the court, there shall thereby be no failure of the term, and no failure to proceed with the business of the court, but the practicing lawyers of such court present thereat may proceed to elect from among their number a special judge of said court, who shall proceed to hold said court and conduct the business thereof, and shall have all the power and authority of the judge of said court, during such continued absence or inability, and until the completion of any business begun before such special judge. [Act Aug. 15, 1876, p. 140, sec. 1.]

Art. 1679. [1072] [1095] **Electoral body, how constituted.**—Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election and shall be entitled to one vote; and a majority of the votes of all the practicing lawyers present and participating shall be necessary to the election of such special judge. [Act Aug. 15, 1876, p. 140, sec. 2.]

Art. 1680. [1073] [1096] **Mode of conducting the election.**—The mode of conducting such election shall be as follows: The sheriff or constable shall make proclamation at the court house door that the election of a special judge of the court is about to be made by the practicing lawyers present thereat; the clerk shall then make a roll or list of all the practicing lawyers present; and such lawyers shall then proceed to organize and hold the election as hereinbefore provided. [Act Aug. 15, 1876, p. 140, sec. 1.]

Art. 1681. [1074] [1097] **Failure or refusal of officers to act.**—Should the sheriff or constable and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk pro tempore to do the duties of such officers respectively. [Act Aug. 15, 1876, p. 141, sec. 2.]

Art. 1682. [1075] [1098] **Record of the election, etc.**—It shall be the duty of the clerk to enter upon the minutes of the court a record of the election of such special judge, showing—

1. The names of all the practicing lawyers present and participating in such election.
2. The fact that the public proclamation was made at the court house door that such election was about to take place.
3. The number of ballots polled at such election and the number polled for each person, and the result of the election.
4. That the oath prescribed by law has been duly administered to the special judge. [Id.]

Art. 1683. [1076] [1099] **Effect of such record.**—The record of such proceedings, showing a substantial compliance with the requirements of the law in that behalf, shall be conclusive evidence of the election and qualification of such special judge. [Id.]

Art. 1684. [1077] [1100] **Other similar elections from time to time.**—Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office. [Id.]

CHAPTER TWO.

THE CLERK OF THE DISTRICT COURT.

Article.	Article.
Election and term of office.....1685	Shall report fines and jury fees.....1696
Vacancy, how filled.....1686	Shall pay over jury fees and fines.....1697
District clerk pro tem. appointed, when..1687	Records of suits, etc., in former district courts.....1698
District clerk pro tem. to qualify and give bond.....1688	Records of suits in former county courts.....1699
District clerk bond and oath.....1689	Books, papers, etc., custody and arrangements of.....1700
May appoint deputies.....1690	Indexes to all judgments.....1701
Oath and powers of deputies.....1691	Shall transfer records to his successor..1702
Shall keep office at county seat.....1692	Single clerk for district and county courts in certain counties.....1703
May administer oaths, take depositions, etc.....1693	When acting as district clerk to use seal of said court.....1704
Shall keep a record of proceedings of court, judgments, etc.....1694	
Other dockets, books, etc.....1695	

Article 1685. [1078] [1100a] **Clerk, how elected; term of office.**—There shall be a clerk for the district court of each county, who shall be elected at a general election for members of the legislature by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified. [Const., art. 5, sec. 9; art. 16, sec. 17.]

Art. 1686. [1079] [1101] **Vacancy in office of clerk, how filled.**—Whenever a vacancy may, from any cause, occur in the office of the clerk of the district court, the same shall be filled by the judge of the district court of such county; and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified. Where such vacancy occurs in a county having two district courts, the same shall be filled by the judges of such courts; and in such case the governor, upon the certificate of such district judges, shall order a special election to fill such vacancy. [Id. Act Aug. 19, 1876, p. 233, sec. 1. Acts of 1891, p. 5.]

Art. 1687. [1080] **District clerk pro tem., appointed, when.**—In all cases wherein any district clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed, shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. [Acts of 1887, p. 102.]

Art. 1688. [1081] **District clerk pro tem., to qualify and give bond.**—Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Id.]

Art. 1689. [1082] [1102] **Bond and oath.**—Each clerk of the district court shall, before entering on the duties of his office, give bond, with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successor in office, in the sum of five thousand dollars, conditioned for the safe-keeping of the records and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond; and the bond and oath so taken and approved shall be filed and recorded in the office of the clerk of the county court. A certified copy of such bond may be put in suit, in the name of the governor, for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered. [Act May 11, 1846, p. 203, sec. 20. P. D. 500.]

Art. 1690. [1083] [1103] **May appoint deputies.**—The clerk of the district court, whether elected or appointed, shall have power to appoint one or more deputies by a written appointment under his hand and the seal of his court, which appointment shall be filed in the office of the clerk of the county court, and shall be by him recorded. [Id. p. 202, sec. 21. P. D. 501.]

Art. 1691. [1084] [1104] **Oath and powers of deputies.**—Such deputies shall take the oath of office prescribed by the constitution; they shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person.

Art. 1692. [1085] [1105] **Shall keep office at county seat.**—The several clerks of the district courts shall keep their offices at the county seats of their respective counties, and when the clerk does not reside at such county seat he shall have a deputy, or deputies, residing there.

Art. 1693. [1086] [1106] **May administer oaths and take depositions.**—The several clerks of the district court shall have power to administer oaths and affirmations required in the discharge of their official duties, to take the depositions of witnesses, and generally to perform all such duties as are, or may be, imposed upon them by law. [Act May 11, 1846, p. 202, sec. 24.]

Art. 1694. [1087] [1107] **Shall keep a record of proceedings, judgments and executions.**—Such clerks shall also keep a fair record of all the acts done, and proceedings had, in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued and the returns thereon, in record books to be kept for the purpose. [Act May 11, 1846, p. 203, sec. 24. P. D. 504.]

Art. 1695. [1088] [1108] **Other dockets, etc.**—They shall also keep such other dockets and books as are, or may be, required by law.

Art. 1696. [1089] [1109] **Shall report fines and jury fees.**—In addition to the reports required of the clerk of the district court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received, up to the date of such statement, and since his previous statement, if any such has been made; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such services; which statement shall be examined by the judge holding such court, and, if found to be correct, shall be approved and signed by him. Should the judge consider such statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same. Such statement, when so approved and signed, shall be recorded in the minutes of the court. [Act Nov. 15, 1864, p. 7, sec. 9. P. D. 4014.]

Art. 1697. [1090] [1109a] Shall pay over jury fees and fines.—It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him, to the use of the county.

Art. 1698. [1091] [1110] Records of suits, etc., in former district courts.—All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the district courts of the several counties of the republic or state of Texas shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts of this state as now organized. [Act May 11, 1846, p. 204, sec. 26. P. D. 506.]

Art. 1699. [1092] [1111] Records of suits, etc., in former county courts.—All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the county courts of the republic of Texas prior to the first day of February, 1839, and of the county courts of the state as organized under the act entitled, "An act to organize the county courts and to define the powers and jurisdiction thereof," approved October 25, 1866, shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts as now organized. [Acts May 11, 1846, p. 20, sec. 27; Aug. 8, 1870, p. 48, secs. 1 to 4.]

Art. 1700. [1093] [1112] Custody and arrangement of books, papers, etc.—The clerks of the district courts shall have the custody of all the minutes, records, books, papers and seals which now are, or may have been heretofore, or may be hereafter, deposited in their respective offices in accordance with law, and it shall be their duty carefully to attend to the arrangement and preservation of the same. [Act May 11, 1846, p. 203, sec. 22. P. D. 502.]

Art. 1701. [1094] [1113] Indexes to all judgments.—They shall also provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts; which indexes shall be kept in well-bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Act June 21, 1876, p. 25, sec. 1.]

Art. 1702. [1095] [1114] Shall transfer records to his successor.—Whenever a clerk of the district court shall vacate his office, he shall transfer to his successor all the records, books and papers of the office.

Art. 1703. [1096] Single clerk for district and county courts in certain counties.—In counties having a population of less than eight thousand persons only one clerk shall be elected, who shall perform the duties of district and county clerks. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have all the powers and perform the duties of such clerks respectively. In determining the number of persons in the county under this article, the estimate shall be made on the basis of five inhabitants for every vote cast for governor in such county at the last preceding general election. [Acts of 1879, p. 47. Const. art. 5, sec. 20.]

Art. 1704. [1097] [1116] When acting as district clerk to use seal of said court.—When, in any county, a single clerk shall have been elected, as provided in the preceding article, he shall, in performing the duties of clerk of the district court, use the seal of said court, and authenticate his official acts as clerk of such district court.

CHAPTER THREE.

THE POWERS AND JURISDICTION OF THE DISTRICT COURT AND OF THE JUDGE THEREOF.

Article.	Article.
Original jurisdiction 1705	To hear and determine all cases of legal and equitable cognizance 1712
Jurisdiction in probate matters 1706	To grant all remedial writs 1713
Motions against officers 1707	Judge may exercise all powers, etc., in vacation by consent of parties, except, etc. 1714
To punish contempts 1708	Judges may alternate, etc. 1715
May transfer probate proceedings to county court 1709	May appoint attorney for pauper 1716
Clerk to transmit papers, records, etc. 1710	Other powers and authority 1717
Judgments, transferred and enforced 1711	

Article 1705. [1098] [1117] Original jurisdiction of the district court.—

The district court shall have original jurisdiction in civil cases—

1. Of all suits in behalf of the state to recover penalties, forfeitures and escheats.

2. Of all cases of divorce.

3. Of all suits to recover damages for slander or defamation of character.

4. Of all suits for the trial of title to land and for the enforcement of liens thereon.

5. Of all suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars; and,

6. Of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest.

7. Of contested elections. [Const., art. 5, sec. 8.]

Art. 1706. [1099] [1118] Jurisdiction in matters of probate.—The district court shall also have appellate jurisdiction and general control in probate matters over the county court established in each county for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as is, or may be, provided by law. Such court shall also have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate, as may be provided by law. [Const. art. 5, sec. 8. Act May 11, 1846, p. 200, sec. 3. P. D. 1406; amendment, 1891.]

Art. 1707. [1100] [1119] Motions against sheriffs, attorneys, etc.—The district court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process, and of motions against attorneys for moneys collected by them and not paid over. [Act May 11, 1846, p. 201, sec. 5. P. D. 1408.]

Art. 1708. [1101] [1120] To punish contempts.—The district court shall also have power to punish by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court. [Act May 11, 1846, p. 201, sec. 6. P. D. 1409.]

Art. 1709. [1103] May transfer probate proceedings to county court.—The judges of the district courts of this state may, by an order made and entered in open court upon the minutes of said court, upon the application

in open court of any person interested as administrator, executor, heir, legatee, devisee, distributee, creditor or guardian in the administration of the estate of a deceased person, or in the guardianship of a minor, person of unsound mind or habitual drunkard, pending in such court, transfer such administration or guardianship to the county court of the county in which such district court is there being held for further administration, upon satisfactory evidence that the county judge of said county is legally qualified to act as such in such administration. [Acts of 1881, p. 72.]

Art. 1710. [1104] **Duty of clerk to transmit papers, records, etc.**—Immediately after the termination of the court at which the order of transfer authorized by the foregoing article is made, it shall be the duty of the clerk thereof to transmit all the papers relating to such administration or guardianship, together with a transcript, certified by him under the seal of said district court, or the record of all orders, judgments and decrees of such district court in relation to such estate, to the county clerk of his county, for which services he shall be allowed such fees as are now allowed him by law for similar services, to be paid as expenses of administration. [Id.]

Art. 1711. [1105] **Judgments transferred and enforced.**—When the clerk of the district court of any county in the state, where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, shall receive from the clerk of the county court a certified copy of a judgment rendered in any civil or criminal case in the county court, he shall immediately record such judgments in the minutes of the district court; and, thereupon, the said district court shall have the power to enforce said judgments by execution or otherwise, as other judgments rendered in said district court are or may be enforced. [Acts of 1879, p. 11.]

Art. 1712. [1106] [1122] **To hear and determine all cases of legal or equitable cognizance.**—Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is, or may be, cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Act May 10, 1846, p. 201, sec. 7. P. D. 1410.]

Art. 1713. [1107] [1123] **To grant all remedial writs.**—The judge of the district court shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Act May 11, 1846, p. 200, sec. 4. P. D. 1407.]

Art. 1714. **Judge may exercise all powers, etc., in vacation, by consent of parties, except, etc.**—The judges of the district courts may in vacation, by consent of the parties, exercise all powers, make all orders, and perform all acts, as fully as in term time, and may, by consent of the parties, try any case without a jury and enter final judgment, except in divorce cases. All such proceedings shall be conducted under the same rules as if done in term time; and the right of appeals and writ of error shall apply as if the acts had been done in term time. [Acts 1909, S. S., p. 352.]

Art. 1715. [1108] [1124] **May alternate, etc.**—Any judge of the district court may hold courts for or with any other district judge; and the judges of the several district courts may exchange districts whenever they may deem it expedient to do so. [Act May 11, 1846, p. 202, sec. 15. P. D. 1418.]

Art. 1716. [1109] [1125] **May appoint attorney to represent pauper.**—The judge of the district court shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same. [Act May 11, 1846, p. 202, sec. 11. P. D. 1414.]

Art. 1717. [1110] [1126] **Other powers and authority.**—In addition to the foregoing powers and jurisdiction, the district courts and the judges thereof shall have such authority as is, or may be, vested in them by law.

CHAPTER FOUR.

THE TERMS OF THE DISTRICT COURT.

	Article.		Article.
Terms of court.....	1718	No new civil cases to be brought to special term	1723
Terms of court in unorganized counties.....	1719	Juries, how summoned, business transacted, etc.	1724
Special terms may be held, when; time; jury commissioners; grand and petit juries, etc.	1720	Adjournment of term, when and how made	1725
Grand jury, selection, etc., duties.....	1721	Extension of term of court, when, etc., effect as to term in another county....	1726
Indictment at special term, arraignment on	1722		

Article 1718. [1111] [1127] **Terms of court.**—The several judges of the district courts shall hold the regular terms of their said courts at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law, and shall hold such special terms as may be required by law. [Const., art. 5, sec. 7.]

Art. 1719. [1112] **Terms of court in unorganized counties.**—Whenever any unorganized county within this state has become organized, or may hereafter become organized, there being no time fixed by law for holding district court in such counties, the district judge in whose judicial district such county is situated shall fix times to hold at least two terms of court each year in each of such counties, by a written declaration, to be forwarded by the district judge to the district clerk of the county, and by him spread on the minutes of the district court. When the times are so fixed they shall not be changed, except by an act of the legislature. [Acts of 1882, p. 4.]

Art. 1720. **Special terms may be held when; time; jury commissioners; grand and petit juries, etc.**—Whenever it may become advisable, in the opinion of a district judge, to hold a special term or terms of the district court in any county in his district, such special term or terms may be held; and such district judge may convene such special term at any time which may be fixed by him. Such district judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law. Such jurors may be summoned to appear before such district court at such time as may be designated by the judge thereof; provided, that in the discretion of the district judge, a grand jury need not be drawn or impaneled. [Acts 1879, p. 42. Acts 1905, p. 116.]

Art. 1721. **Grand jury, selection, etc., duties.**—The grand jury selected, as provided for in the last preceding article, shall be duly impaneled, and shall proceed to the discharge of its duties as at a regular term of the district court. [Id.]

Art. 1722. **Indictment at special term, arraignment on.**—Any person indicted by the grand jury impaneled at a special term of the district court may be placed upon trial at such special term. [Id.]

Art. 1723. [1117] **No new civil cases to be brought to special term.**—No new civil cases can be brought to a special term of the district court. [Id.]

Art. 1724. [1118] **Juries, how summoned, business transacted, etc.**—The juries for any special term shall be summoned in accordance with the law

regulating juries at regular terms of court; and at any special term all proceedings may be had in any case which could be had at any regular term of such court; and all process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, criminal or civil, which would be lawful if had at a regular term, shall have the same force and effect; and any proceeding had may be appealed from under the same rules, regulations and limitations as provided for in appeals from regular terms of court. [Act of 1879, p. 42.]

Art. 1725. [1119] [1128] **Adjournment of term, when and how made.**—Should the judge of any district court not appear at the time appointed for holding the same, and should no election of a special judge be had, the sheriff of the county, or in his default any constable of the county, shall adjourn the court from day to day for three days; and if the judge should not appear on the morning of the fourth day, and should no special judge have been elected, the sheriff or constable, as the case may be, shall adjourn the court until the next regular term thereof. [Act May 11, 1846, p. 203, sec. 9. P. D. 1412.]

Art. 1726. **Extension of term of court when, etc.; effect as to term in another county.**—Whenever any district court shall be in the midst of the trial of any cause when the time for the expiration of the term of said court, as fixed by law, shall arrive, the judge presiding shall have the power and may, if he deems it expedient, extend the term of said court until the conclusion of such pending trial. In such case, the extension of such term shall be shown in the minutes of the court before they are signed. In case of the extension of the term of court, as herein provided, no term of court shall fail because thereof in any other county, but the term of court therein may be opened and held as now provided by law, when the district judge fails to appear at the opening of a term of court. [Acts 1909, p. 114.]

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS RELATING TO THE DISTRICT COURT.

	Article.		Article.
Minutes to be read and signed.....	1727	Seal of the court.....	1729
Of proceedings before special judge.....	1728	When clerk has no seal.....	1730

Article 1727. [1120] [1129] **Minutes to be read and signed.**—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary corrected and signed in open court by the judge. [Act May 11, 1846, p. 202, sec. 12. P. D. 1415.]

Art. 1728. [1121] [1130] **Minutes of proceedings before a special judge.**—When a special judge has presided during the term, or a portion thereof, or in the trial of a particular case, he shall sign the minutes of such proceedings as were had before him.

Art. 1729. [1122] [1131] **Seal of the court.**—Each of the several district courts shall be provided with a seal, having engraved thereon a star of five points in the center and the words, "District Court of _____ County, Texas," the impress of which shall be attached to all process, except subpoenas issued out of such court, and shall be used to authenticate the official acts of the clerk. [Act May 11, 1846, p. 201, sec. 8. P. D. 1411.]

Art. 1730. [1123] [1132] **When clerk has no seal.**—When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured. [Act May 11, 1846, p. 201, sec. 8. P. D. 1411.]

TITLE 35.

COURTS—COUNTY.

Chapter.

1. The County Judge.
2. The Clerk of the County Court.
3. The Powers and Jurisdiction of the County Court and of the the Judge Thereof.

Chapter.

4. The Terms of the County Court for Civil and Probate Business.
5. Miscellaneous Provisions Relating to the County Court.

CHAPTER ONE.

THE COUNTY JUDGE.

	Article.
County judge, election, qualifications and term of office.....	1731
Oath of office.....	1732
Shall keep office at county seat.....	1733
May practice law in certain counties.....	1734
Vacancy, how filled.....	1735
Disqualification, causes of.....	1736
Special county judge appointed by parties.....	1737

	Article.
Governor to appoint special county judge.....	1738
Governor to appoint by telegram.....	1739
Minutes of court to show proceedings.....	1740
Special judges, when and how elected; powers.....	1741
Record of election of special judge.....	1742

Article 1731. [1124] [1133] **County judge, election, qualifications, term of office.**—There shall be elected in each county by the qualified voters thereof, at each general election, a county judge, who shall be well informed in the law of the state, who shall hold his office for two years, and until his successor shall have duly qualified. [Const., art. 5, sec. 15; art 16, sec. 17. Act June 10, 1876, p. 17, sec. 1.]

Art. 1732. [1125] [1134] **Oath of office.**—The county judge shall, before entering on the duties of his office, execute a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, in a sum of not less than one thousand dollars nor more than five thousand dollars, the amount of said bond to be determined and fixed by the county commissioners' court, payable to the treasurer of his county, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, within thirty days after he shall have received the same, and take the oath of office prescribed in the constitution, and the further oath required of the several members of the commissioners' court. [Acts of 1883, p. 50.]

Art. 1733. [1126] [1135] **Shall keep office at the county seat.**—The county judge shall keep his office at the county seat of the county and shall attend at said office from day to day. He shall not absent himself from the county or the state without the permission of the commissioners' court, to be entered on the minutes of the court, nor shall he so absent himself with such permission for a longer period than ninety days. [Acts of 1883, p. 8.]

Art. 1734. [1127] [1136] **May practice law in certain counties.**—County judges in those counties wherein the civil or criminal jurisdiction of the county courts has been, or may hereafter be, diminished, shall have the right to practice as attorneys in all justices' and county courts, in cases wherein the courts over which they preside have neither original nor appellate jurisdiction, provided they are licensed lawyers. [Acts of 1879, extra session, ch. 16.]

Art. 1735. [1128] [1137] **Vacancy, how filled.**—Any vacancy in the office of the county judge may be filled by the commissioners' court of the county in which such vacancy may occur until the next general election. [Const., art. 5, sec. 28. Act June 10, 1876, p. 17, sec. 1.]

Art. 1736. [1129] [1138] **Disqualification; causes of.**—No judge of the county court shall sit in any case wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree. [Const., art. 5, sec. 11. Act June 10, 1876, p. 19, sec. 6.]

Art. 1737. [1130] **Special county judge may be appointed by parties.**—When a judge of the county court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try such case. [Acts of 1893, p. 75.]

Art. 1738. [1131] **Governor to appoint special county judge, etc.**—Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, it shall be the duty of the judge to certify to the governor that he is disqualified to try such case, and the failure of the parties to agree upon a proper person to try the same, whereupon the governor shall proceed to appoint some person, learned in the law, to try such case. But when a county judge is disqualified to act in probate matters in any cause, he shall forthwith certify his disqualification in such case to the governor, whereupon the governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. [Id.]

Art. 1739. [1132] **Governor to appoint by telegram.**—Whenever any case or cases are called, or pending, in which the county judge, or the special judge chosen, as hereinbefore provided, shall be a party, or have an interest, or have been attorney, or of counsel, or otherwise disqualified from sitting in and trying the same, no transfer of, or removal of, shall be made necessary thereby; but the parties, or their counsel, shall have the right to select and agree upon an attorney of the court for the trial thereof; and, if the parties, or their attorneys, shall fail to select or agree upon an attorney for the trial of such case at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties fail to select or agree upon a special judge who is qualified at once, it shall be the duty of the county judge, or special judge presiding, to certify the fact to the governor immediately, by telegram, mail, or otherwise, whereupon the governor shall appoint a special judge, not so disqualified, to try the same. The evidence of such appointment by the governor may be transmitted by telegram, or otherwise. The special judge, after taking the oath of office prescribed by the constitution, shall proceed to the trial or disposition of such case immediately, if the trial is pending, otherwise when called or reached, as in other cases. Any special judge agreed upon or appointed to try causes shall receive the same pay for his services as is now provided by law for county judges. [Id.]

Art. 1740. [1132a] **Minutes of court to show proceedings.**—Whenever a special judge is agreed upon by the parties, or is appointed by the governor, for the trial of any particular cause, as above provided, the clerk shall enter in the minutes of the court as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified to try the cause; and
2. That such special judge [naming him] was, by consent, agreed upon by the parties to try the cause; or
3. That the parties having failed to agree upon a proper person to try the cause, and the judge of the court having certified that fact to the governor, he had appointed such special judge [naming him] to try the cause; and
4. That the oath prescribed by law has been duly administered to such special judge; provided, that all cases heretofore transferred by the county

court to the district court on account of the disqualification of the county judge shall be considered lawful, and the district courts to which such causes have been transferred shall retain jurisdiction thereof. [Id.]

Art. 1741. **Special judges when and how elected; powers.**—Should any county judge fail to appear at the time appointed for holding the court, or should he, during the term, be absent, or unable or unwilling to hold the court, a special county judge may be elected in the same manner as is provided for the election of a special judge of the district court, in articles 1678 to 1681, inclusive, so far as applicable, and the special county judge so elected shall have all the power and authority of the county judge while in the trial and disposition of all the cases pending in said court during the absence, inability, or such refusal of the county judge elected. And similar elections may be held, from time to time, during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. [Acts 1897, p. 7.]

Art. 1742. **Record of election of special judge.**—When a special county judge shall have been so elected, it shall be the duty of the clerk to enter upon the minutes of the court, a record such as is provided for the district court in article 1682, and such record shall have the same force and effect provided for the record of the district court in similar cases in article 1683. [Id.]

[Note.—For appointment of special county judge in railroad condemnation cases, see art. 6507.]

CHAPTER TWO.

THE CLERK OF THE COUNTY COURT.

	Article.		Article.
Election and term of office.....	1743	Issue marriage licenses and take oaths,	1752
Vacancy, how filled.....	1744	depositions, etc.	1753
Clerk pro tem. appointed when.....	1745	Ex officio clerk of commissioners' court.....	1754
County clerk pro tem. to qualify and give		Custody of records of deeds, etc.....	1755
bond	1746	Custody of records, etc., of said court.....	1756
Bond and oath.....	1747	Record of proceedings, judgments.....	1757
May appoint deputies.....	1748	Indexes to all judgments.....	1758
Oath and powers of deputies.....	1749	Other dockets, indexes, etc.....	1759
Clerk shall keep office at county seat.....	1750	Report fines and jury fees.....	1760
Take acknowledgments and proofs of		Shall pay over jury fees and fines.....	1761
deeds for record.....	1751	Shall transfer records to his successor.....	1762
		To use seal of county court.....	1762

Article 1743. [1133] [1142] **County clerk, election and term of office.**—There shall be a clerk of the county court for each county, who shall be elected at a general election for members of the legislature, by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified. [Const., art. 5, sec. 20; art. 16, sec. 17.]

Art. 1744. [1134] [1143] **Vacancy in office, how filled.**—Whenever a vacancy may, from any cause, occur in the office of clerk of the county court, the same shall be filled by the commissioners' court of the county, and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified. [Const., art. 5, sec. 20.]

Art. 1745. [1135] **County clerk pro tem. appointed, when.**—In all cases wherein any county clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the county judge

in whose court the same may be pending or proposed shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. [Acts of 1887, p. 102.]

Art. 1746. [1136] **County clerk pro tem. to qualify and give bond.**—Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Id.]

Art. 1747. [1137] [1144] **Bond and oath.**—Each clerk of the county court shall, before entering on the duties of his office, give bond with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successors in office, in a sum to be fixed by the commissioners' court, not less than two thousand nor more than ten thousand dollars, conditioned for the safe keeping of the records, and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and shall be deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the governor for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered. [Act May 25, 1876, p. 10, sec. 2. P. D. 500.]

Art. 1748. [1138] [1145] **May appoint deputies.**—The clerk of the county court, whether elected or appointed, shall have power to appoint one or more deputies, by a written appointment under his hand and the seal of his court, which appointment shall be recorded in the office of such clerk of the county court, and shall be deposited in the office of the clerk of the district court. [Act May 25, 1876, p. 10, sec. 3.]

Art. 1749. [1139] [1146] **Oath and power of deputies.**—Such deputies shall take the oath of office prescribed by the constitution. They shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. [Act May 25, 1876, p. 10, sec. 4.]

Art. 1750. [1140] [1147] **Clerk shall keep office at county seat.**—The several clerks of the county court shall keep their offices at the county seat of their respective counties; and, when the clerk does not reside at such county seat, he shall have a deputy or deputies residing there. [Id.]

Art. 1751. [1141] [1148] **Take acknowledgments and proofs of deeds for record, etc.**—The clerks of the county court shall have power and it shall be their duty, when applied to for that purpose, to take separate acknowledgment of married women in all cases where such acknowledgment is required or permitted by law to be taken, to the execution of any deed or other instrument in writing, or conveyance executed by them, and to take the acknowledgment of all other persons to deeds or other written instruments or conveyances and to take proof by witnesses of all such deeds, written instruments or conveyances which are required or permitted by law to be so acknowledged or proven for record; and it shall also be their duty to record, in accordance with the registration laws now or hereafter in force, all such deeds, mort-

gages, deeds of trust or any other instrument in writing, or judgments, which may be permitted or required by law to be recorded. [Act May 25, 1876, p. 10, sec. 5.]

Art. 1752. [1142] [1149] **Issue marriage licenses, and take oaths, depositions, etc.**—Such clerks shall also be authorized to issue all marriage licenses, to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts. [Id. sec. 6.]

Art. 1753. [1143] [1150] **Ex officio clerk of commissioners' courts.**—Such clerks shall be ex officio clerks of the commissioners' courts of their respective counties; and it shall be their duty to attend upon each term of said court, to issue all notices, writs, and other process required by said courts, to keep the records, books, papers and proceedings of said courts, and see that the same are properly indexed, arranged and preserved, and generally to do and perform such other duties as are, or may be, imposed on them by law as clerks of such courts. [Acts July 22, 1876, p. 52, sec. 8; May 25, 1876, p. 10, sec. 1.]

Art. 1754. [1144] [1151] **Have custody of records of deeds, etc.**—They shall be ex officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved, and shall do and perform such other duties as are or may be by law required of them as recorders. [Act May 25, 1876, p. 10, sec. 1.]

Art. 1755. [1145] [1152] **Custody of records, etc., of said court.**—They shall be the keepers of the records, books, papers and proceedings of their respective county courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall do and perform such other duties in that behalf as are, or may be by law, imposed on them. [Id.]

Art. 1756. [1146] [1153] **Keep a record of proceedings, judgments, etc.**—The several clerks of the county courts shall keep a fair record of all the acts done and proceedings had in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued, and of the returns thereon in record books to be kept for that purpose. [Id. P. D. 504.]

Art. 1757. [1147] [1154] **Index to all judgments.**—It shall be the duty of the several clerks of the county courts to provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Act June 21, 1876, p. 25, sec. 1.]

Art. 1758. [1148] [1155] **Other dockets, indexes, etc.**—They shall also keep such other dockets, books and indexes as are, or may be, required by law; and all books and records and file papers, belonging to the office of county clerks in this state, shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. [Acts 1905, p. 114.]

Art. 1759. [1149] [1156] **Report fines and jury fees.**—In addition to the reports required of the clerk of the county court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the county court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received up to the date of such statement, and since his previous statement, if any such has been made; and also the name of each

juror who has served at such term, the number of days he served, and the amount due him for such service; which statement shall be examined by the judge holding such court, and, if found to be correct, shall be approved and signed by him. Should said judge consider said statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same; which statement, when so approved and signed, shall be recorded in the minutes of the court. [Act June 16, 1876, p. 23, sec. 24.]

Art. 1760. [1150] [1157] **Shall pay over jury fees and fines.**—It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1761: [1151] [1158] **Shall transfer records to his successor.**—Whenever a clerk of the county court shall vacate his office, he shall transfer to his successor all the records, books and papers of the office.

Art. 1762. [1153] [1160] **When acting as county clerk to use seal of county court.**—Where in any county a single clerk shall have been elected, as provided in article 1703, he shall, in performing the duties of clerk of the county court, use the seal of said court and authenticate his official acts as clerk of such county court.

CHAPTER THREE.

THE POWERS AND JURISDICTION OF THE COUNTY COURT AND OF THE JUDGE THEREOF.

	Article.		Article.
Exclusive original jurisdiction.....	1763	Both law and equity powers.....	1771
Concurrent original jurisdiction.....	1764	To grant remedial writs.....	1772
Forfeited bonds in criminal cases.....	1765	To appoint attorney for pauper.....	1773
Jurisdiction denied in certain cases.....	1766	Additional authority, where expressly granted.....	1774
Appellate jurisdiction.....	1767	Changed jurisdiction recognized, eminent domain retained.....	1775
Certiorari to justices' courts.....	1768		
Motions against certain officers.....	1769		
To punish contempts.....	1770		

Article 1763. [1154] [1161] **Exclusive original jurisdiction.**—The county court shall have exclusive original jurisdiction in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. [Const., art. 5, sec. 16. Act Aug. 18, 1876, p. 172, sec. 3.]

Art. 1764. [1155] [1162] **Concurrent original jurisdiction.**—The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. [Id.]

Art. 1765. [1156] [1163] **Forfeited bonds in criminal cases.**—The county court shall also have jurisdiction to enter final judgment on all forfeited bonds taken in criminal cases pending in said court. [Act. Aug. 18, 1876, p. 172, sec. 3.]

Art. 1766. [1157] [1164] **Jurisdiction denied in certain cases.**—The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits for the recovery of lands, nor of suits for the enforcement of liens upon land, nor of suits in behalf of the state for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of incorporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, se-

questration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. [Const., art. 5, sec. 16; art. 5, sec. 8. Act Aug. 18, 1876, p. 172.]

Art. 1767. [1158] [1165] **Appellate jurisdiction.**—The county court shall have appellate jurisdiction in civil cases over which the justices' courts have original jurisdiction, when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. [Const., art. 5, sec. 16. Act Aug. 18, 1876, p. 172, sec. 3.]

Art. 1768. [1159] [1166] **Certiorari to justices' courts.**—The county court shall also have power to hear and determine cases brought up from the justices' courts by certiorari under the provisions of the title relating thereto.

Art. 1769. [1160] [1167] **Motions against sheriffs and other officers.**—The county court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. [Act June 16, 1876, p. 33, sec. 26.]

Art. 1770. [1161] [1168] **To punish contempts.**—The county court shall also have power to punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court. [Act May 11, 1846, p. 200, sec. 6. P. D. 1409.]

Art. 1771. [1162] [1169] **Both law and equity powers.**—Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is, or may be, cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Act May 11, 1846, p. 200, sec. 7.]

Art. 1772. [1163] [1170] **To grant remedial writs.**—The county judge shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Const. art. 5, sec. 16. Act June 16, 1876, p. 19, sec. 5.]

Art. 1773. [1164] [1171] **To appoint attorney for pauper.**—The county judge shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same. [Act May 11, 1846, p. 200, sec. 11. P. D. 1414.]

Art. 1774. [1165] [1172] **Additional authority where expressly granted.**—In addition to the foregoing powers and jurisdiction, the county court and the county judge shall have such authority as is or may be vested in them by law.

Art. 1775. [1166] **Changed jurisdiction recognized; eminent domain retained.**—Where the jurisdiction of the county court of the several counties of this state has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law; provided, however, that jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this state. [Acts of 1885, p. 77.]

[Note.—For jurisdiction of county court to adjudicate heirship, see chapter 25, title 52.]

CHAPTER FOUR.

THE TERMS OF THE COUNTY COURT FOR CIVIL AND PROBATE BUSINESS.

Terms of the county court.....	Article. 1776	Adjournment of term, when the county judge fails to appear.....	Article. 1778
Commissioners' court may fix.....	1777		

Article 1776. [1167] **Terms of the county court.**—The county court shall hold at least four terms for both civil and criminal business annually as may be provided by the legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court; provided, the commissioners' court of any county having fixed the times and number of terms of the county court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is, or may be, provided by law, and a jury therein shall consist of six men. Until, or unless otherwise provided, the terms of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. [Cont. amendment, 1883, art. 5, sec. 29.]

Art. 1777. [1168] **Commissioners' court may fix.**—The county commissioners' courts of the several counties in this state may, at a regular term thereof, by an order entered upon the records of said courts, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of said terms; provided, that, when the commissioners' court shall have fixed the number of terms of the county court by an order entered of record, said court shall not change the number of terms of the county court for one year from the date of entry of the original order fixing the terms of the county court. [Acts of 1885, p. 53.]

Art. 1778. [1169] **Adjournment of term when county judge fails to appear.**—Should the county judge fail to appear at the time appointed for holding the county court, and should no election of a special judge be had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days; and, if the judge should not appear on the fourth day, and should no special judge have been appointed, the sheriff or constable, as the case may be, shall adjourn the court until the next regular term thereof. [Act May 11, 1846, p. 200, sec. 9. P. D. 1412.]

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS RELATING TO THE COUNTY COURT.

Minutes of the court to be read and signed	Article. 1779	Probate day to be designated.....	Article. 1783
Minutes of proceedings before special judge	1780	Proceedings when case is transferred to district court	1784
Seal of the court.....	1781	Jurisdiction taken away, judgments to be transferred	1785
When clerk has no seal may use scroll.....	1782		

Article 1779. [1170] [1175] **Minutes of the court to be read and signed.**—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and, if necessary, corrected, and signed in open court by the county judge. [Act May 11, 1846, p. 200, sec. 12.]

Art. 1780. [1171] [1176] **Minutes of proceedings before special judge.**—When a special county judge has presided during the term, or a portion thereof, he shall sign the minutes of such of the proceedings as were had before him.

Art. 1781. [1172] [1177] **Seal of the court.**—Each of the several county courts shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, “County Court of ——— County, Texas,” the impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge, where he is authorized or required to use a seal of office. [Act June 16, 1876, p. 23, sec. 22. P. D. 1411.]

Art. 1782. [1173] [1178] **When clerk has no seal, may use scroll.**—When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured. [Act May 11, 1846, p. 200, sec. 12. P. D. 1411.]

Art. 1783. [1174] [1179] **Probate day to be designated.**—On the first day of the term for civil business, the county court shall, by an order entered on the minutes, designate a day for taking up the probate business; and the probate docket shall thereupon be called in its regular order, unless otherwise ordered by the court. [Act June 16, 1876, p. 22, sec. 20.]

Art. 1784. [1175] [1180] **Proceedings when case is transferred to the district court.**—Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court. [Act June 10, 1876, p. 19, sec. 6.]

Art. 1785. [1176] **Jurisdiction taken away; judgments to be transferred.**—It shall be the duty of the clerks of the county courts of the several counties in this state, where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, to make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties. [Acts of 1879, p. 10.]

TITLE 36.

COURTS—COUNTY, AT LAW, ETC.

Chapter.

1. County Court of Dallas County,
at Law.

Chapter.

2. County Court of Tarrant County
for Civil Cases.

CHAPTER ONE.

COUNTY COURT OF DALLAS COUNTY, AT LAW.

Article.	Article		
Creation of county court of Dallas county, at law.....	1786	Special judge elected or appointed how.....	1792
Jurisdiction of said court.....	1787	May issue writs.....	1793
Jurisdiction retained by county court of Dallas county.....	1788	Clerk of; seal; sheriff to attend when, etc.....	1794
Terms of county court of Dallas county, at law; practice, etc.....	1789	Appointment of jury commissioners; selection, etc. of juries.....	1796
Judge to be elected when etc.; qualifications; term.....	1790	Vacancies in office of judge how filled.....	1796
Bond and oath of judge.....	1791	Fees and salary of judge.....	1797
		Salary of county judge of Dallas county.....	1798

Article 1786. **Creation of county court of Dallas county, at law.**—There is hereby created a court to be held in Dallas county, to be called the “County Court of Dallas County, at Law.” [Acts 1907, p. 115, sec. 1.]

Art. 1787. **Jurisdiction of said court.**—The county court of Dallas county, at law, shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the state, the county court of said county would have jurisdiction, except as provided in article 1788; and all cases pending in the county court of said county, other than probate matters, and such as are provided in said article 1788, shall be, and the same are hereby, transferred to the county court of Dallas county, at law; and all writs and process, civil and criminal, heretofore issued by or out of said county court, other than those pertaining to matters over which by said article jurisdiction remains in the said county court of Dallas county, shall be, and the same are hereby, made returnable to the county court of Dallas county, at law. The jurisdiction of the county court of Dallas county, at law, and of the judge thereof, shall extend to all matters of eminent domain, of which jurisdiction has been heretofore vested in the county court, or in the county judge; but this provision shall not affect the jurisdiction of the commissioners’ court, or of the county judge of Dallas county, as the presiding officer of such commissioners’ court, as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners’ court, or the judge thereof. [Id. sec. 2.]

Art. 1788. **Jurisdiction retained by county court of Dallas county.**—The county court of Dallas county shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and shall apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are, or may be, provided by general law governing county courts throughout

the state; but said county court of Dallas county shall have no other jurisdiction, civil or criminal. The county judge of Dallas county shall be the judge of the county court of Dallas county. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Dallas county, except in so far as the same shall, by this chapter, be committed to the judge of the county court of Dallas county, at law. [Id. sec. 3.]

Art. 1789. Terms of county court of Dallas county, at law; practice, etc.—The terms of the county court of Dallas county, at law, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. [Id. sec. 4.]

Art. 1790. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law, who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. [Id. sec. 5.]

Art. 1791. Bond and oath of judge.—The judge of the county court of Dallas county, at law, shall execute a bond and take the oath of office as required by the law relating to county judges. [Id. sec. 6.]

Art. 1792. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law, may be appointed or elected as provided by laws relating to county courts and to the judges thereof. [Id. sec. 7.]

Art. 1793. May issue writs.—The county court of Dallas county, at law, or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Id. sec. 8.]

Art. 1794. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 9.]

Art. 1795. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Dallas county, at law. [Id. sec. 10.]

Art. 1796. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law, may be filled by the commissioners' court of Dallas county until the next general election. [Id. sec. 11.]

Art. 1797. Fees and salary of judge.—The judge of the county court of Dallas county, at law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners' court. [Id. sec. 12.]

Art. 1798. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition

to the fees allowed him by law, such a salary, for the ex. officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. [Id. sec. 13.]

CHAPTER TWO.

COUNTY COURT OF TARRANT COUNTY FOR CIVIL CASES.

Article.	Article.		
Creation of county court of Tarrant county for civil cases.....	1799	Special judge elected or appointed, how.....	1806
Jurisdiction of said court.....	1800	Clerk of; seal; sheriff to attend when, etc.	1807
Jurisdiction retained by county court of Tarrant county	1801	Selection, etc., of juries by two courts jointly	1808
Both courts may issue writs.....	1802	Fees; salary of judge of county court of Tarrant county for civil cases.....	1809
Terms, practice, etc., of county court of Tarrant county for civil cases.....	1803	Removal of judge.....	1810
Judge to be elected when, etc., qualifications; term; vacancies how filled.....	1804	Salary of county judge of Tarrant county	1811
Bond and oath of judge.....	1805		

Article 1799. Creation of County Court of Tarrant County for civil cases.—There is hereby created a court to be held in Tarrant county, Texas, to be known and designated as the "County Court of Tarrant County for Civil Cases." [Acts 1909, p. 48, sec. 1.]

Art. 1800. Jurisdiction of said court.—The county court of Tarrant county for civil cases shall have jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in article 1801; and all civil cases pending in the county court of said county, other than probate matters, and such as are provided in said article, shall be, and the same are hereby, transferred to the county court of Tarrant county for civil cases; and all civil writs and process heretofore issued by, or out of, said county court, other than those pertaining to matters over which by said article jurisdiction remains in the county court of Tarrant county, [shall be] and the same are, returnable to the county court of Tarrant county for civil cases. The jurisdiction of the county court of Tarrant county for civil cases, and of the judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the county court of Tarrant county, or the judge thereof; but this provision shall not affect the jurisdiction of the commissioners' court or of the county judge of Tarrant county as the presiding officer of said court as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or of the judge of the county court of Tarrant county. [Id. sec. 2.]

Art. 1801. Jurisdiction retained by county court of Tarrant county.—The county court of Tarrant county shall retain, as heretofore, the jurisdiction of all criminal cases, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased per-

sons, and shall apprentice minors as provided by law. The county judge of Tarrant county shall be the judge of the county court of Tarrant county; and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Tarrant county, except in so far as the same shall, by this chapter, be committed to the judge of the county court of Tarrant county for civil cases. [Id. sec. 3.]

Art. 1802. **Both courts may issue writs.**—Both the said county court of Tarrant county and the county court of Tarrant county for civil cases, or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts, and also power to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts, or of any court or tribunal inferior to said courts. [Id. sec. 4.]

Art. 1803. **Terms, practice, etc., of county court of Tarrant county for civil cases.**—The terms of the county court of Tarrant county for civil cases, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to the county courts. The terms of the county court of Tarrant county for civil cases shall be held not less than four times each year; and the commissioners' court of Tarrant county shall fix the time at which said court shall hold its terms, until the same may be changed according to law. [Id. sec. 5.]

Art. 1804. **Judge to be elected when, etc.; qualifications; term; vacancies how filled.**—At each general election there shall be elected by the qualified voters of Tarrant county a judge of the county court of Tarrant county for civil cases, who shall be well informed in the laws of this state, who shall hold his office for two years, and until his successor shall have been duly elected and qualified; provided, that no person shall be eligible for judge of the county court of Tarrant county for civil cases, unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election, and who shall have resided in the county of Tarrant for two years next preceding his election. All vacancies in said office shall be filled by appointment by the governor until the next general election thereafter. [Id. sec. 6.]

Art. 1805. **Bond and oath of judge.**—The judge of the county court of Tarrant county for civil cases shall execute a bond and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

Art. 1806. **Special judge elected or appointed how.**—A special judge of the county court of Tarrant county for civil cases may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id. sec. 8.]

Art. 1807. **Clerk of; seal; sheriff to attend when, etc.**—The county clerk of Tarrant county shall be the clerk for the county court of Tarrant county for civil cases. The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court of Tarrant County for Civil Cases." The sheriff of Tarrant county shall, in person or by deputy, attend the court when required by the judge thereof. [Id. sec. 9.]

Art. 1808. **Selection, etc., of juries by the two courts jointly.**—The jurisdiction and authority now vested by law in the county court of Tarrant county for the selection and service of jurors shall be exercised by the two courts jointly and not separately. [Id. sec. 10.]

Art. 1809. **Fees; salary of judge of county court of Tarrant county for civil cases.**—The judge of the county court of Tarrant county for civil cases shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury; and he shall receive a salary of three thousand dollars annually, to be paid monthly out of the county treasury by the commissioners' court. [Id. sec. 11.]

Art. 1810. **Removal of judge.**—The judge of the county court of Tarrant county for civil cases may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state. [Id. sec. 12.]

Art. 1811. **Salary of county judge of Tarrant county.**—The county judge of Tarrant county shall hereafter receive from the county treasury in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court. [Id. sec. 13.]

TITLE 37.

COURTS—DISTRICT AND COUNTY—PRACTICE IN.

Chapter.

1. Institution of Suits.
2. Pleading in General.
3. Pleadings of the Plaintiff.
4. Venue of Suits.
5. Parties to Suits.
6. Process and Returns.
7. Abatement and Discontinuance of Suit.
8. Pleadings of the Defendant.
9. Change of Venue.
10. Continuance.
11. Stenographic Reporters.
12. Trial of Causes.
13. Charges and Instructions to the Jury.
14. The Verdict.

Chapter.

15. Judgments.
16. Remitter and Amendment of Judgment.
17. New Trials and Arrest of Judgment.
18. Costs and Security Therefor.
19. Bills of Exceptions and Statements of Facts.
20. Appeal and Writ of Error.
21. Certain Interlocutory Proceedings, etc.
22. Suit by Next Friend.
23. Suits Against Non-residents.
24. Attorney's Fees, Recovery of.
25. Miscellaneous Provisions.

CHAPTER ONE.

INSTITUTION OF SUITS.

	Article.
Suit commenced with petition filed by the clerk	1812
Duty of the clerk	1813
No paper to be considered filed, unless, etc.	1814

	Article.
Clerk's file docket	1815
Civil suits not to be instituted on Sunday, etc., except	1816

Art. 1812. [1177] [1181] **Suits commenced by petition filed with clerk.**—All civil suits in the district and county courts shall be commenced by petition filed in the office of the clerk of such court. [Act May 13, 1846, p. 363, sec. 3. P. D. 1425.]

Art. 1813. [1178] [1182] **Duty of the clerk on receiving petition.**—When a petition is filed with the clerk, it shall be his duty to indorse thereon the day on which it was filed and the number of the suit; and he shall enter the suit in a docket to be kept by him for that purpose, to be called the clerk's file docket. [Id. sec. 6. P. D. 1428.]

Art. 1814. [1449] [1445] **No paper to be considered filed, unless, etc.**—No paper shall be considered as filed in the proceedings of any cause, unless the clerk shall have indorsed thereon the day on which it was filed, and have signed his name officially thereto.

Art. 1815. [1179] [1183] **Clerk's file docket.**—The clerk's file docket shall be so kept as to show in a convenient form the number of the suit, the names of the attorneys, the names of the several parties to the suit, and the object thereof, and, in a brief form, the return on the process made by the sheriff or constable, and all the subsequent proceedings had in the case, specifying the time when they were had. [Act May 13, 1846, p. 363, sec. 6. P. D. 1428.]

Art. 1816. [1180] [1184] **Civil suits not to be instituted on Sunday, etc., except.**—No civil suit shall be commenced, nor shall any process be issued or served, on Sunday or on any legal holiday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceeding. [Acts 1846, p. 363. Acts 1897, p. 84. P. D. 1424.]

CHAPTER TWO.

PLEADING IN GENERAL.

	Article.		Article.
System of pleading.....	1817	Pleading special acts of the legislature.....	1823
To be in writing, signed and filed.....	1818	Pleadings may be amended.....	1824
"Pleadings" defined.....	1819	Time of filing amendment.....	1825
Pleadings of an intervenor.....	1820	Amendment after arrest of judgment, etc.....	1826
Pleadings in particular cases.....	1821		
Pleading charters and acts of incorpora- tion.....	1822		

Article 1817. [1181] [1185] **System of pleading.**—The pleadings in all civil suits in the district and county courts shall be by petition and answer. [Act Feb. 5, 1840, p. 88, sec. 1. P. D. 979.]

Art. 1818. [1182] [1186] **Pleadings to be in writing, signed and filed.**—The pleadings in said courts shall be in writing and signed by the party, or by his attorney, and filed with the clerk of the court.

Art. 1819. [1183] [1187] **Pleadings defined.**—The pleading shall consist of a statement, in logical and legal form, of the facts constituting the plaintiff's cause of action, or the defendant's ground of defense.

Art. 1820. [1184] [1188] **Pleadings of an intervenor.**—The pleadings of an intervenor shall conform to the requirements of pleadings on the part of the plaintiff and defendant, respectively, so far as they may be applicable.

Art. 1821. [1185] [1189] **Pleadings in particular cases.**—In addition to the requirements of the several articles of this title relating to pleading, the pleadings of the parties, respectively, shall contain any other matter, not included in the preceding articles, which may be required by any law authorizing or regulating any particular action or defense.

Art. 1822. [1186] [1190] **Pleading charters and acts of incorporation.**—In pleading the charter or act of incorporation of any corporation, public or private, it shall not be necessary to set out at length such charter or act of incorporation, but it shall be sufficient to allege that such corporation was duly incorporated; and such allegation by either party shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney. [Acts Feb. 14, 1860, p. 116, sec. 1. P. D. 1518. Acts of 1883, p. 103.]

Art. 1823. [1187] [1191] **Pleading special act of the legislature.**—Whenever any pleading is founded, in whole or in part, on any private or special act or law of the congress of the republic of Texas, or of the legislature of this state, it shall not be necessary for the party pleading the same to set out such private or special act or law, but it shall be sufficient to recite the title thereof, and the date of its approval, and to allege in substance so much of such act or law as may be pertinent to the cause of action or defense.

Art. 1824. [1188] [1192] **Pleadings may be amended.**—All parties to a suit may, in vacation, amend their pleadings, may file suggestions of death and make representative parties, and make new parties, and file such other pleas with the clerk of the court in which such suit is pending as they may desire. And any party may in vacation intervene in any suit pending such amendments and pleas, subject to be stricken out at the next term of the court on motion of the opposite party to the suit for sufficient cause shown or existing, to be determined by the court; provided, that it shall be the duty of the party filing such pleading to notify the opposite party or their attorneys of the filing of such papers within five days from the filing of the same. All amendments to pleadings, pleas and pleas of intervention, must, when court is in session, be filed under leave of the court, upon such terms as the court may prescribe, before the parties announce ready for trial, and not thereafter. [Acts of 1889, p. 9.]

Art. 1825. [1189] [1193] **Time of filing amendment.**—Such leave shall be given, and such amendment filed, for a reasonable time before the case is called for trial, so as not to operate as a surprise to the opposite party. [Act May 13, 1846, p. 363, sec. 34. P. D. 54.]

Art. 1826. [1190] [1194] **Pleadings amended after arrest of judgment, etc.**—Whenever a judgment has been arrested or a new trial granted, because of the insufficiency of the pleadings of the party in whose favor the judgment was rendered, the court may allow such pleadings to be amended as if no such trial had been had or judgment rendered. [Act May 13, 1846, p. 363, sec. 114. P. D. 1475.]

CHAPTER THREE.

PLEADINGS OF THE PLAINTIFF.

Article.	Article.
Requisites of the petition.....1827	Denial of special defenses presumed....1829
Defensive matters by plaintiff.....1828	

Article 1827. [1191] [1195] **Requisites of the petition.**—The petition shall set forth clearly the names of the parties and their residences, if known, with a full and clear statement of the cause of action, and such other allegations, pertinent to the cause, as the plaintiff may deem necessary to sustain his suit, and without any distinction between suits at law and in equity, and shall also state the nature of the relief which he requests of the court. [Act May 13, 1846, p. 363, sec. 5. P. D. 1427.]

Art. 1828. [1192] [1196] **Defensive matters pleaded by plaintiff.**—When the defendant sets up a counter claim against the plaintiff, the plaintiff may plead thereto under the rules prescribed for the pleadings of defensive matter by the defendant so far as the same may be applicable; and, whenever, under such rules, the defendant is required to plead any matter of defense under oath, the plaintiff shall in like manner be required to plead such matters under oath, when relied on by him.

Art. 1829. [1193] [1197] **Denial of special defenses presumed.**—It shall not be necessary for the plaintiff to deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted.

CHAPTER FOUR.
VENUE OF SUITS.

In what counties suits shall or may be brought1830 Issuing process and taking depositions, no waiver of plea; use of deposition; cause transferred when; costs.....1831	Article. Article.	If plea sustained, no dismissal, but transferred1832 When plea sustained, order changing venue, record transmitted.....1833 When water course or highway is county boundary1834
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Art. 1830. [1194] [1198] **Venue, general rule.**—No person who is an inhabitant of this state shall be sued out of the county in which he has his domicile, except in the following cases, to-wit: [Acts Dec. 10, 1863. P. D. 1423.]

1. **Exceptions: married women.**—Where the defendant is a married woman, in which case she may be sued in the county in which her husband has his domicile. [P. D. 1423.]

2. **Transient persons.**—Where the defendant is a transient person, in which case he may be sued in any county in which he may be found.

3. **Non-residents and persons whose residence is unknown.**—Where the defendant, or all of several defendants, reside without the state, or where the residence of the defendants is unknown, in which case the suit may be brought in the county in which the plaintiff resides.

4. **Several defendants residing in different counties.**—Where there are two or more defendants residing in different counties, in which case the suit may be brought in any county where any one of the defendants resides. [P. D. 1423.]

5. **Contract in writing to be performed in a particular county.**—Where a person has contracted in writing to perform an obligation in any particular county, in which case suit may be brought either in such county, or where the defendant has his domicile. [Id.]

6. **Executors, administrators, etc.**—Where the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, in which case the suit must be brought in the county in which such estate is administered. [Id.]

7. **Cases of fraud, and defalcation.**—In all cases of fraud, and in cases of defalcation of public officers, in which cases suit may be instituted in the county in which the fraud was committed, or where the defalcation occurred, or where the defendant has his domicile. [Id.]

8. **When attachment sued out or levied.**—Any suit for damages growing out of the suing out of any writ of attachment or sequestration, or for the levy of any such writ, may be brought in any county from which such writ was issued, or in any county where such levy was made, in whole or in part, within this state. [Acts of 1889, p. 48.]

9. **Cases of crime, offense, or trespass.**—Where the foundation of the suit is some crime, or offense, or trespass, for which a civil action in damages may lie, in which case the suit may be brought in the county where such crime, or offense, or trespass was committed, or in the county where the defendant has his domicile. [P. D. 1423.]

10. **Suits for personal property.**—Where the suit is for the recovery of any personal property, in which case the suit may be brought in any county in which the property may be, or in which the defendant resides. [Id.]

11. **Concerning inheritances.**—Where the defendant has inherited an estate, concerning which the suit is commenced, in which case suit may be brought in the county where such estate principally lies. [Id.]

12. **Foreclosure of mortgage or other liens.**—Where the suit is for the foreclosure of a mortgage or other lien, in which case suit may be brought in the

county in which the property subject to such lien, or a portion thereof, may be situated. [Id.]

13. **Suits for partition.**—Suits for the partition of lands or other property may be brought in the county where such lands or other property, or a part thereof, may be, or in the county in which one or more of the defendants reside.

14. **Suits concerning lands.**—Suits for the recovery of lands or damages thereto, suits to remove incumbrances upon the title to land, suits to quiet the title to land, and suits to prevent or stay waste on lands, must be brought in the county in which the land, or a part thereof, may lie. [Id.]

15. **Breach of warranty.**—In breach of warranty of title to lands, where the vendors liable thereon live in different counties, the plaintiff may bring his action in any county where either of such vendors reside, and join all other vendors in one and the same suit. [Acts of 1887, p. 69.]

16. **Suits for divorce.**—Suits for divorce from the bonds of matrimony shall be brought in the county in which the plaintiff, whether husband or wife, shall have resided for six months next preceding the bringing of the suit. [Act May 27, 1873, p. 117.]

17. **Injunctions, etc.**—When the suit is brought to enjoin the execution of a judgment or to stay proceedings in any suit, in which case the suit shall be brought in the county in which such judgment was rendered or in which such suit is pending. [Act May 13, 1846. P. D. 3932.]

18. **To revise proceedings of the county court in probate matters.**—Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had. [Act Aug. 9, 1876, p. 128, secs. 128, 130.]

19. **Suits against counties.**—Suits against any county shall be commenced in some court of competent jurisdiction within such county. [Act April 11, 1846. P. D. 1047.]

20. **Heads of departments.**—Suits for mandamus against the heads of any of the departments of the state government shall be brought in the district court of the county in which the seat of government may be. [P. D. 1407.]

21. **Forfeiture of charters granted by the legislature.**—Suits in behalf of the state for the forfeiture of the charters of private corporations chartered by act of the legislature, shall be commenced in the district court of the county in which the seat of government may be. [Act Aug. 21, 1876, p. 312, sec. 2.]

22. **Forfeiture of charters, under general incorporation law, for certain purposes.**—Suits brought by the state for the purpose of forfeiting the charter of a private corporation, organized under the laws of this state, and for the purpose of cancelling the permit authorizing a foreign corporation to transact business in this state, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this state, and for the purpose of preventing persons from engaging in business in the state of Texas, contrary to the laws thereof, may be instituted in the proper court of the county in which the seat of government may be. [Acts 1903, p. 118.]

23. **Suits to set aside fraudulent alienations of lands granted to railway companies.**—Suits on behalf of the state to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the state, under the laws granting lands to railway companies, shall be brought in the county in which the seat of government may be. [Const., art 14, sec. 5.]

24. **Private corporations, associations, etc.**—Suits against any private corporation, association or joint stock company may be commenced in any county in which the cause of action, or a part thereof, arose, or in which such corporation, association or company has an agency or representative, or in which

its principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as provided for in article 2147. [Act March 21, 1874, p. 31. P. D. 6011f, 6011h. Act to adopt and establish R. C. S., passed Feb. 21, 1879. Acts of 1887, p. 122.]

25. **Suits for damages against two or more railroad, etc., companies or receivers, etc.**—Whenever any passenger, freight, baggage or other property has been transported by two or more railroad companies, express companies, steamship or steamboat companies, transportation companies, or common carriers of any kind or name whatsoever, or by any assignee, lessee, trustee or receiver thereof, or partly by one or more such companies, or common carriers, and partly by one or more assignees, lessees, trustees or receivers thereof, operating or doing business as such common carriers in this state, or having agents or representatives in this state, suit for damage, or loss, or for any other cause of action arising out of such carriage, transportation or contract in relation thereto, may be brought against any one or all of such common carriers, assignees, lessees, trustees or receivers so operating or doing business in this state, or having agents or representatives in this state, in any court of competent jurisdiction, in any county in which either of such common carriers, assignees, lessees, trustees or receivers operates or does business, or has an agent or representative; provided, however, that, if damages be recovered in such suits against more than one defendant not partners in such carriage, transportation or contract, the same shall, on request of either party, be apportioned between the defendants, by the verdict of the jury, or, if no jury is demanded, then by the judgment of the court. [Acts 1899, p. 214. Acts 1905, p. 29.]

26. **Suits for personal injuries, against railroad corporations, assignees, receivers, etc.**—All suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in the state of Texas, for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred, or in the county in which the plaintiff resided at the time of the injury; provided, that if the defendant railroad corporation does not run or operate its railway in, or through, the county in which the plaintiff resided at the time of the injury, and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent; and provided, further, that, in case that the plaintiff is a non-resident of the state of Texas, then such suit may be brought in any county in which the defendant corporation may run or operate its railroad, or may have an agent; provided, that, when an injury occurs within one-half mile from the boundary line dividing two counties, suit may be brought in either of said counties. [Acts 1901, p. 31.]

27. **Mechanics, laborers and operatives for their wages.**—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated; and, in all such suits, service of process may be made in the manner now required by law. [Acts of 1879, p. 8.]

28. **Foreign, private or public corporations, etc.**—Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this state, and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any

county where the cause of action, or a part thereof, accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in the state, then in the county where the plaintiffs, or either of them, reside. [Acts of 1887, p. 131.]

29. **Fire, marine, life and accident insurance companies.**—Suits against fire, marine or inland insurance companies may also be commenced in any county in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be commenced in the county in which the persons insured, or any of them, resided at the time of such death or injury. [Act April 17, 1874, p. 107. P. D. 6011f.]

30. **Venue prescribed by particular law.**—Whenever, in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given.

Art. 1831. **Issuing process and taking depositions, no waiver of plea; use of deposition; cause transferred when; costs.**—Issuing process for witnesses and taking depositions shall not constitute a waiver of a plea of privilege, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject-matter in like manner as if taken in such subsequent suit. [Acts 1907, p. 248.]

Art. 1832. **If plea sustained, no dismissal, but transfer.**—If a plea of privilege is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the court having jurisdiction of the person of the defendant therein; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. [Id.]

Art. 1833. **When plea sustained, order changing venue, record transmitted.**—Whenever a plea of privilege to the venue, to be sued in some other county than the county in which the suit is pending, shall be sustained, the court shall order the venue to be changed to the proper court of the county having jurisdiction of the parties and the cause; and the clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and transmit the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed; provided, that nothing herein shall prevent an appeal from the judgment of the court sustaining a plea of privilege. [Id.]

Art. 1834. [1195] [1199] **When water course or highway is county boundary.**—In all cases where any part of a river, water course, highway, road or street shall be the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county, in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county. [Act May 11, 1846. P. D. 1421.]

CHAPTER FIVE.

PARTIES TO SUITS.

<p>Suits by and against counties, etc.....1835 Suits by executors, etc.....1836 Suits for lands against estates.....1837 Suits for injuries resulting in death.....1838 Suits for wife's separate property.....1839 Against husband and wife for necessaries, etc.....1840 For wife's debts, etc.....1841 Several obligors in any contract may be joined, etc.....1842 Parties conditionally liable may be sued alone, when1843</p>	<p>Article: Sheriffs, etc., sued may make indemnitors parties1844 Sureties on official bonds when joined...1845 When different officials and their bondsmen may be joined.....1846 Suit in the name of the state for use of others1847 Additional parties may be brought in, when1848 Parties may appear by attorney.....1849</p>
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Article 1835. [1196] [1200] **Suits by and against counties, cities, etc.—**All suits brought by or against any of the counties or incorporated cities, towns or villages shall be by or against it in its corporate name. [Act Aug. 30, 1876. P. D. 1045.]

Art. 1836. [1197] [1201] **Suits by executors, etc.—**Suits for the recovery of personal property, debts or damages, and suits for title or for the possession of lands, or for any right attached to, or growing out of, the same, or for any injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this state, in like manner as they could have been by their testator or intestate; and judgment in such cases shall be as conclusive as if rendered in favor of, or against, such testator or intestate; but such judgment may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. [Act May 13, 1846, p. 363, sec. 44. P. D. 1447.]

Art. 1837. [1198] [1202] **Suits for land against decedents.—**In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant. [Act Aug. 15, 1870, p. 141, sec. 229. P. D. 5697.]

Art. 1838. [1199] [1203] **Suits for injuries resulting in death.—**In cases arising under the provisions of title 70, relating to injuries resulting in death, the parties entitled thereto may bring their suit for such damages as provided in said title.

Art. 1839. [1200] [1204] **Suits for wife's separate property.—**The husband may sue either alone or jointly with his wife for the recovery of any separate property of the wife; and, in case he fail or neglect so to do, she may, by the authority of the court, sue for such property in her own name. [Act Jan. 20, 1840, p. 3, sec. 9. P. D. 4636.]

Art. 1840. [1201] [1205] **Against husband and wife, for necessaries, etc.—**The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property. [Act March 13, 1848, p. 77, sec. 4. P. D. 4643.]

Art. 1841. [1202] [1206] **For wife's debts, etc.—**The husband and wife shall also be jointly sued for all separate debts and demands against the wife, but, in such case, no personal judgment shall be rendered against the husband. [Act May 13, 1848, p. 363, sec. 41. P. D. 9.]

Art. 1842. [1203] [1207] **Several obligors to any contract may be joined, but, etc.—**The acceptor of any bill of exchange, or any other principal obligor in any contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against such other party not primarily liable on such bill or other contract, unless judgment shall have been previously, or shall be at the same time, rendered against such acceptor or other principal obligor, except where the plaintiff may dis-

continue his suit against such principal obligor as hereinafter provided. [Acts May 13, 1846, p. 363, sec. 4; *Id.* secs. 45, 46. Jan. 25, 1840, p. 144, sec. 6. P. D. 1426, 1448-9, 225. Act to adopt and establish R. C. S. passed Feb. 21, 1879.]

Art. 1843. [1204] [1208] **Parties conditionally liable may be sued, when.**—The assignor, indorser, guarantor and surety upon any contract, and the drawer of any bill which has been accepted, may be sued without the necessity of previously, or at the same time, suing the maker, acceptor or other principal obligor, when he resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent. [*Id.*]

Art. 1844. [1204] [1208] **Sheriff, constable, etc., sued for damages, may make indemnitors parties, etc.**—Whenever a sheriff, constable or a deputy of either, has been sued for damages for any act done in his official character, and has taken an indemnifying bond for such acts so done by him, upon which said act a suit for damages is based, the said sheriff, constable or his deputy shall have the right to make the parties, principal and surety on such bond of indemnity, parties defendant in such suit for damages, and the cause may be continued for the purpose of obtaining service on such parties so made in said cause. [Acts 1885, p. 90.]

Art. 1845. [1205] **Sureties on official bonds, when joined.**—In any suit brought by the state of Texas, or any county of said state, against any officer who has held an office for more than one term and has given more than one official bond, the sureties on each and all of such bonds may be joined as defendants in one and the same suit, whenever it is alleged in the petition that it is difficult to determine when the default sued for occurred and which set of sureties on such official bonds is liable therefor. [Acts of 1891, p. 85.]

Art. 1846. [1206] **When different officials and their bondsmen may be joined.**—In any suit by the state of Texas upon the official bond of any state officer, any subordinate officer who has given bond, payable either to the state or to such superior officer, to cover the default sued for, or any part thereof, together with the sureties on his official bond, may be joined as defendants in one and the same suit with such superior officer and his bondsmen, whenever it is alleged in the petition that both of such officers are liable for the money sued for, to the end that all equities may be adjusted between them in one suit. [*Id.*]

Art. 1847. [1207] **Suit in the name of the state for the use of others.**—Whenever any official bond is made payable to the state of Texas, or any officer thereof, and a recovery thereon is authorized by, or would inure to the benefit of, parties other than the state, suit may be instituted on such bond in the name of the state alone for the benefit of all parties entitled to recover thereon. [*Id.*]

Art. 1848. [1208] [1209] **Additional parties may be brought in, when.**—Before a case is called for trial, additional parties may, when they are necessary or proper parties to the suit, be brought in by proper process, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but such parties shall not be brought in at such a time or in such a manner as unreasonably to delay the trial of the case.

[Note.—For provisions authorizing unincorporated joint stock companies or associations to sue and be sued in their company names, see title “Partnerships—Limited” and “Joint Stock Companies.”]

Art. 1849. [1209] [1210] **Parties may appear by attorney.**—Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

[Note.—For provisions as to the appointment of attorney to defend suit by publication where no answer is filed, etc., and as to appointment of guardian ad litem for minors, lunatics, etc., see articles 1941 and 1942.]

CHAPTER SIX.

PROCESS AND RETURNS.

Article.	Article.		
Requisites of citation; when to issue....	1850	Time of service of citation.....	1867
One citation to each county where there		Same	1868
is a defendant.....	1851	Citation to defendants without the state.....	1869
Citation shall contain, what.....	1852	By whom served.....	1870
Defendant out of county to have copy of		Service in such cases.....	1871
petition	1853	Return of service.....	1872
Citation when sheriff is a party.....	1854	Effect of such service.....	1873
Duty of officer receiving citation.....	1855	Citation by publication.....	1874
Service of citation within the county.....	1856	For unknown heirs.....	1875
Service without the county.....	1857	Citation by publication; requisites.....	1876
Citation in suits against counties.....	1858	Publication of citation in suits involving	
Against cities, towns, etc.....	1859	title to land.....	1877
Against incorporated companies, etc.....	1860	Return of citation by publication.....	1878
Foreign corporations, how served.....	1861	Mistake in return may be corrected.....	1879
In suits against foreign corporations,		Acceptance of service of process.....	1880
cumulative mode	1862	Entering appearance in open court.....	1881
Against partners	1863	Answer constitutes appearance.....	1882
Return of citation.....	1864	Motion constitutes appearance, when.....	1883
Return of citation not served.....	1865	Reversal of judgment on appearance.....	1884
Alias process	1866	No judgment without service.....	1885

Article 1850. [1212] [1213] **Citation to issue, when.**—When a petition shall be filed with the clerk, and the other regulations hereinafter prescribed shall be complied with, it shall be his duty to issue forthwith a writ of citation for the defendant. [Act Feb. 6, 1854, p. 53, sec. 9. P. D. 1430.]

Art. 1851. [1213] [1214] **One citation to each county where there is a defendant.**—If there be several defendants, residing in different counties, one citation shall issue to each of such counties.

Art. 1852. [1214] [1215] **Citation shall contain what.**—Such citation shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him to summon the defendant to appear and answer the plaintiff's petition at the next regular term of the court, stating the time and place of holding the same. It shall state the date of the filing of the plaintiff's petition, the file number of the suit, the names of all the parties and the nature of the plaintiff's demand, and shall contain the requisites prescribed in article 2180. [Acts Feb. 6, 1854, p. 53, sec. 9. May 13, 1846, p. 363, sec. 10. Nov. 12, 1866, p. 199, sec. 1. P. D. 1430-1. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 1853. [1215] [1216] **Defendant out of county to have copy of petition.**—Where the defendant is to be served without the county in which the suit is pending, a certified copy of the plaintiff's petition shall accompany the citation; and, should there be more than one defendant to be served without the county, a certified copy of the petition shall be made out for each of them.

Art. 1854. [1216] [1217] **Citation where sheriff is a party.**—Where it appears from the petition that the sheriff is a party to the suit, or is interested

therein, the citation shall be addressed to any constable of his county. [Act May 13, 1846, p. 363, sec. 21. P. D. 1437.]

Art. 1855. [1217] [1218] **Duty of officer receiving citation.**—It shall be the duty of the sheriff or constable to whom any citation shall be delivered to indorse thereon the day and hour on which he received it, and to execute and return the same without delay. [Act May 13, 1846, p. 363, sec. 14. P. D. 1433.]

Art. 1856. [1218] [1219] **Service of citation within the county.**—Unless the process should otherwise direct, the citation shall be served, if within the county in which the suit is pending, by the officer executing it delivering to the defendant, or, if there be more than one, then to each defendant in person, a true copy of the citation.

Art. 1857. [1219] [1220] **Service without the county.**—If served without the county in which the suit is pending, the officer shall also deliver to the defendant and each of them, in person, the certified copy of the petition accompanying the citation. [Act May 13, 1846, p. 363, sec. 14. P. D. 1433.]

Art. 1858. [1220] [1221] **Citation in suits against counties.**—In suits against any county, the citation shall be served on the county judge of such county. [Act May 11, 1846, p. 320, sec. 5. P. D. 1048.]

Art. 1859. [1221] [1222] **Against cities, towns, etc.**—In suits against any incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. [Act Feb. 6, 1854, p. 53, sec. 9. P. D. 1430.]

Art. 1860. [1222] [1223] **Against incorporated companies and joint stock associations.**—In suits against an incorporated company or joint stock association, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours; provided, that if the president, secretary or treasurer does not either of them reside in the county in which suit is brought, and such company or association has no agent in the county in which suit is brought, then the citation may be served upon any agent representing such company or association in the state; and, in suits against receivers of railroad companies, service may be had upon the receiver, upon the general or division superintendent, or upon any agent of the receiver who resides in the county in which suit it [is] brought; provided, that, if there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the state. [Acts 1887, p. 122. Acts 1874, p. 32. Acts 1874, p. 10. Acts 1854, p. 53. Acts 1854, p. 55. Acts 1903, p. 66. P. D. 1430, 4888.]

Art 1861. [1223] **Foreign corporations, how served.**—In any suit against a foreign, private or public corporation, joint stock company or association or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer, or general manager, or upon any local agent within this state, of such corporation, joint stock company or association, or acting corporation or association. [Acts of 1885, p. 79.]

Art. 1862. **In suits against foreign corporations, cumulative mode.**—Service may be had on foreign corporations, having agents in this state, in addition to the means now provided by law, by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the state line of Texas, and on the track of a domestic railway corporation within the state of Texas, or upon any agent who has an office in Texas, and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company. For the

purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains, and agents engaged in the sale of tickets or the making of contracts for the transportation of property, as described in this article, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served. [Acts 1905, p. 30.]

Art. 1863. [1224] [1224] **Against partners.**—In suits against partners, the citation may be served upon one of the firm; and such service shall be sufficient to authorize a judgment against the firm and against the partner actually served. [Act Feb. 5, 1858, p. 110, sec. 2. P. D. 1514.]

Art. 1864. [1225] [1225] **Return of citation.**—The return of the officer executing the citation shall be indorsed on, or attached to, the same; it shall state when the citation was served and the manner of service, conforming to the command of the writ, and shall be signed by him officially. [Act March 16, 1848, p. 106, sec. 11. P. D. 1507.]

Art. 1865. [1226] [1226] **Return of citation not served.**—When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, in so far as he has been able to ascertain.

Art. 1866. [1227] [1227] **Alias process.**—When any process has not been returned, or has been returned without service, or has been improperly served, it shall be the duty of the clerk, upon the application of any party to the suit, his agent or attorney, to issue other process to the same or any other county, as the party applying may direct. [Act May 13, 1846, p. 363, sec. 19. P. D. 1435.]

Art. 1867. [1228] [1228] **Time of service of citation.**—The citation shall be served before the return day thereof; and, in order to compel the defendant to plead at the return term of the court, the citation must be served at least ten days before the first day of such return term, exclusive of the days of service and return. [Acts of 1891, p. 94.]

Art. 1868. [1229] [1229] **Same subject.**—If the citation be issued too late, or if it can not be served at least ten days before the first day of such return term, exclusive of the days of service and return, the officer to whom it is delivered shall nevertheless proceed to serve the same at any time before the return day thereof; and such service shall compel the defendant to plead at the next succeeding term of the court. [Id.]

Art. 1869. [1230] [1230] **Citation to defendant without the state.**—Where the defendant is absent from the state, or is a non-resident of the state, the clerk shall, upon the application of any party to the suit, his agent or attorney, address a notice to the defendant requiring him to appear and answer the plaintiff's petition at the time and place of the holding of the court, naming such time and place. Its style shall be, "The State of Texas," and it shall give the date of the filing of the petition, the file number of the suit, the names of all the parties and the nature of the plaintiff's demand, and shall state that a copy of the plaintiff's petition accompanies the notice. It shall be dated and signed, and attested by the clerk, with the seal of the court impressed thereon; and the date of its issuance shall be noted thereon; a certified copy of the plaintiff's petition shall accompany the notice. [Act March 15, 1875, p. 170, sec. 2.]

Art. 1870. [1231] [1231] **By whom served.**—Such notice may be served by any disinterested person competent to make oath of the fact. [Id.]

Art. 1871. [1232] [1232] **Service in such cases.**—Service in such cases shall be made by the person executing the same delivering to the defendant in person a true copy of such notice, together with the certified copy of the plaintiff's petition accompanying the same. [Id.]

Art. 1872. [1233] [1233] **Return of such service.**—The return of service in such cases shall be indorsed or attached to the original notice; it shall state when the same was served and the manner of service, and shall be signed and sworn to by the party making such service before some officer authorized by the laws of this state to take affidavits; and such affidavit shall be certified under the hand and official seal of such officer. [Id.]

Art. 1873. [1234] [1234] **Effect of such service.**—Where a defendant has been served with such notice, he shall be required to appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within this state.

Art. 1874. [1235] [1235] **Citation by publication.**—Where any party to the suit, his agent or attorney, shall make oath at the time of instituting the suit, or at any time during its progress, that the party defendant is a non-resident of the state, or that he is absent from the state, or that he is a transient person, or that his residence is unknown to the affiant, the clerk shall issue a citation for the defendant, addressed to the sheriff or any constable of the county in which the suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of the citation in some newspaper published in his county, if there be any newspaper published therein, but if not, then in any newspaper published in the judicial district where the suit is pending; but if there be no newspaper published in such judicial district, then it shall be published in the nearest district to the district where the suit is pending. Such citation shall be published once in each week for four consecutive weeks previous to the return day thereof. [Acts March 16, 1848, p. 106, sec. 13; March 15, 1875, p. 170, sec. 1. Acts 1879, ch. 96, p. 103. P. D. 25.]

Art. 1875. [1236] [1236] **For unknown heirs.**—Where any property of any kind in this state may have been granted, or may have accrued, to the heirs, as such, of any deceased person, any party having a claim against them relative to such property, if their names be unknown to him, may bring his action against them, their heirs or legal representatives, describing them as the heirs of such ancestor, naming him; and, if the plaintiff, his agent or attorney, shall at the time of instituting the suit, or any time during its progress, make oath that the names of such heirs are unknown to the affiant, the clerk shall issue a citation for such heirs, addressed to the sheriff or any constable of the county in which the suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the sheriff or constable to summon the defendant by making publication of the citation in some newspaper of his county, if there be a newspaper published therein, but if not, then in the nearest county where a newspaper is published, once in each week for eight successive weeks previous to the return day of such citation. [Acts Nov. 9, 1866, p. 125, sec. 1; March 16, 1848, p. 106, sec. 26. P. D. 5460, 26.]

Art. 1876. [1237] [1237] **Citation by publication to contain same requisites as other writs.**—The citations provided for in the two preceding articles shall contain the requisites prescribed in article 2180. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

[Note.—See articles 1941 and 2175.]

Art. 1877. [1264] [1264] **Publication of citation in suits involving title to land.**—In all suits involving the title to land, wherein service of citation is by publication, the publication of citation shall be made in the county in which the land is situated; provided, there be a newspaper published in such county, and if there be no newspaper published in such county, then in the county nearest to the county wherein the land is situated. [Acts 1909, S. S. p. 324.]

Art. 1878. [1238] [1238] **Return of citation by publication.**—The return of the officer executing such citation shall be indorsed or attached to the same, and shall show when the citation was executed and the manner thereof, specifying the dates of such publication, shall be accompanied by a printed copy of such publication, and shall be signed by him officially. [R. S. 1879, 1238.]

Art. 1879. [1239] [1239] **Mistake in return may be corrected.**—Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court. [Act May 13, 1846, p. 363, sec. 18. P. D. 53.]

Art. 1880. [1240] [1240] **Acceptance of service of process.**—The defendant may accept service of any process, or waive the issuance or service thereof by a written memorandum signed by him or by his duly authorized agent or attorney, and filed among the papers of the cause; and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. [Act May 13, 1846, p. 363, secs. 12, 13. P. D. 1508, 1432.]

Art. 1881. [1241] [1241] **Entering appearance in open court.**—The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court; and such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if citation had been duly issued and served as provided by law. [Id.]

Art. 1882. [1242] [1242] **Answer constitutes appearance.**—The filing of an answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him. [Id.]

Art. 1883. [1243] [1243] **Motion constitutes appearance, when.**—Where the citation, or service thereof, is quashed on motion of the defendant, the case may be continued for the term, but the defendant shall be deemed to have entered his appearance to the succeeding term of the court.

Art. 1884. [1244] [1244] **Reversal of judgment on appearance.**—Where the judgment is reversed on appeal or writ of error taken by the defendant for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

Art. 1885. [1245] [1245] **No judgment without service of process, etc.**—No judgment shall, in any case, be rendered against any defendant unless upon service, or acceptance, or waiver of process, or upon an appearance by the defendant, as prescribed in this chapter, except where otherwise expressly provided by law. [Act May 11, 1846, p. 65, sec. 18.]

CHAPTER SEVEN.

ABATEMENT AND DISCONTINUANCE OF SUIT.

Suit not to abate where plaintiff dies, if, etc.	Article. 1886	Suit to the use of another.	Article. 1894
Scire facias to executor, etc.	1887	Death of party to suit for injuries resulting in death.	1895
Death of defendant.	1888	When some defendants not served.	1896
When executor, etc., dies.	1889	Discontinuance as to principal obligor.	1897
Surviving parties.	1890	Discontinuance in vacation.	1898
Death between verdict and judgment.	1891	As to defendant served.	1899
Marriage of plaintiff feme sole.	1892	When defendant has filed counter claim.	1900
Marriage of defendant feme sole.	1893	Requisites of scire facias and returns.	1901

Article 1886. [1246] [1246] **Suit not to abate where plaintiff dies, if, etc.**—Where in any suit the plaintiff shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but the executor or administrator, and if there be no administration, and no necessity therefor, then the heir of such deceased plaintiff may appear, and, upon a suggestion of such death being entered of record, in open court, may be made plaintiff in such suit, and the suit shall proceed in his name. [Act May 13, 1846, p. 363, sec. 38. P. D. 6.]

Art. 1887. [1247] [1247] **Scire facias to executor, etc.**—If, upon such death, no such appearance and suggestion be made at the first term of the court thereafter, it shall be the duty of the clerk, upon the application of the defendant, his agent or attorney, to issue a scire facias for the executor, administrator or heir of such decedent requiring him to appear and prosecute such suit; and if, after service of such scire facias as required in the case of citations, such executor, administrator or heir shall not enter his appearance on or before the appearance day of the succeeding term of the court, the defendant may, on motion, have the suit discontinued. [Id.]

Art. 1888. [1248] [1248] **Death of defendant.**—Where in any suit the defendant shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but, upon a suggestion of such death being entered of record in open court, or upon a petition of the plaintiff, representing that fact, being filed with the clerk, it shall be his duty to issue a scire facias for the executor or administrator, and, in a proper case, for the heir of such deceased defendant, requiring him to appear and defend the suit; and, upon the return of such service, the suit shall proceed against such executor, administrator or heir, and such judgment may be rendered therein as may be authorized by law. [Id. sec. 39. P. D. 7.]

Art. 1889. [1249] [1249] **Where executor, etc., dies.**—Where an executor or administrator shall be a party to any suit, whether as plaintiff or defendant, and shall die or cease to be such executor or administrator before verdict, the suit shall not thereby abate, but may be continued by or against the person succeeding him in the administration, or by or against the heir, where there is no administration and no necessity therefor, upon like proceedings being had as provided in the two preceding articles, or the suit may be discontinued, as provided in article 1882. [1887.] [P. D. 6, 7.]

Art. 1890. [1250] [1250] **Surviving parties.**—Where there are two or more plaintiffs or defendants, and one or more of them die, if the cause of action survive to the surviving plaintiffs and against the surviving defendants, the suit shall not abate by reason of such death, but, upon suggestion of such death being entered upon the record, the suit shall, at the instance of either party, proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be. [Id. sec. 36. P. D. 4.]

Art. 1891. [1251] [1251] **Death between verdict and judgment.**—Where in any suit either party shall die between verdict and judgment, the judgment shall be entered as if both parties were living. [Id. sec. 37. P. D. 5. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 1892. [1252] [1252] **Marriage of plaintiff feme sole.**—A suit instituted by a feme sole shall not abate by her marriage; but, upon a suggestion of such marriage being entered on the record, the husband may make himself a party to such suit and prosecute the same as if he and his wife had been originally plaintiffs in such suit. [Id. sec. 40. P. D. 8.]

Art. 1893. [1253] [1253] **Marriage of defendant feme sole.**—A suit instituted against a feme sole shall not abate by her marriage, but, upon a suggestion of such marriage being entered on the record, in open court, or upon a petition representing that fact being filed with the clerk, it shall be his duty to issue a scire facias to the husband of such defendant; and upon the return thereof executed, the husband shall be made a party to such suit, and it shall proceed as if such husband and wife had originally been defendants in such suit. [Id. sec. 41. P. D. 9.]

Art. 1894. [1254] [1254] **Suit to the use of another.**—When a plaintiff, suing for the use of another person shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be responsible for costs in the same manner as he would have been had the suit been commenced by him. [Id. sec. 42. P. D. 10.]

Art. 1895. [1255] [1255] **Death of party to suit for injuries resulting in death.**—In cases arising under the provisions of title 70, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the persons entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment as provided for in previous articles of this chapter. [Act Feb. 2, 1860, p. 32, sec. 4. P. D. 18.]

Art. 1896. [1256] [1256] **Where some of defendants not served.**—Where there are several defendants in a suit, and some of them are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may continue the suit until the next term of the court and take new process against those not served; and no defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered. [Act May 13, 1846, p. 363, sec. 45. P. D. 1448.]

Art. 1897. [1257] [1257] **Discontinuance as to principal obligor.**—Where a suit is discontinued as to a principal obligor, no judgment can be rendered therein against an indorser, guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proven that such principal obligor resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or that his residence is unknown and can not be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent. [Id. P. D. 1449, 1426, 225.]

Art. 1898. [1258] [1258] **Discontinuance in vacation.**—The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon. [Id. sec. 28. P. D. 1440.]

Art. 1899. [1259] [1259] **Discontinuance as to defendants served, etc.**—The court may permit the plaintiff to discontinue his suit as to one or more of several defendants who may have been served with process, or who may have answered when such discontinuance would not operate to the prejudice

of the other defendants; but no such discontinuance shall, in any case, be allowed as to a principal obligor, except in the cases provided for in article 1897.

Art. 1900. [1260] [1260] **Discontinuance when defendant has filed counter claim.**—Where the defendant has filed a counter claim seeking affirmative relief, the plaintiff shall not be permitted, by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter claim.

Art. 1901. [1261] [1261] **Requisites of scire facias and returns.**—The scire facias and returns thereon, provided for in this chapter, shall conform to the requisites of citations and the returns thereon, under the provisions of chapter six of this title.

CHAPTER EIGHT.

PLEADINGS OF THE DEFENDANT.

	Article.		Article.
Answer may include several matters.....	1902	Plea of payment, counter claim, etc.....	1907
Plea of privilege, what sufficient.....	1903	General denial need not be repeated.....	1908
To be filed, when.....	1904	Pleas to be filed in due order.....	1909
In cases of citation by publication.....	1905	Certain pleas to be determined during	
Certain pleas to be by affidavit.....	1906	the term at which filed.....	1910

Article 1902. [1262] [1262] **Answer may include several matters.**—The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; provided, that he shall file them all at the same time, and in due order of pleading. [Act May 13, 1846, p. 363, sec. 29. P. D. 1441.]

Art. 1903. **Plea of privilege; what sufficient.**—A plea of privilege to be sued in the county of ones residence shall be sufficient, if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of such process therein, nor at the time of filing such plea, a resident of the county in which such suit was instituted, and shall state the county of his residence at the time of such plea, and that none of the exceptions to exclusive venue in the county of ones residence mentioned in article 1830 or article 2308 of the Revised Statutes exist in said cause. [Acts 1907, p. 248.]

Art. 1904. [1263] [1263] **Answer to be filed, when.**—In all cases in which the citation has been personally served at least ten days before the first day of the term to which it is returnable, exclusive of the day of service and return, the answer of the defendant shall be filed in the county and district courts, on or before the second day of the return term, and before the call of the appearance docket on said second day. [Act May 13, 1846, p. 363, secs. 10, 12; June 16, 1876, p. 22, sec. 18. P. D. 1506, 1508. Acts of 1891, p. 94; amend., 1893, p. 31.]

Art. 1905. [1264] [1264] **Answer in cases of citation by publication.**—In cases in which service of citation has been made by publication, and wherein eight weeks' publication is required, the answer shall be filed on or before appearance day of the term to which the citation is returnable, as in cases of personal service. In all other cases in which service of citation has been made by publication, the answer shall be filed on or before appearance day of the term next succeeding that to which the citation is returnable. [Acts 1846, p. 363, sec. 12. Acts 1909, S. S. p. 324.]

Art. 1906. [1265] [1265] **Certain pleas to be verified by affidavit.**—An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

1. That the suit is not commenced in the proper county.
2. That the plaintiff has not legal capacity to sue.
3. That the plaintiff is not entitled to recover in the capacity in which he sues.
4. That there is another suit pending in this state between the same parties for the same cause of action.
5. That there is a defect of parties, plaintiff or defendant.
6. A denial of partnership as alleged in the petition, whether the same be on the part of the plaintiff or defendant.
7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is not duly incorporated as alleged.

8. A denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority.

9. A plea denying the genuineness of the indorsement or assignment of a written instrument, as required by article 588.

10. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

11. That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

12. That the contract sued upon is usurious. [Act May 13, 1846, p. 363, sec. 31. P. D. 1. Id. sec. 52. P. D. 228. Id. sec. 88. P. D. 1444. Id. sec. 30. P. D. 1442. Id. sec. 86. P. D. 1443. Act Jan. 25, 1840, p. 144, sec. 5. P. D. 224. Act April 2, 1874, p. 52, sec. 1. P. D. 6829c. Acts of 1883, p. 4.]

Art. 1907. [1266] [1266] **Plea of payment, counter claim, etc.**—In every action in which a defendant shall desire to prove any payment, counter claim or set-off, he shall file with his plea an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; and, on failure to do so, he shall not be entitled to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof. [Act Feb. 5, 1840, p. 62, sec. 2. P. D. 3444.]

Art. 1908. [1267] [1267] **General denial need not be repeated.**—Where the defendant has pleaded the general denial, and the plaintiff shall afterward amend his pleading, it shall not be necessary for the defendant to plead such denial a second time, but such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

Art. 1909. [1268] [1268] **Pleas to be filed in due order, etc.**—Pleas shall be filed in the due order of pleading, and shall be heard and determined in such order under the direction of the court. [Act May 13, 1846, p. 363, sec. 32. P. D. 2.]

Art. 1910. [1269] [1269] **Certain pleas to be determined during the term at which filed.**—Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrers, not involving the merits of the case, shall be determined during the term at which they are filed, if the business of the court will permit. [Id. sec. 33. P. D. 3.]

CHAPTER NINE.

CHANGE OF VENUE.

	Article.		Article.	
By consent of parties.....	1911	|	To what county.....	1914
Granted on application, when.....	1912		In case of new counties.....	1915
Shall be granted, unless.....	1913		Duty of clerk on change of venue.....	1916

Article 1911. [1270] [1270] **By consent of parties.**—The court may, upon the written consent of the parties thereto, or their attorneys, filed with the papers of the cause by an order entered on the minutes, transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit. [Act June 21, 1876, p. 25, sec. 1.]

Art. 1912. [1271] [1271] **Granted on application, when.**—A change of venue may be granted in any civil cause upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any of the following causes: [Act April 7, 1874, p. 67, sec. 1. P. D. 5885a.]

1. That there exists in the county where the suit is pending so great a prejudice against him that he can not obtain a fair and impartial trial.

2. That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

3. For other good and sufficient cause, to be determined by the court.

Art. 1913. [1272] [1272] **Shall be granted, unless, etc.**—Where application for a change of venue is made in conformity to the requirements of the preceding article, the same shall be granted, unless the credibility of the persons making the application for a change of venue, or their means of knowledge, or the truth of the facts set out in the said application, are attacked by the affidavit of a credible person; and, if such application is thus attacked, the issue thus formed shall be tried by the judge, and the application granted or refused, as the law and the facts shall warrant. [Id. sec. 4. P. D. 5885d; amend., 1893, p. 2.]

Art. 1914. [1273] [1273] **To what county.**—Upon the grant of a change of venue, as provided in the two preceding articles, the cause shall be removed to some adjoining county, the court house of which is nearest to the court house of the county in which the suit is pending, unless it be made to appear in the application that such nearest county is subject to some objection sufficient to authorize a change of venue therefrom in the first instance; but the parties may, by consent, agree that it shall be changed to some other county, and the order of court shall conform to such agreement. [Id. sec. 2. P. D. 5885b.]

Art. 1915. [1274] [1274] **In case of new counties.**—Where a suit may be pending in the district or county court of any county, out of the territory of which a new county has been, or may be hereafter, made, in whole or in part, if the defendants, or any one of them, shall file a motion in the court where such suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor any one of the defendants now resides in the territorial limits of the county where such suit is pending, and that neither he nor any one of the defendants resided in said territorial limit at the time of the institution of such suit, and shall further swear that at the date of the filing of such suit, said defendant was a resident citizen within the territorial limits of the new county, the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of article 1830. [Act July 29, 1876. p. 74, sec. 1.]

Art. 1916. [1275] [1275] **Duty of clerk on change of venue.**—When an order for a change of venue has been granted by the court, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and transmit the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

CHAPTER TEN.

CONTINUANCE.

Continuance not to be granted, except, etc.	Article. 1917	} Business not disposed of continued by operation of law.....	Article. 1919	
Application for continuance, requisites of	1918			

Article 1917. [1276] [1276] **Continuance not to be granted, except, etc.**—No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause, supported by affidavit, or by consent of the parties, or by operation of law. [Act March 16, 1848, p. 106, sec. 15. P. D. 1509.]

Art. 1918. [1278] [1278] **Application for continuance, requisites of.**—On applying for a continuance, if the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony can not be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and he shall also state that the continuance is not sought for delay only, but that justice may be done; provided, that, on a first application for continuance, it shall not be necessary to show that the absent testimony can not be procured from any other source. Acts 1873, p. 58. Acts 1848, p. 109. Acts 1897, p. 117.]

Art. 1919. [1279] [1279] **Business not disposed of continued by operation of law.**—If from any cause the court shall not be held at the time prescribed by law, or if the business before the court be not determined before the adjournment thereof, such business, of whatsoever nature, remaining undetermined, shall stand continued until the next succeeding term of the court. [Act May 13, 1846, p. 363, sec. 95. P. D. 1462.]

CHAPTER ELEVEN.

STENOGRAPHIC REPORTERS.

District judges may appoint official reporters, when1920 Examination and certificate of reporters.....1921 Oath of reporters.....1922 Duties of reporters.....1923 Same subject1924 Compensation of reporter; further duties, compensation, how paid etc., extra compensation, how paid, etc.....1925 Reporters to make transcript for any person; compensation1926 Stenographer's fee to be taxed as costs when, payable into general fund of county, except, etc.....1927	Article. Deputy reporter; appointment; oath; examination1928 Annual statement of reporter.....1929 Special stenographer appointed, when....1930 Compensation of special stenographer...1931 Stenographer for county court, etc., in civil causes, appointed when; oath; compensation1932 In felony cases reporter to keep stenographic record to be made when and how; transcript for appointed attorney, when, and compensation for same.....1933
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Article 1920. **District judges may appoint official reporters, when.**—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judges of the district courts in all judicial districts of this state composed of only one county, or of only a portion of one county, and of all other district courts sitting in the same counties therewith, may appoint official shorthand reporters for such courts, who shall be well skilled in their profession, who shall be sworn officers of the courts, and shall hold their office during the pleasure of the court. In all other judicial districts, the district judges thereof may appoint official shorthand reporters, if in their judgment such appointment is necessary, and in the event of such appointment the terms of this chapter shall apply. [Acts 1907, S. S. p. 509. Acts 1905, p. 219. Acts 1903, p. 94. Acts 1909, S. S. p. 374, sec. 1.]

Art. 1921. **Examination and certificate of reporters.**—Before any person is appointed an official shorthand reporter, under the provisions of this chapter, he shall be examined as to his competency by a committee to be composed of at least three members of the bar practicing in said court, such committee to be appointed by the judge thereof. The test of competency of any applicant for the position of official shorthand reporter shall be as follows: The applicant shall write in the presence of such committee at the rate of at least one hundred and thirty words per minute for five consecutive minutes, from questions and answers not previously written by him; and, in computing the number of words written, the words "questions" and "answers" appearing in the official shorthand reporter's transcript shall not be counted, and shall transcribe the same with accuracy. If the applicant passes this test satisfactorily, a majority of the committee shall furnish him with a certificate of that fact, which shall be filed among the records of the court, and shall be recorded by the clerk of the court in the minutes thereof. Upon the occasion of subsequent appointments, the presentation of a certified transcript from the clerk of the court of the certificate above mentioned, shall be taken as prima facie evidence of the applicant's competency; provided, however, that if the applicant shall have been an official stenographer of any district court of this state for not less than two years prior to the filing of his application for said appointment, then such examination by said committee, as herein provided, shall not be necessary. [Id. sec. 2.]

Art. 1922. **Oath of reporters.**—Before any person shall assume the duties of official shorthand reporter, under the provisions of this chapter, he shall, in addition to the oath required of officers by the constitution, subscribe to an oath to be administered to him by the clerk of any district court, to the effect that he will well and truly, and in an impartial manner, keep a correct record of all evidence offered in any case which may be reported by him, together with the objections and exceptions thereto which may be interposed

by the parties to such suit, and the rulings and remarks of the court in passing on the admissibility of such testimony. [Id. sec. 3.]

Art. 1923. Duties of reporter.—It shall be the duty of the official shorthand reporter to attend all sessions of the court, to take full shorthand notes of all oral testimony offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings and remarks of the court thereon, and all exceptions to such rulings. If, during the trial of any cause, either party thereto, or his attorney, shall desire to have the evidence already adduced upon the trial, or any part thereof, read over to him, he shall request such official shorthand reporter to read the same from his notes; and it shall be the duty of such reporter to comply with such request, and, in case he shall fail or refuse so to do, he shall be removed from his official position as court reporter, in case it shall be found by a committee of three disinterested practicing attorneys of the county wherein such failure or refusal occurred, to be appointed by the court, that such failure or refusal was intentional and without justification. It shall also be the duty of such official shorthand reporter to preserve all shorthand notes taken in said court, for future use or reference, for at least one year, and to furnish to any person a transcript in question-and-answer form of all such evidence or other proceedings, or any portion thereof, upon the payment to him of the compensation hereinafter provided. [Id. sec. 4.]

Art. 1924. Same subject.—In case an appeal is taken from the judgment rendered in any case, the official shorthand reporter shall transcribe the testimony and other proceedings recorded by him in said case, in the form of questions and answers, provided the same is requested by either party to the suit, certifying that such transcript is true and correct, and shall file the same in the office of the clerk of the court within such reasonable time as may be fixed by written order of the court. Said transcript shall be made in duplicate, to be paid for by the party ordering the same on delivery, and the amount so paid shall be taxed as costs. [Id. sec. 5.]

[Note.—For duties of reporter as to preparation of statements of facts, see articles 2071-2 and 2077 of chapter 19 of this title.]

[Note.—Secs. 6 and 7, parts of sec. 8, a part of sec. 13, and all of sec. 14, that is proper to be retained, of the Act 1909, S. S., p. 374, have been transferred to chapter 19, "Bills of Exceptions and Statements of Facts." See arts. 2070, 2071, 2077 and 2072.]

Art. 1925. Compensation of reporter; further duties; compensation how paid, etc.; extra compensation; how paid, etc.—The official shorthand reporter shall receive a per diem compensation of five dollars for each and every day he shall be in the actual discharge of his duties in reporting cases in the court for which he is appointed, or in performing service under the actual directions of the judge of such court, upon work by such judge deemed necessary. Such compensation shall be paid monthly by the commissioners' court of the county in which said court sits, out of the general fund of the county, upon the certificate of the district judge. He shall also receive from persons ordering transcripts of his notes the sum of ten cents per folio of one hundred words; provided, further however, that if, in any district, the said official shorthand reporter shall, in the judgment of the court, have rendered more service to the court in the discharge of his duties than the terms of this bill shall provide for, then and in that event the district judge shall certify to the commissioners' court of each county in his district, at the end of every six months, that, in his judgment, the compensation is not commensurate with the services performed; and the certificate of said judge shall state the amount that, in his judgment, the said official shorthand reporter should receive from each of the counties in the district, and same shall be a claim against the county, to be allowed or re-

jected by the commissioners' court as other claims against the counties. But this article shall be subject to the provisions of articles 1933 and 2071. [Id. sec. 8.]

Art. 1926. Reporters to make transcript for any person; compensation.—At the request of any person, it shall be the duty of the official shorthand reporter to make a transcript in typewriting of all the evidence and other proceedings, or any portion thereof, either in question-and-answer form or in narrative form, in any case; which transcript shall be paid for at the rate of ten cents per folio of one hundred words by and be the property of the person ordering the same. [Id. sec. 9.]

Art. 1927. Stenographer's fee to be taxed as costs, when; payable into general fund of county, except, etc.—Hereafter the clerks of all courts having official shorthand reporters, as provided for in this chapter, shall tax as costs in each civil case, now or hereafter pending in such courts, except suits for the collection of delinquent taxes, and except suits which are not contested, a stenographer's fee of three dollars, which shall be paid as other costs in the case, and which shall be paid by said clerk, when collected, into the general fund of the county in which said court sits, except cases in which the district court has not original jurisdiction. [Id. sec. 10.]

Art. 1928. Deputy reporter; appointment; oath; examination.—The official shorthand reporter may, with the consent of the court, appoint one or more deputies when necessary to assist him in the discharge of his duties; provided, however, that, before any such deputy shall enter upon the discharge of his duties as official shorthand reporter, he shall subscribe to the same oath hereinbefore provided for the official shorthand reporter, and shall also be required to stand such examination as to his proficiency as may be required by the court. [Id. sec. 11.]

Art. 1929. Annual statement of reporter.—It shall be the duty of each official shorthand reporter to file with the district clerk of each county of his district, annually, upon the first Monday in January, an itemized statement, verified by affidavit, showing all sums collected by him as per diem or other compensation during the preceding year, giving the name of the person paying each sum and the date of payment of same. [Id. sec. 12.]

Art. 1930. [1295] [1295] Special stenographer appointed, when.—Where there shall be no official stenographer, the court may, and upon application of either party shall, employ a competent stenographer or other person to take down the testimony in a cause, for the purpose of preserving a statement of the evidence given on the trial.

Art. 1931. [1296] [1296] Compensation of special stenographer.—In such case, reasonable compensation, not to exceed twenty cents per hundred words, shall be allowed such stenographer, to be fixed by the court and taxed in the bill of costs.

Art. 1932. Stenographer for county court, etc., in civil causes, appointed when; oath; compensation.—Whenever either party to a civil cause pending in the county court, or county court at law, shall apply therefor, the judge of the court shall appoint a competent stenographer to report the oral testimony given in such cause. Such stenographer shall take the oath herein prescribed, and shall receive such compensation as the court may fix, to be not less than five dollars per day, which shall be taxed and collected as costs. [Acts 1909, S. S. p. 378, sec. 13.]

Art. 1933. In felony cases reporter to keep stenographic record, to be made when and how; transcript for appointed attorney, when, and compensation for same.—In the trial of all criminal cases in the district court, in which the defendant is charged with a felony, the official shorthand reporter shall keep an accurate stenographic record of all the proceedings of such trial in like manner as is provided for in civil cases; and, should an appeal be prose-

cutted from any judgment of conviction, whenever the state and the defendant can not agree as to the testimony of any witness, then and in such event, a transcript of so much of the official shorthand reporter's report, with reference to such disputed fact or facts as is necessary to show what such witness testified to in regard to the same, shall be inserted in the statement of facts, and constitute a part of the statement of facts, and the same rule shall apply to the preparation of bills of exceptions; provided, that such stenographer's report, when carried into the statement of facts or bill of exceptions, shall be condensed so as not to contain the questions and answers, except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved; provided, further, that in all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, the official shorthand reporter shall be required to furnish the attorney for the said defendant, if convicted, and where an appeal is prosecuted, with a transcript of his notes, for which said service he shall be paid, by the state of Texas, upon the certificate of the district judge, one-half of the rate provided for herein in civil cases. [Id. sec. 15.]

[Note.—See art. 2071, as to statement of facts prepared by stenographer.]

CHAPTER TWELVE.

TRIAL OF CAUSES.

Article.	Article
Appearance day	Cases brought up from inferior courts
Call of appearance docket.....	tried de novo.....
Judgment by default.....	Order of proceedings on trial by jury.....
Where some defendants answer and	Additional testimony allowed, when.....
others do not.....	Order of argument.....
Damages on liquidated demands, how	Charge and instructions.....
assessed	Nonsuit may be taken, when.....
On unliquidated demands.....	Foreman of the jury.....
Jury to assess damages, when.....	Jury may take certain papers.....
Procedure in case of service by publica-	Jury to be kept together.....
tion where no answer.....	Duty of officer in charge of jury.....
Guardian ad litem for minors, lunatics,	Caution to the jury.....
etc.	May communicate with the court.....
Suits called in their order, etc.....	May ask further instructions.....
To be tried when called, unless, etc.....	May have witness recalled.....
Day set for jury docket.....	May have depositions, etc., re-read.....
Call of non-jury docket.....	Disagreement of jury.....
Issues of law and, dilatory pleas, tried	May be discharged by the court.....
when	Adjournment of court discharges.....
Trial by court.....	Case to be tried again.....
Agreed case	Court may proceed with other business.....

Article 1934. [1280] [1280] **Appearance day.**—The second day of each term of the district or county court is termed appearance day. [Acts of 1891, p. 94.]

Art. 1935. [1281] [1281] **Call of the appearance docket.**—It shall be the duty of the court on appearance day of each term, or as soon thereafter as may be practicable, to call, in their order, all the cases on the docket which are returnable to such term.

Art. 1936. [1282] [1282] **Judgment by default.**—Upon the call of the appearance docket, or at any time after appearance day, the plaintiff may take judgment by default against any defendant who has been duly served with process and who has not previously filed an answer. [Act May 13, 1846, p. 363, sec. 12. P. D. 1508.]

Art. 1937. [1283] [1283] **Where some defendants answer and others do not.**—Where there are several defendants, some of whom have answered and others have made default, an interlocutory judgment by default may be entered against those who have not answered, and the cause may proceed against the others; but only one final judgment shall be given in the suit. [Id. sec. 47. P. D. 1450.]

Art. 1938. [1284] [1284] **Damages on liquidated demands, how assessed.**—Where a judgment by default is rendered against the defendant, or all of several defendants, if the cause of action is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and judgment final shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury. [Id.]

Art. 1939. [1285] [1285] **On unliquidated demands, etc.**—If in such case the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to the damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury. [Id.]

Art. 1940. [1286] [1286] **Jury to assess damages, when.**—If the defendant shall demand and be entitled to a trial by jury, the judgment by default shall be noted and a writ of inquiry awarded, and the cause shall be entered on the jury docket. [Id.]

Art. 1941. [1346] [1212,1345] **Procedure in case of service by publication where no answer, etc.**—Where service of process has been made by publication, and no answer has been filed nor appearance entered within the time prescribed by law, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as part of the record thereof. The court shall allow such attorney a reasonable compensation for his services, to be taxed as part of the costs of the suit. [Acts 1846, p. 363, sec. 128. Acts 1866, p. 125, sec. 1. P. D. 1488, 26.]

[Note.—For general provisions as to suits against non-residents, see chapter 23 of this title, and especially article 2175.]

Art. 1942. [1211] [1211] **Guardian ad litem for minors, lunatics, etc.**—In all cases when a minor, lunatic, idiot or a non compos mentis may be a defendant to a suit, and it shall be shown to the court that such minor, lunatic, idiot or person non compos mentis has no guardian within the state, it shall be the duty of the court to appoint a guardian ad litem for such minor, lunatic, idiot or person non compos mentis for the purpose of defending such suit, and to allow him a reasonable compensation for his services, to be taxed as a part of the costs of suit. [Acts 1846, p. 374. Acts 1895, p. 80. P. D. 1446.]

Art. 1943. [1287] [1287] **Suits called in their order, etc.**—All suits in which final judgments shall not have been rendered by default, as hereinbefore provided, shall be called for trial in the order in which they stand on the docket to which they belong, unless otherwise ordered by the court. [Act May 13, 1846, p. 363, sec. 93. P. D. 1461.]

Art. 1944. [1288] [1288] **To be tried when called, unless, etc.**—Every suit shall be tried when it is called, unless it be continued or postponed to a future day of the term, or be placed at the end of the docket to be called again for trial in its regular order. [Id.]

Art. 1945. [1289] [1289] **Day set for jury docket.**—The court shall, by an order entered on the minutes, designate a day of the term for taking up for trial the causes on the jury civil docket at all subsequent terms, until changed by a like order; but, in case of change, it shall not take effect until the succeeding term of said court. In all cases in which juries have been de-

manded by either party, all questions of law, demurrers, exceptions to pleadings, etc., shall, as far as practicable, be heard and determined by the court before the day designated for the trial of said jury causes, and all jurors shall be summoned to appear on the day of the term so designated. [Acts of 1881, p. 5.]

Art. 1946. [1290] [1290] **Call of non-jury docket.**—The docket of cases in which jury trials have not been granted shall be taken up at such times and in such manner as not unnecessarily to interfere with the dispatch of business on the jury docket.

Art. 1947. [1291] [1291] **Issues of law and dilatory pleas, when tried.**—When a case is called for trial, the issues of law arising on the pleadings, and all pleas in abatement, and other dilatory pleas remaining undisposed of, shall be determined; and it shall be no cause for the postponement of a trial of the issues of law that a party is not prepared to try the issues of fact. [Act May 13, 1846, p. 363, sec. 33. P. D. 3.]

Art. 1948. [1292] [1292] **Trial by the court.**—The rules hereinafter prescribed for the trial of causes before the jury shall govern in trials by the court so far as may be applicable.

Art. 1949. [1293] [1293] **Agreed case.**—The parties may in any case submit the matter in controversy between them to the court upon an agreed statement of facts made out and signed by them or their counsel, and filed with the clerk, upon which judgment shall be rendered as in other cases; and, in such case, the statement so agreed to and signed and certified by the court to be correct, and the judgment rendered thereon, shall constitute the record of the cause. [Act Feb. 5, 1858, p. 110, sec. 12. P. D. 1516.]

Art 1950. [1294] [1294] **Cases brought up from inferior courts, tried de novo.**—In all cases brought up from inferior courts, whether by appeal or certiorari, the case shall be tried de novo. [Act May 13, 1846, p. 363, secs. 59, 60. P. D. 1459, 1460.]

Art. 1951. [1297] [1297] **Order of proceedings on trial by jury.**—In suits tried by a jury the trial shall proceed in the following order, unless the court should, for good cause, to be stated in the record, otherwise direct:

1. The plaintiff or his counsel shall read his petition to the jury.
2. The defendant or his counsel shall read his answer.
3. If there be any intervenor, he or his counsel shall read his pleadings.
4. The party, plaintiff or defendant, upon whom rests the burden of proof on the whole case under the pleadings, shall then be permitted to state to the jury briefly the nature of his claim or defense and facts relied on in support thereof.
5. Such party shall then introduce his evidence.
6. The adverse party shall then be permitted to state briefly the nature of his defense or claim and the facts relied on in support thereof.
7. He shall then introduce his evidence.
8. The intervenor, if any, shall, in like manner, be permitted to make his statement, and shall then introduce his evidence.
9. The parties shall then be confined to rebutting testimony on each side.

Art. 1952. [1298] [1298] **Additional testimony allowed, when.**—The court may at its discretion, at any time before the conclusion of the argument, where it appears to be necessary to the due administration of justice, allow a party to supply an omission in testimony, on such terms and under such limitations as the court may prescribe.

Art. 1953. [1299] [1299] **Order of argument.**—After the evidence is concluded, the parties may submit the case to the jury in argument; the party having under the pleadings the burden of proof on the whole case shall be entitled to open and conclude the argument; where there are several other parties having separate claims or defenses, and represented by differ-

ent counsel, the court shall prescribe the order of argument between them.

Art. 1954. [1300] [1300] **Charge and instructions.**—After the conclusion of the argument, the court shall read to the jury the charges and instructions, if any, under the provisions of this title relating thereto. [Act Feb. 6, 1953, p. 19, sec. 99. P. D. 1464.]

Art. 1955. [1301] [1301] **Nonsuit may be taken, when.**—At any time before the jury have retired, the plaintiff may take a nonsuit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief; when the case is tried by the judge such nonsuit may be taken at any time before the decision is announced. [Id. P. D. 1464.]

Art. 1956. [1302] [1302] **Foreman of jury.**—The court may appoint one of the jury to be the foreman thereof; and, in case no foreman is appointed by the court, the jury may elect a foreman from their number, who shall preside at their deliberations and see that the same are conducted with regularity and in order.

Art. 1957. [1303] [1303] **Jury may take papers with them, except, etc.**—The jury may take with them in their retirement the charges and instructions in the cause, the pleadings and any written evidence, except the depositions of witnesses. But, when part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded. [Id. P. D. 1464.]

Art. 1958. [1304] [1304] **Jury to be kept together.**—The jury may either decide the case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court; but the court may, in its discretion, permit them to separate temporarily for the night and at their meals, and for other proper causes.

Art. 1959. [1305] [1305] **Duty of officer in charge of jury.**—The officer having the jury under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon a verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Art. 1960. [1306] [1306] **Caution to the jury.**—If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject connected with the trial.

Art. 1961. [1307] [1307] **Jury may communicate with the court.**—When the jury wish to communicate with the court, they shall make their wish known to the officer having them in charge, who shall inform the court thereof, and they may be brought into open court, and through their foreman shall state to the court, either verbally or in writing, what they desire to communicate.

Art. 1962. [1308] [1308] **May ask further instruction.**—The jury may, after having retired, ask further instruction of the court touching any matter of law. For this purpose, they shall appear before the judge in open court in a body and, through their foreman, state to the court, either verbally or in writing, the particular question of law upon which they desire further instruction, and the court shall give such instruction in writing; but no instruction shall be given except upon the particular question on which it is asked [Id. P. D. 1464.]

Art. 1963. [1309] [1309] **May have witness recalled.**—If the jury disagree as to the statement of any particular witness, they may, upon applying to the court, have such witness again brought upon the stand; and he shall be directed by the judge to detail his testimony to the particular point of

disagreement, and no other, and as nearly as he can in the language used upon his examination.

Art. 1964. [1310] [1310] **May have deposition, etc., re-read.**—If the jury disagree as to any portion of a deposition or other paper not carried with them in their retirement, the court may, in like manner, permit such portion of the deposition or paper to be again read to the jury.

Art. 1965. [1311] [1311] **Disagreement of jury.**—The jury may, after the cause is submitted to them, be discharged by the court when they can not agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree.

Art. 1966. [1312] [1312] **May be discharged by the court.**—They may also be discharged by the court when any calamity or accident may, in the opinion of the court, require it; and they shall be so discharged when, by sickness or other cause, their number is reduced below the number constituting a jury in such court. [Const., art. 5, sec. 13.]

Art. 1967. [1313] [1313] **Final adjournment of court discharges.**—The final adjournment of the court before the jury have agreed upon a verdict discharges them.

Art. 1968. [1314] [1314] **Case to be tried again.**—Where a jury has been discharged as herein provided, without having rendered a verdict, the cause may be again tried at the same or another term.

Art. 1969. [1315] [1315] **Court may proceed with other business.**—The court may, during the retirement of the jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

CHAPTER THIRTEEN.

CHARGES AND INSTRUCTIONS TO THE JURY.

<p>Court shall charge the jury, unless waived, etc.1970 Requisites of the charge.....1971 Charge need not be excepted to.....1972</p>	<p>Article. Parties may ask instructions.....1973 Instructions refused constitute part of bill of exceptions.....1974 Jury may carry charge, etc., with them...1975</p>
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Article 1970. [1316] [1316] **Court shall charge jury unless waived, etc.**—After the argument of a cause, the judge shall, in open court, unless the same be expressly waived by the parties to the suit, prepare and deliver a written charge to the jury on the law of the case, subject to the restrictions hereinafter provided. [Acts 1853, p. 19. Acts 1903, p. 55. R. S. 1879, 1316. P. D. 1464.]

Art. 1971. [1317] [1317] **Requisites of the charge.**—The charge shall be in writing and signed by the judge, and he shall read it to the jury in the precise words in which it is written; he shall not charge or comment on the weight of evidence; he shall so frame the charge as to distinctly separate the questions of law from the questions of fact; he shall decide on, and instruct the jury as to the law arising on the facts, and shall submit all controverted questions of fact solely to the decision of the jury. [Id.]

Art. 1972. [1318] [1318] **Charge need not be excepted to.**—Such charge shall be filed by the clerk and shall constitute a part of the record of the cause, and shall be regarded as excepted to, and subject to revision for er-

rors therein, without the necessity of taking any bill of exception thereto.

Art. 1973. [1319] [1319] **Parties may ask instructions.**—Either party may present to the judge, in writing, such instructions as he desires to be given to the jury; and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper, and he shall read to the jury such of them as he may give. [Act May 13, 1846, p. 363, sec. 100. P. D. 216.]

Art. 1974. [1320] [1320] **Instructions refused constitute part of bill of exceptions.**—When the instructions asked, or some of them, are refused, the judge shall note distinctly which of them he gives and which he refuses, and shall subscribe his name thereto; and such instructions shall be filed with the clerk, and shall constitute a part of the record of the cause, subject to revision for error without the necessity of taking any bill of exception thereto. [Id.]

Art. 1975. [1321] [1321] **Jury may carry charge, etc., with them.**—The charge and instructions given to the jury may be carried with them by the jury in their retirement, and an additional charge or instructions may be given them upon any question of law arising in the case, in conformity with the preceding rules, upon the application of the jury therefor in open court. [Act Feb. 5, 1853, p. 19, sec 99. P. D. 1464.]

CHAPTER FOURTEEN.

THE VERDICT.

Article.	Article.
Rendition of verdict.....1976	Verdict to comprehend whole issue or all issues submitted .....1988
Must be in writing and signed.....1977	Judge, on request to state conclusions of fact and law separately, statement to be filed .....1989
Verdict received and noted.....1978	Court to render judgment on special verdict or conclusions, unless set aside, etc. ....1990
Jury may be polled.....1979	Exceptions to conclusions or judgment noted in judgment; appeal, etc.; transcript .....1991
Defective or mistaken verdict.....1980	No submission of special issues unless requested .....1992
Not responsive to the issues.....1981	Verdict not void for want of form.....1993
Verdicts either general or special.....1982	
General verdict.....1983	
Special verdict defined.....1984	
Special verdict, requisites of: failure to submit issue not reversible error unless request, etc.....1985	
Special verdict conclusive.....1986	
Jury to render general or special verdict as directed .....1987	

Article 1976. [1322] [1322] **Rendition of verdict.**—When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge, and their names shall be called by the clerk, and they shall deliver their verdict to the clerk.

Art. 1977. [1323] [1323] **Must be in writing and signed.**—The verdict shall be in writing, and shall be signed by the foreman; and where, pending a trial in the district court, any juror may die or be disabled from sitting and the verdict is rendered by the remaining jurors, the verdict shall be signed by all of such remaining jurors. [Act Aug. 1, 1876. P. D. 1464.]

Art. 1978. [1324] [1324] **Verdict received and noted on docket.**—The clerk shall read the verdict aloud, and shall inquire of the jury if such is their verdict; if any juror disagrees to the verdict, the jury shall be sent out again, but if no disagreement is expressed, and neither party requires the jury to be polled, the court shall, except in the cases hereinafter provided

for, receive the verdict and enter a minute thereof on the docket, and the jury shall be discharged.

Art. 1979. [1325] [1325] **Jury may be polled.**—When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or judge asking each juror separately if such is his verdict; if any jury answers in the negative, the jury shall again be sent out for further deliberation; but if each juror concurs in the verdict the same shall be received and noted in the docket, except in the cases provided for in the two succeeding articles, and the jury shall be discharged.

Art. 1980. [1326] [1326] **Defective or mistaken verdict.**—If the verdict is informal or defective, the court may direct it to be reformed at the bar; and, where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar; and the verdict may, if the jury assents thereto, be reformed in accordance with such computation.

Art. 1981 [1327]. [1327] **Not responsive to the issues.**—If the verdict is not responsive to the issue submitted to the jury, the court shall call their attention thereto, and send them back for further deliberation.

Art. 1982. [1328] [1328] **Verdicts either general or special.**—The verdict of a jury is either a general or a special verdict.

Art. 1983. [1329] [1329] **General verdict.**—A general verdict is one whereby the jury pronounce generally in favor of one or more parties to the suit upon all or any of the issues submitted to them.

Art. 1984. [1330] [1330] **Special verdict defined.**—A special verdict is one wherein the jury find the facts only on issues made up and submitted to them under the direction of the court. [Act May 13, 1846, p. 363, sec. 108. P. D. 1469.]

Art. 1985. [1331] [1331] **Special verdict, requisites of; failure to submit issue not reversible error unless request, etc.**—The special verdict must find the facts established by the evidence, and not the evidence by which they are established; and it shall be the duty of the court, when it submits a case to the jury upon special issues, to submit all the issues made by the pleading. But the failure to submit any issue shall not be deemed a ground for reversal of the judgment, upon appeal or a writ of error, unless its submission has been requested in writing by the party complaining of the judgment. Upon appeal or writ of error, an issue not submitted and not requested by a party to the cause, shall be deemed as found by the court in such manner as to support the judgment; provided, there be evidence to sustain such a finding. [Acts 1897, S. S. p. 15.]

Art. 1986. [1332] [1332] **Special verdict conclusive.**—A special verdict found under the provisions of the two preceding articles shall, as between the parties, be conclusive as to the facts found. [P. D. 1469.]

Art. 1987. [1333] [1333] **Jury to render general or special verdict as directed.**—The jury shall render a general or special verdict as may be directed by the court. [Acts 1879, p. 119. Acts 1899, p. 190.]

Art. 1988. [1333] [1333] **Verdict to comprehend whole issue or all the issues submitted.**—The verdict shall comprehend the whole issue or all the issues submitted to the jury. [Id.]

Art. 1989. [1333] [1333] **Judge, on request, to state conclusions of fact and law separately, statement to be filed.**—Upon a trial by the court, the judge shall, at the request of either of the parties, state in writing the conclusion of fact found by him, separately from the conclusions of law; which conclusions of fact and law shall be filed with the clerk and shall constitute a part of the record. [Id.]

Art. 1990. [1333] [1333] **Court to render judgment on special verdict or conclusions, unless set aside, etc.**—In all cases where a special verdict of

the jury is rendered, or the conclusions of fact found by the judge are separately stated, the court shall, unless the same be set aside and a new trial granted, render judgment thereon. [Id.]

Art. 1991. [1333] [1333] **Exceptions to conclusions or judgment noted in judgment; appeal, etc.; transcript.**—It shall be sufficient for the party, excepting to the conclusions of law or judgment of the court, to cause it to be noted on the record in the judgment entry that he excepts thereto; and such party may thereupon take his appeal or writ of error without a statement of facts or further exceptions in the transcript; but the transcript shall in such cases contain the special verdict or conclusions of fact and law aforesaid, and the judgment rendered thereon. [Id.]

Art. 1992. [1333] [1333] **No submission of special issues unless requested.**—A case shall not be submitted to a jury on special issues by the court, unless one or all parties to the suit request such submission. [Id.]

[Note.—See recital in Acts 1899, pp. 190-191, sec. 2, as to original article 1333.]

Art. 1993. [1334] [1334] **Verdict not void for want of form.**—No special form of verdict is required; and where there has been a substantial compliance with the requirements of the law in rendering a verdict, the judgment shall not be arrested or reversed for mere want of form therein. [Act May 13, 1846, p. 363, sec. 104. P. D. 1465.]

CHAPTER FIFTEEN.

JUDGMENTS.

Article.	Article.		
Judgments, how framed.....	1994	On appeals from justice's court.....	2003
For or against one or more plaintiffs		Judgments against executors, etc.....	2004
etc.....	1995	Against executors acting independently	
Several counts, some good and others		of probate court.....	2005
bad.....	1996	Against partners when all not served.....	2006
But one final judgment.....	1997	Confession of judgment.....	2007
Judgment may pass title, etc.....	1998	Acceptance of service, waiver of pro-	
Court shall enforce its own decrees; in		cess.....	2008
certain cases, how.....	1999	Confession of by attorney.....	2009
Judgments of foreclosure of liens.....	2000	Releases errors, but impeachable, etc.....	2010
Writ of possession awarded.....	2001	Other judgments when authorized by	
On appeals from county court.....	2002	law.....	2011

Article 1994. [1335] [1335] **Judgments how framed.**—The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. [Acts May 13, 1846, p. 363, sec. 115; May 11, 1846, p. 200, sec. 7. P. D. 1476, 1410.]

Art. 1995. [1336] [1336] **For or against one or more plaintiffs, etc.**—Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and against or for one or more of several defendants or intervenors.

Art. 1996. [1453] [1449] **Several counts, some good and others bad.**—Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defensive. [Act May 13, 1846, p. 363, sec. 105. P. D. 1460.]

Art. 1997. [1337] [1337] **But one final judgment.**—Only one final judgment shall be rendered in any cause, except where it is otherwise specially provided by law.

Art. 1998. [1338] [1338] **Judgment may pass title, etc.**—Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered. [Act May 13, 1846, p. 363, sec. 120. P. D. 1481.]

Art. 1999. [1339] [1339] **Court shall enforce its own decrees, and may in certain cases do so by contempt process.**—The court shall cause its judgments and decrees to be carried into execution; and, where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and the court may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. [Act May 11, 1846, p. 200, sec. 17. P. D. 1420.]

Art. 2000. [1340] [1340] **Judgment of foreclosure of liens.**—Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to the sheriff or any constable of the county where such property may be, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property can not be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions. [Act May 13, 1846, p. 303, sec. 119. P. D. 1480.]

Art. 2001. [1341] [1340a] **Writ of possession awarded.**—When any order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, in any court having jurisdiction, such order shall have all the force and effect of a writ of possession, as between the parties to such suit of foreclosure and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order; and the sheriff or other officer executing such order of sale shall proceed by virtue of said order to place the purchaser of the property sold under the same in possession thereof within thirty days after the day of sale. [Acts of 1885, p. 10.]

Art. 2002. [1342] [1341] **Judgment on appeal, etc., from county court.**—Judgments on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance. [Act May 13, 1846, p. 363, sec. 60. P. D. 1460.]

Art. 2003. [1343] [1342] **On appeal, etc., from justices' court.**—Judgments on appeal or certiorari from any justice's court shall be enforced by the county court.

Art. 2004. [1344] [1343] **Judgments against executors, etc.**—Where a recovery of money is had against an executor, administrator or guardian, as such, the judgment shall state that it is to be paid in the due course of administration, and no execution shall issue on such judgment, but the same shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law. [Act May 13, 1846, p. 363, sec. 118. P. D. 1479.]

Art. 2005. [1345] [1344] **Against executors acting independently of probate court.**—The preceding article shall not apply to judgments against an

executor who has been appointed and is acting under a will dispensing with the action of the county court in reference to such estate; but such judgment shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

Art. 2006. [1347] [1346] **Against partners when all not sued.**—Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners, but not upon all, judgment may be rendered therein against such partnership and against the partners actually served, but no personal judgment or execution shall be awarded against those not served. [Act Feb. 5, 1858, p. 110, sec. 2. P. D. 1514.]

Art. 2007. [1348] [1347] **Confession of judgment.**—Any person indebted, or against whom a cause of action exists, may, without process, appear in person or by attorney, and confess judgment therefor in open court; but in such case a petition should be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed. [Act May 13, 1846, p. 363, sec. 116. P. D. 1477.]

Art. 2008. [1349] [1347a] **The acceptance of service and waiver of process.**—The acceptance of service and waiver of process, provided for in article 1880, and the entry of appearance in open court as provided for in article 1881, or the confession of judgment as provided for in article 2007, shall not in any action be authorized by the contract or instrument of writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver of service be made until after suit brought. [Acts of 1885, p. 33.]

Art. 2009. [1350] [1348] **Confession of, by attorney.**—When the judgment is confessed by attorney, the power of attorney shall be filed, and a recital of the contents of the same be made in the judgment. [Id.]

Art. 2010. [1351] [1349] **Releases errors, but may be impeached, etc.**—Every judgment by confession duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause. [Id. sec. 117. P. D. 1478.]

Art. 2011. [1352] [1350] **Other judgments, when authorized by law.**—The court may render such other judgment and in such form as may be authorized by law.

CHAPTER SIXTEEN.

REMITTER AND AMENDMENT OF JUDGMENT.

	Article.		Article.
Remitter of excess in verdict.....	2012	Misrecitals, etc., corrected in vacation or	
Remitter of excess in judgment in open		term time in certain cases.....	2016
court	2013	Correction made in vacation to be certi-	
Remitter in vacation.....	2014	fied to clerk.....	2017
Mistake in judgment corrected in open		Correction or remitter operates to cure	
court	2015	errors	2018

Article 2012. [1353] [1351] **Remitter of excess in verdict.**—Any party in whose favor a verdict has been rendered may in open court remit any part of such verdict; and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. [Act May 13, 1846, p. 363, sec. 133. P. D. 52.]

Art. 2013. [1354] [1352] **Remitter of excess in judgment in open court.**—Any person in whose favor a judgment has been rendered may in open court remit any part of such judgment; and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. [Id.]

Art. 2014. [1355] [1353] **Remitter in vacation.**—Any party may make such remitter in vacation by executing and filing with the clerk a release in writing, signed by him or by his attorney of record, and attested by the clerk with the seal of his office. Such release shall constitute a part of the record of the cause, and any execution thereafter issued shall be for the balance only of the judgment, after deducting the amount remitted. [Id.]

Art. 2015. [1356] [1354] **Mistakes in judgments corrected in open court.**—Where there shall be a mistake in the record of any judgment or decree, the judge may, in open court, and after notice of the application therefor has been given to the parties interested in such judgment or decree, amend the same according to the truth and justice of the case, and thereafter the execution shall conform to the judgment as amended. [Act May 11, 1846, p. 200, sec. 13. P. D. 49.]

Art. 2016. [1357] [1355] **Misrecitals, etc., corrected in vacation or term time, in certain cases.**—Where, in the record of any judgment or decree of any court, there shall be any mistake, miscalculation or misrecital of any sum or sums of money, or of any name or names, and there shall be among the records of the cause any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be the duty of the court in which such judgment or decree shall be rendered, and the judge thereof, in vacation, on application of either party, to amend such judgment or decree thereby, according to the truth and justice of the case; but the opposite party shall have reasonable notice of the application for such amendment. [Act May 13, 1846, p. 363, sec. 132. P. D. 51. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 2017. [1358] [1356] **Correction, made in vacation to be certified to clerk, etc.**—The judge making such correction in vacation shall embody the same in a judgment, and shall certify thereto and deliver the same to the clerk, who shall enter the same in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

Art. 2018. [1359] [1357] **Correction or remitter operates to cure error.**—A remitter or correction made as provided in any of the six preceding articles shall, from the making thereof, cure any error in the verdict or judgment by reason of such excess. [Id. sec. 133. P. D. 52.]

CHAPTER SEVENTEEN.

NEW TRIALS AND ARREST OF JUDGMENT.

	Article.		Article.
New trials may be granted.....	2019	Not more than two new trials, except, etc.....	2024
Motion for, requisites of.....	2020	Determined when	2025
Misconduct of jury, etc., as ground of motion; evidence	2021	Bill of review in suits by publication.....	2026
New trials granted where damages too small, etc.....	2022	Petition necessary in such cases.....	2027
Time of making motion.....	2023	Execution, etc., not suspended, unless.....	2028
		Sale under such execution not avoided but, etc.....	2029

Article 2019. [1370] [1368] **New trials, etc., may be granted.**—New trials may be granted and judgments may be set aside or arrested on motion for good cause, on such terms and conditions as the court shall direct. [Act May 13, 1846, p. 363, sec. 109. P. D. 1470.]

Art. 2020. [1371] [1369] **Motion for new trial, etc., requisites of.**—Every such motion shall be in writing and signed by the party or his attorney, and shall specify the ground upon which it is founded, and may be amended under leave of the court, and no grounds other than those specified shall be heard or considered. [Acts 1846, p. 363. Acts 1905, p. 21.]

Art. 2021. [1371] [1369] **Misconduct of jury, etc., as ground of motion; evidence.**—Where the ground of the motion is misconduct of the jury or of the officer in charge of same, or because of any communication made to the jury, or because the jury received other testimony, the court shall hear evidence thereof; and it shall be competent to prove such facts by the jurors or others, by examination in open court; and, if the misconduct proven, or the testimony received, or the communication made, be material, a new trial may, in the discretion of the court, be granted. [Id.]

Art. 2022. [1452] [1448] **New trials granted where damages too small, etc.**—New trials may be granted as well when the damages are manifestly too small as when they are too large. [Act May 13, 1846, p. 363, sec. 111. P. D. 1472.]

Art. 2023. [1373] [1371] **Time of making motion.**—All motions for new trials, in arrest of judgment, or to set aside a judgment, shall be made within two days after the rendition of verdict, if the term of court shall continue so long; if not, then before the end of the term. [Id. sec. 112. P. D. 1473.]

Art. 2024. [1372] [1370] **Not more than two new trials, except, etc.**—Not more than two new trials shall be granted to either party in the same cause, except when the jury have been guilty of some misconduct or have erred in matter of law. [Id. P. D. 1470.]

Art. 2025. [1374] [1372] **Determined when.**—All motions for new trials, in arrest of judgment, or to set aside a judgment, shall be determined at the term of the court at which such motion shall be made. [Id.]

Art. 2026. [1375] [1373] **Bill of review in suits by publication.**—In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by an attorney of his own selection, a new trial may be granted by the court upon the application of the defendant for good cause shown, supported by affidavit, filed within two years after the rendition of such judgment. [Id. sec. 129. P. D. 1489.]

Art. 2027. [1376] [1374] **Petitions, etc., necessary in such cases.**—In the cases mentioned in the preceding article, a petition shall be filed and service of process made upon the parties adversely interested in the judgment, as in other cases. [Id.]

Art. 2028. [1377] [1375] **Execution, etc., not suspended, unless, etc.**—In the cases mentioned in the two preceding articles, process on such judgment shall not be suspended, unless the defendant or party applying there-

for shall give bond, with two or more good and sufficient sureties, to be approved by the clerk, in double the amount of the judgment, or value of the property adjudged, payable to the plaintiff in the judgment, conditioned that the party will prosecute his petition for new trial to effect, and will perform such judgment as may be rendered by the court, should its decision be against him. [Id.]

Art. 2029. [1378] [1376] **Sale under such execution not avoided, but, etc.**—Where, in such case as is mentioned in the three preceding articles, property has been sold under the judgment and execution before the process was suspended, the defendant, should he defeat the plaintiff's action, shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale. [Id.]

CHAPTER EIGHTEEN.

COSTS AND SECURITY THEREFOR.

[See Fees, Title 58, Chapter 4.]

<p>Who responsible for costs.....2030 Each party liable for costs incurred by him.....2031 Officers may demand payment of, to adjournment of each term.....2032 May put bill of costs with officer for collection; when; same has force of execution; appeal not to prevent execution for costs.....2033 Levy for costs; costs demanded of attorney; fees for collecting, when allowed.....2034 Successful party to recover.....2035 Taxes on law proceedings.....2036 Fees of only two witnesses to any fact.....2037 Costs of motions.....2038 Costs where exception sustained.....2039 Where exception overruled.....2040</p>	<p>Article. Costs of several suits, etc.....2041 Where demand reduced by payment, etc.....2042 In actions of assault and battery.....2043 Costs of new trials.....2044 Where judgment is arrested, etc.....2045 On appeals and certiorari.....2046 The same.....2047 Court may otherwise adjudge costs.....2048 Clerk may require security for costs.....2049 Who may require security.....2050 Judgment on cost bond.....2051 Affidavit of inability to give cost bond.....2052 Deposit in lieu of cost bond.....2053 No security to be required of who.....2054 No security required of the state.....2055 Security may be required of who, etc.....2056 Costs may be secured by other bonds.....2057</p>
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Article 2030. [1421] [1420] **Each party responsible to officers for his own costs.**—Each party to any suit shall be responsible to the officers of the court for the costs incurred by himself; and no sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; provided, that when affidavit is filed, as provided for in article 2052 of this chapter, the clerk issuing the process shall indorse thereon the words, "pauper oath filed," and sign his name officially below them; and the sheriff or constable in whose hands such process is placed for service shall serve the same as in other cases. [Acts of 1887, p. 102.]

Art. 2031. [2491] [2427] **Each party liable for costs incurred by him.**—Each party to a suit shall be liable for all costs incurred by him; and, in case the costs can not be collected of the party against whom the same have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

Art. 2032. [1422] [1420a] **Officers may demand payment of costs up to adjournment of each term.**—It shall be lawful for the clerks of the district and county courts and justices of the peace to demand payment of all costs

due in each and every case pending in their respective courts, up to the adjournment of each term of said courts. [Acts of 1879, ch. 81, p. 90.]

Art. 2033. [1423] [1420b] **May put bill of costs in hands of officer for collection, when. Same to have force of execution. Appeal not to prevent issuance of execution for costs.**—Should any party against whom costs have been taxed under the provisions of this chapter fail or refuse to pay the same within ten days after demand for payment, it shall be lawful for the clerk or justice of the peace to make out a certified copy of the bill of costs then due, as herein provided for, and place the same in the hands of the sheriff or constable for collection; and such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the district clerk, county clerk or justice of the peace from issuing his execution for costs at the end of the term at which the appeal is taken. [Id. R. S. 1879, 1420b.]

Art. 2034. [1424] [1420c] **Officer to levy for costs, when. Costs demanded of attorney when. Fees for collecting costs, when allowed.**—It shall be lawful for the sheriff or constable, upon demand and failure to pay said bill of costs, to levy upon a sufficient amount of property of the person from whom said costs may be due to satisfy the same, and sell such property according to the law governing sales under execution; provided, where such party is not a resident of the county where such suit is pending, then payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, nor shall the sheriff or constable be allowed any fees for collecting said costs, unless he is compelled to make a levy; and, in case of levy or sale, he shall charge and collect the same fees as are allowed for collecting money under other executions. [Id. R. S. 1879, 1420c.]

Art. 2035. [1425] [1421] **Successful party to recover of his adversary.**—The successful party to a suit shall recover of his adversary all the costs expended or incurred therein, except where it is or may be otherwise provided by law. [Id. sec. 122. P. D. 1483.]

[Note.—See art. 3722.]

Art. 2036. [1426] [1422] **Taxes on law proceedings.**—All taxes imposed on law proceedings shall be included in the bill of costs. [Id. sec. 124. P. D. 1484.]

Art. 2037. [1427] [1423] **Fees of only two witnesses to any fact.**—There shall not be allowed in any cause the fees of more than two witnesses to any one fact. [Id. sec. 127. P. D. 1487.]

Art. 2038. [1428] [1424] **Costs of motions.**—On all motions, the court may give or refuse costs at its discretion, except where it is otherwise provided by law. [Id. sec. 121. P. D. 1482.]

Art. 2039. [1429] [1425] **Costs where exception is sustained.**—Where a pleading is excepted to, if such exception be sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings. [Id. secs. 122, 123. P. D. 1483, 12.]

Art. 2040. [1430] [1426] **Where exception overruled.**—If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception. [Id.]

Art. 2041. [1431] [1427] **Costs of several suits, etc.**—Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other actions shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions. [Id. sec. 49. P. D. 1452.]

Art. 2042. [1432] [1428] **Where demand reduced by payments, etc.**—Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs. [Act Jan. 2, 1860, p. 5, sec. 1. P. D. 3446.]

Art. 2043. [1433] [1429] **Costs in action of assault and battery, etc.**—In all civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for a less sum than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit. [Act May 13, 1846, p. 363, sec. 106. P. D. 1467.]

Art. 2044. [1434] [1430] **Cost of new trials.**—The costs of all new trials may either abide the event of the suit or may be taxed against the party to whom the new trial is granted, as may be adjudged by the court at the time of granting such new trial. [Id. sec. 113. P. D. 1474.]

Art. 2045. [1435] [1431] **Where judgment is arrested, etc.**—When the judgment is arrested or the verdict set aside because of the insufficiency of the pleadings of the party in whose favor the verdict or judgment was rendered, the cost thereof shall be taxed against the party whose pleadings shall have been so adjudged insufficient. [Id. sec. 114. P. D. 1475.]

Art. 2046. [1436] [1432] **On appeal and certiorari.**—In cases of appeal or certiorari taken by the party against whom the judgment was rendered in the court below, if the judgment of the court above be against him, but for a less amount, such party shall recover the costs of the court above, but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. [Act Aug. 13, 1870, p. 87, sec. 12. P. D. 6349.]

Art. 2047. [1437] [1433] **Same subject.**—In cases of appeal or certiorari taken by the party in whose favor the judgment was rendered in the court below, if the judgment of the court above be in his favor for a greater amount, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below and pay the cost of the court above. [Id.]

Art. 2048. [1438] [1434] **Court may otherwise adjudge costs.**—The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided in the preceding articles of this chapter.

Art. 2049. [1439] [1435] **Clerk may require security for costs.**—The clerk may require from the plaintiff in a suit security for costs before issuing any process therein, but he shall file the petition and enter the same properly on the docket. [Act March 20, 1848, p. 184, sec. 23. P. D. 3833.]

Art. 2050. [1440] [1436] **Defendant or any officer may require security.**—The plaintiff in any civil suit may, at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, be ruled to give security for the costs; and, if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed. [Act March 16, 1848, p. 106, sec. 1.]

Art. 2051. [1441] [1437] **Judgment on cost bond.**—All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause. [Id. sec. 2.]

Art. 2052. [1442] [1438] **Affidavit of inability to give.**—A party who is required to give security for costs may file with the clerk or justice of the peace an affidavit that he is too poor to pay the costs of court and is unable to give security therefor; and it shall thereupon be the duty of the clerk or

justice of the peace to issue process and to perform all other services required of him, in the same manner as if the security had been given; provided, any party to the suit, the clerk or justice of the peace, shall have the right to contest by proof the inability of the party to pay the costs or his inability to give security for the same. [Acts 1879, p. 91. Acts 1846, p. 363. Acts 1907, p. 4.]

Contest of affidavit, and trial of same.—Such contest may be tried before the trial of the cause, at such time as may be designated by the court; provided that notice of such contest shall be given by noting it on the docket at the term of the court at which the affidavit of inability to give security is filed. [Id. P. D. 1429.]

Art. 2053. [1442] [1438] **Deposit in lieu of cost bond.**—In lieu of a bond for costs, the party required to give the same may deposit with the clerk of the court, or with the justice of the peace, such amount of money as the court or justice of the peace from time to time may designate as sufficient to pay the costs that have accrued. [Acts 1907, p. 4.]

Art. 2054. [1443] [1439] **No security to be required of executors, etc.**—Executors, administrators and guardians appointed by the courts of this state shall not be required to give security for costs in any suit brought by them in their fiduciary character. [Act March 16, 1848, p. 106, sec. 4. P. D. 1503.]

Art. 2055. [1444] [1440] **No security required of state.**—The state shall not, in any case, be required to give security for costs.

Art. 2056. [1445] [1441] **Security may be required of intervenors, etc.**—The provisions of this chapter relating to security for costs by the plaintiff shall also apply to an intervenor, and to a defendant who seeks a judgment against the plaintiff on a counter claim after the plaintiff shall have discontinued his suit under the provisions of this title relating to discontinuance.

Art. 2057. [1446] [1442] **Costs may be secured by other bonds, etc.**—When the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs, no further security shall be required.

CHAPTER NINETEEN.

BILLS OF EXCEPTIONS AND STATEMENTS OF FACTS.

[See Chapter 11 of this title—Stenographic Reporters.]

Article.	Article.
Exceptions to rulings taken, when.....2058	Statements of facts by stenographer for party appealing without bond, etc., when.....2071
Requisites of bill of exceptions.....2059	Parties may prepare statement of facts independent of transcript.....2072
May refer to statement of facts.....2060	Time for preparing and filing statements of facts and bills of exceptions; judge may extend, provided, etc.....2073
Charges regarded as excepted to.....2061	Statement of facts not filed in time, when considered by court.....2074
No bill of exceptions where ruling appears of record.....2062	Time for judge to file conclusions, etc.....2075
Bill to be presented to the judge.....2063	Where term of office expires before adjournment, etc.....2076
Submitted to opposing counsel, etc.....2064	Statements of facts and bills of exceptions in civil cases in county courts and county courts at law.....2077
If found incorrect.....2065	
On disagreement, judge to make out bill, etc.....2066	
Bystander's bill, how obtained.....2067	
Statement of facts, how prepared.....2068	
When the parties disagree.....2069	
Statement of facts prepared from transcript of official shorthand reporter, when and how, etc.; in duplicate; filed; original sent up; reporter to prepare on request, etc., fees, proviso.....2070	

Article 2058. [1360] [1358] **Exception to rulings taken, when.**—Whenever, in the progress of a cause, either party is dissatisfied with any ruling, opinion or other action of the court, he may except thereto at the time the same is made or announced, and at his request time shall be given to embody such exception in a written bill. [Act May 13, 1846, p. 363, sec. 101. P. D. 217.]

Art. 2059. [1361] [1359] **Requisites of bills of exceptions.**—No particular form of words shall be required in a bill of exceptions; but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain it, and no more, and the whole as briefly as possible.

Art. 2060. [1362] [1360] **May refer to statement of facts.**—Where the statement of facts contains all the evidence requisite to explain the bill of exceptions, it shall not be necessary to set out such evidence in the bill of exceptions; but it shall be sufficient to refer to the same as it appears in the statement of facts.

Art. 2061. [1363] [1361] **Charges regarded as excepted to.**—The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as excepted to in all cases. [Act May 13, 1846, p. 363, sec. 101. P. D. 217.]

Art. 2062. [1364] [1362] **No bill of exceptions where ruling appears of record.**—Where the ruling or other action of the court appears otherwise of record, no bill of exceptions shall be necessary to reserve an exception thereto.

Art. 2063. [1365] [1363] **Bill to be presented to the judge.**—It shall be the duty of the party taking any bill of exceptions to reduce the same to writing, and present the same to the judge for his allowance and signature.

Art. 2064. [1366] [1364] **Submitted to opposing counsel, etc.**—It shall be the duty of the judge to submit such bill of exceptions to the adverse party or his counsel, if in attendance on the court, and if the same is found to be correct, it shall be signed by the judge without delay and filed with the clerk.

Art. 2065. [1367] [1365] **If found incorrect.**—Should the judge find such bill of exceptions to be incorrect, he shall suggest to the party, or his counsel who drew it, such corrections as he may deem necessary therein; and if they are agreed to, he shall make such corrections and sign the same and file it with the clerk. [Act May 13, 1846, p. 363, sec. 101. P. D. 217.]

Art. 2066. [1368] [1366] **On disagreement, judge to make out bill, etc.**—Should the party not agree to such corrections, the judge shall return the bill

of exceptions to him with his refusal indorsed thereon, and shall make out and sign and file with the clerk such a bill of exceptions as will, in his opinion, present the ruling of the court in that behalf as it actually occurred.

Art. 2067. [1369] [1367] **Bystanders bill, how obtained.**—Should the party be dissatisfied with the bill of exceptions filed by the judge, as provided in the preceding article, he may, upon procuring the signatures of three respectable bystanders, citizens of this state, attesting the correctness of the bill of exceptions as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of such bill of exceptions, and to be considered as a part of the record relating thereto. When the court refuses to sign a correct bill of exceptions, such proceedings may be had in the court of civil appeals, as is prescribed in article 1607. [Act May 13, 1846, p. 363, secs. 101, 102. Acts of 1892, p. 25.]

Art. 2068. [1379] [1377] **Statement of facts, how prepared.**—After the trial of any cause, either party may make out a written statement of the facts given in evidence on the trial, and submit the same to the opposite party, or his attorney, for inspection. If the parties, or their attorneys, agree upon such statement of facts, they shall sign the same; and it shall then be submitted to the judge, who shall, if he find it correct, approve and sign it; and the same shall be filed with the clerk. Where it is agreed by the parties to the suit, or their attorneys of record, that the evidence adduced upon the trial of the cause is sufficient to establish a fact or facts alleged by either party, the testimony of the witnesses and the deeds, wills, records, or other written instruments, admitted as evidence relating thereto, shall not be stated or copied in detail into a statement of facts; but the facts thus established shall be stated as facts proved in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust, that constitutes the cause of action on which the petition, or answer, or cross-bill, or intervention, is founded may be copied once in the statement of facts. When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule, there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts. [Acts of 1892, p. 42.]

Art. 2069. [1380] [1378] **When the parties disagree.**—If the parties do not agree upon such statement of facts, or if the judge do not approve or sign it, the parties may submit their respective statements to the judge, who shall, from his own knowledge, with the aid of such statements, make out and sign and file with the clerk a correct statement of the facts proven on the trial; and such statement shall constitute a part of the record. [Id.]

Art. 2070. **Statement of facts prepared from transcript of official shorthand reporter, when and how, etc.; in duplicate; filed; original sent up; reporter to prepare, on request, etc., fees, proviso.**—Upon the filing by the official shorthand reporter, of his transcript, as provided in chapter 11 of this title, the party appealing shall prepare, or cause to be prepared, a statement of facts in duplicate, which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in a succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters as were used in evidence. It shall not be necessary to copy said statement of facts in the transcript of the clerk on appeal; but the same shall, when agreed to by the parties and approved by the judge, or in the event of a failure of the parties to agree where a statement of facts is prepared and certified by the judge trying the case, be filed in duplicate with the clerk of the court; and the original thereof shall be sent up as a part of the record in the cause on appeal; provided, however, that the official shorthand

reporter shall, when requested by the party appealing, prepare, under the direction of the party appealing, a statement of facts in narrative form, in duplicate, and deliver same to the party appealing, for which said statement of facts he shall be paid the sum of ten cents per folio of one hundred words for the original copy; and no charge shall be made for the duplicate copy; provided, further, that such amount shall not be taxed as costs in the case, if a transcript of the testimony in the form of questions and answers has been theretofore filed with the clerk and taxed as costs. [Acts 1907, 1 S. S., p. 509, sec. 5. Acts 1905, p. 219, sec. 5. Acts 1903, p. 84. Acts 1909, S. S., p. 374, sec. 6.]

Art. 2071. Statement of facts by stenographer for party appealing without bond, or for defendant appealing; when; penalties.—In any civil case, where the appellant or plaintiff in error has made the proof required to appeal his case without bond, such appellant or plaintiff in error may make affidavit of such facts; and, upon the making and filing of such affidavit, the court shall order the stenographer to make such statement of facts in duplicate, and deliver the same as herein provided in other cases; but the stenographer shall receive no pay for same; provided, that should any such affidavit so made by such appellant or plaintiff in error be false, he shall be prosecuted and punished as is now provided by law for making false affidavits. And when any criminal case is appealed and the defendant is not able to pay for a statement of facts, or to give security therefor, he may make affidavit of such facts, and upon the making and filing of such affidavit, the court shall order the stenographer to make such statement of facts in duplicate and deliver it as herein provided in civil cases; but the stenographer shall receive no pay for same; provided, further, that should any such affidavit so made by such defendant be false, he shall be prosecuted and punished as is now provided by law for making false affidavits. [Id. sec. 8.]

[Note.—See article 1933, as to transcript in criminal cases.]

Art. 2072. Parties may prepare statement of facts independent of transcript.—Nothing in this chapter shall be so construed as to prevent parties from preparing statements of facts on appeal, independent of the transcript of the notes of the official shorthand reporter. [Id. sec. 14.]

Art. 2073. Time for preparing and filing statements of facts and bills of exceptions; judge may extend, provided, etc.—When an appeal is taken from the judgment rendered in any cause, in any district court or county court, the parties to the suit shall be entitled to, and they are hereby granted, thirty days after the day of adjournment of court, in which to prepare and file a statement of facts and bill of exceptions; and, upon good cause shown, the judge trying the cause may extend the time in which to file a statement of facts and bill of exceptions; provided, that the court trying such cause shall have power in term time or in vacation, upon the application of either party, for good cause, to extend the several times as hereinbefore provided for the preparation and filing of the statement of facts and bill of exceptions; but the same shall not be so extended so as to delay the filing of the statement of facts, together with the transcript of record, in the appellate court within the time prescribed by law; and when the parties fail to agree upon a statement of facts, and that duty devolves upon the court, the court shall have such time in which to do so, after the expiration of the thirty days, as hereinbefore provided as the court may deem necessary; but the court, in such case, shall not postpone the preparation and filing of such statement of facts and bill of exceptions so as to delay the filing of same, together with a transcript of the record in the appellate court within the time prescribed by law; provided, further, that if the term of said court may by law continue more than eight weeks, said statement of facts and bill of exceptions shall be filed within thirty days after final judgment shall be rendered, unless the court shall, by order

entered of record in said cause, extend the time for filing such statement and bill of exceptions. [Id. sec. 7.]

Art. 2074. [1382] [1379a] **Statement of facts not filed in time, when considered by court.**—Whenever a statement of facts shall have been filed after the time prescribed by law, and the party tendering or filing the same shall show to the satisfaction of the courts of civil appeals that he has used due diligence to obtain the approval and signature of the judge thereto, and to file the same within the time in this chapter prescribed for filing the same, and that his failure to file the same within said time is not due to the fault or laches of said party or his attorney, and that such failure was the result of causes beyond his control, the courts of civil appeals shall permit said statement of facts to remain as part of the record, and consider the same in the hearing and adjudication of said cause the same as if said statement of facts had been filed in time. [Acts 1887, p. 17.]

Art. 2075. **Time for judge to file conclusions, etc.**—The judge of any district or county court shall have ten days after adjournment of the term at which a cause may be tried in such court in which to prepare his findings of fact and conclusions of law in cases tried before the court, when demand is made therefor. [Acts 1903, p. 32. Acts 1907, S. S., p. 446, sec. 1.]

Art. 2076. **Where term of office expires before adjournment, etc.**—Any judge of a district or county court whose term of office may expire before the adjournment of the term of such court at which a cause may be tried, or during the period prescribed for the filing of the statement of facts and bill of exceptions, or conclusions of fact and law, may approve such statement of facts and bill of exceptions, or file such findings of fact and conclusions of law, in such causes as provided in this chapter. [Acts 1903, p. 32. Acts 1907, S. S., 446, modified by Act 1909, S. S., p. 374, sec. 7.]

Art. 2077. **Statements of facts and bills of exceptions in civil cases in county courts and county courts at law.**—The provisions of this chapter with respect to the preparation of the statements of facts, the time to be allowed therefor, and for the presentation of same to the opposite party, and the approval and filing thereof by the court shall apply to all statements of facts in civil causes tried in the county courts and county courts at law; and all other provisions of law governing statements of facts and bills of exceptions to be filed in district courts, and the use of same on appeal, shall apply to civil causes tried in the county courts and county courts at law. [Acts 1909, S. S. p. 378, sec. 13.]

[Note.—For requirement as to statement of the evidence in case of judgment on service by publication, see article 1941 of this title.]

CHAPTER TWENTY.

APPEAL AND WRIT OF ERROR.

Article.	Article.		
Appeals, etc., to the courts of civil ap- peals, allowed in what cases.....	2078	Appeal, etc., perfected, when.....	2099
Appeal from interlocutory order appoint- ing receiver or trustee, etc.....	2079	Appeal, etc., on cost bond or affidavit does not suspend execution.....	2100
Appeal from interlocutory orders granting or dissolving temporary injunctions....	2080	Supersedeas bond.....	2101
"Appellant" and "appellee" defined.....	2081	Supersedeas bond where judgment is for land or other property.....	2102
"Plaintiff in error" and "defendant in error" defined.....	2082	Judgment stayed and execution super- seded.....	2103
"Appellate court" and "court below" de- fined.....	2083	Amendment of appeal bond.....	2104
Appeal perfected, how.....	2084	State, county, etc., not to give bond....	2105
By parties of whom no appeal bond is required.....	2085	Of executors, etc.....	2106
Writ of error sued out, when.....	2086	Executor, etc., may take appeal or writ of error.....	2107
By petition.....	2087	Transcript to be made out and delivered.	2108
Requisites of petition.....	2088	To contain all proceedings, except, etc....	2109
Error bond.....	2089	Citation and return omitted when.....	2110
Citation in error.....	2090	Omission of unimportant proceedings, when.....	2111
Form and requisites of citation.....	2091	Agreed statement of pleadings and proof.	2112
Service and return of.....	2092	Transcript must contain, what.....	2113
Return, and what shall show.....	2093	Clerk's certificate and indorsement.....	2114
Alias citation.....	2094	Briefs filed in court below, and notice given.....	2115
Service on the attorney of record.....	2095	Case appealed, etc., to remain on docket till, etc.....	2116
Service in other modes.....	2096	Proceedings on return of mandate.....	2117
Cost bond on appeal or writ of error....	2097		
Appeal, etc., by pauper.....	2098		

Article 2078. [1383] [1380] **Appeals, etc., to the courts of civil ap-
peals, allowed in what cases.**—An appeal or writ of error may be taken to the
court of civil appeals from every final judgment of the district court in civil
cases. and from every final judgment in the county court in civil cases of which
the county court has original jurisdiction, and from every final judgment of
the county court in civil cases of which the court has appellate jurisdiction,
where the judgment or amount in controversy exceeds one hundred dollars,
exclusive of interest and costs.

Art. 2079. [1383] [1380] **Appeal from interlocutory order appointing
receiver, or trustee, etc.**—An appeal shall lie from an interlocutory order of
the district court appointing a receiver or trustee in any cause; provided, such
appeal be taken within twenty days from the entry of such order. An appeal
under such cases shall take precedence in the appellate court; but the pro-
ceedings in other respects in the court below shall not be stayed during the
pendency of the appeal, unless otherwise ordered by the appellate court.

Art. 2080. **Appeals from interlocutory orders granting or dissolving tem-
porary injunctions.**—Appeals shall also lie from the district and county courts
to courts of civil appeals, from orders granting or dissolving temporary in-
junctions, in cases and the manner provided for in articles 4644 and 4645 of
the Revised Civil Statutes. [Acts 1909, p. 354, secs. 2, 3.]

[Note.—For jurisdiction of courts of civil appeals, see chapter 3, title 32.]

Art. 2081. [1384] [1384] **"Appellant" and "appellee" defined.**—The
party taking an appeal is called the "appellant;" and the adverse party is
called the "appellee."

Art. 2082. [1385] [1385] **"Plaintiff in error" and "defendant in error"
defined.**—The party suing out a writ of error is called the "plaintiff in error;"
and the adverse party is called the "defendant in error."

Art. 2083. [1386] [1386] **"Appellate court" and "court below" de-
fined.**—The term "appellate court" includes the supreme court or court of
civil appeals having jurisdiction of a cause on appeal or writ of error. The
term "court below" includes the district or county court from which such
appeal or writ of error is taken.

Art 2084. [1387] [1387] **Appeal perfected, how.**—An appeal may, in
cases where an appeal is allowed, be taken during the term of the court at

which the final judgment in the cause is rendered by the appellants giving notice of appeal in open court within two days after final judgment, or two days after judgment overruling a motion for a new trial, which shall be noted on the docket and entered of record, and by his filing with the clerk an appeal bond, where bond is required by law, or affidavit in lieu thereof, as hereinafter provided, within twenty days after the expiration of the term. If the term of the court may by law continue more than eight weeks, the bond or affidavit in lieu thereof shall be filed within twenty days after notice of appeal is given, if the party taking the appeal resides in the county, and within thirty days, if he resides out of the county.

Art. 2085. [1388] [1388] **By parties of whom no appeal bond is required.**—In cases where the appellant is not required by law to give bond on appeal, the appeal is perfected by the notice provided for in the preceding article.

Art. 2086. [1389] [1389] **Writ of error sued out, when.**—The writ of error may, in cases where the same is allowed, be sued out at any time within twelve months after the final judgment is rendered, and not thereafter.

Art. 2087. [1390] [1390] **By petition.**—The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a petition in writing signed by him or by his attorney, and addressed to such clerk. [Id. sec. 140. P. D. 1495.]

Art. 2088. [1391] [1391] **Requisites of petition.**—The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the court of civil appeals for revision and correction. Where the plaintiff in error desires the issuance of a supersedeas, he shall state the facts which entitle him thereto, and pray for the issuance thereof.

Art. 2089. [1392] [1392] **Error bond.**—The plaintiff shall also, at the time of filing such petition, file with the clerk a writ of error bond, or affidavit in lieu thereof, as hereinafter provided. [Id.]

Art. 2090. [1393] [1393] **Citation in error.**—Upon the filing of the petition and bond mentioned in the three preceding articles, it shall be the duty of the clerk forthwith to issue a citation for the defendant in error, and if there be several defendants residing in different counties, one citation shall issue to each of such counties. [Id.]

Art. 2091. [1394] [1394] **Form and requisites of citation.**—The style of such citation shall be "The State of Texas;" and it shall be dated and tested by the clerk as other writs, and the date of its issuance shall be noted thereon. It shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him forthwith to summon the defendant to appear and defend such writ before the court of civil appeals within sixty days from date of service of said citation, stating the place of holding the same, according to the provisions of the law regulating the returns of appeals and writs of error from the county in which the judgment was rendered. It shall state the date of the filing of the petition in error, the names of the parties according to such petition, and the description of the judgment as therein given. Such citation shall be made returnable within ten days from the issuance of the same, if defendant resides in the county, and within twenty days, if he resides out of the county.

Art. 2092. [1395] [1395] **Service and return of.**—It shall be the duty of the sheriff or constable receiving such citation to indorse the day and hour on which he receives it, and to execute and return it forthwith. Service shall be made by delivering to the defendant in error, and, if more than one, then, to each of them, in person, a true copy of such citation. The return of such officer

shall be indorsed on or attached to the original writ, and shall state when and how the same was served, and shall be signed by him officially. [Id.]

Art. 2093. [1396] [1396] **Return and what shall show.**—The citation shall be returned as prescribed in article 2091, and where the same has not been served, the return shall show the diligence used by the officer to execute the same, and a failure to execute it, and where the defendant is to be found, so far as he has been able to ascertain.

Art. 2094. [1397] [1397] **Alias citation.**—If the citation is returned not executed, the clerk shall forthwith issue an alias or pluris citation, as the case may be, which shall conform to the requisites prescribed for the issuance of citation in the first instance, and shall, in addition, indicate how many previous citations have been issued. [Id.]

Art. 2095. [1398] [1398] **Service on the attorney of record.**—If it appears from the allegations in the papers of the cause that the party is a non-resident of the state, or if it appears from the return of the sheriff or constable that the party can not be found in the county of his residence, the citation shall direct the officer to summon the defendant by making service on his attorney of record, if there be one. [Id.]

Art. 2096. [1399] [1399] **Service in other modes.**—Service of the citation may be also made in either of the modes provided in chapter six of this title, so far the same are applicable.

Art. 2097. [1400] [1400] **Cost bond on appeal or writ of error.**—The appellant or plaintiff in error, as the case may be, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the suit in the court of civil appeals, supreme court and the court below, to be fixed by the clerk, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the court of civil appeals and the supreme court.

Art. 2098. [1401] [1401] **Appeal, etc., by party unable to give cost bond.**—Where the appellant or plaintiff in error is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the case, and shall consist of the affidavit of said party, stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit, whereupon it shall be the duty of the court trying the case, if in session, or the county judge of the county in which the suit is pending, to hear evidence and to determine the right of the party, under this article, to his appeal. [Act May 3, 1871, p. 74, sec. 1. Acts of 1879, ch. 81, p. 90. P. D. 6180.]

Art. 2099. [1402] [1402] **Appeal or writ of error, perfected, when.**—When the bond, or affidavit in lieu thereof, provided for in the two preceding articles, has been filed and the previous requirements of this chapter have been complied with, the appeal or writ of error, as the case may be, shall be held to be perfected.

Art. 2100. [1403] [1403] **Appeal, etc., on cost bond or affidavit does not suspend execution.**—The bond, or affidavit in lieu thereof, provided in the three preceding articles, shall not have the effect to suspend the judgment, but execution shall issue thereon as if no such appeal or writ of error had been taken.

Art. 2101. [1404] [1404] **Supersedeas bond.**—Should the appellant or plaintiff in error, as the case may be, desire to suspend the execution of the judgment, he may do so by giving, instead of the bond or affidavit in lieu

thereof mentioned in the four preceding articles, or in addition to such bond, a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect; and in case the judgment of the supreme court or the court of civil appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him.

Art. 2102. [1405] [1405] **Supersedeas bond, where judgment is for land or other property.**—Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant or plaintiff in error shall, in case the judgment is affirmed, pay to the appellee or defendant in error the value of the rent or hire of such property in any suit which may be brought therefor. [Id. sec. 137. P. D. 1492.]

Art. 2103. [1406] [1406] **Judgment stayed and execution superseded.**—Upon the filing of the bonds mentioned in the two preceding articles, the appeal or writ of error shall be held to be perfected, and the execution of the judgment shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas. [Id. sec. 140, P. D. 1495.]

Art. 2104. **Amendment of appeal bond.**—When an appeal has been or shall be taken from the judgment of any of the courts of this state by filing a bond or entering into a recognizance within the time prescribed by law in such cases, and it shall be determined by the court to which appeal is taken that such bond or recognizance is defective in form or substance, such appellate court may allow the appellant to amend such bond or recognizance by filing a new bond on such terms as the court may prescribe. [Acts 1905, p. 224.]

[Note.—See note to articles 1608, 1609, and 2395.]

Art. 2105. [1407] [1407] **State, county, etc., not to give bond.**—Neither the state of Texas, nor any county in the state of Texas, nor the railroad commission of Texas, nor the head of any department of the state of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case. [Acts 1897, p. 27. Acts 1909, S. S., p. 284.]

Art. 2106. [1408] [1408] **Of executors, etc.**—Executors, administrators and guardians appointed by the courts of this state shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity. [Act March 16, 1848, p. 106, sec. 4. P. D. 1503.]

Art. 2107. [1409] [1409] **Executor, etc., may take appeal or writ of error.**—In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

Art. 2108. [1410] [1410] **Transcript to be made out and delivered.**—When an appeal or writ of error has been perfected, the clerk of the court shall, upon the application of either party, make out, and deliver to him, a transcript of the record of the cause. [Act May 13, 1846, p. 363, sec. 139. P. D. 1494.]

Art. 2109. [1411] [1411] **Transcript to contain all proceedings, except, etc.**—The transcript shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause. [Id.]

Art. 2110. [1412] [1412] **Citation and return omitted, when.**—If the pleadings or the judgment show an appearance of the defendant, in person or by attorney, the citation and returns shall not be copied into the transcript.

Art. 2111. [1413] [1413] **Omission of unimportant proceedings, when.**—The parties may, by an agreement in writing, with the approval of the judge, direct the clerk in making up the transcript for the appellate court to omit therefrom any designated portion of the proceedings not deemed material to

the disposition of the cause in such appellate court; and, in such case, the transcript shall not embrace such portions of the proceedings. [Act Feb. 5, 1858, p. 110, sec. 12. P. D. 1516.]

Art. 2112. [1414] [1414] **Agreed statement of pleadings and proof.**—The parties may, without the necessity of setting out all the proceedings at length, agree upon such a brief statement of the case and of the facts proven, with or without copies of any part of the proceedings as shall, in their opinion, enable the appellate court to determine whether there has been any error in the judgment; and, if the judge shall approve and sign such statement, the same shall be filed among the papers of the cause and shall constitute a part of the record, and, on appeal or writ of error, shall be copied into the transcript in lieu of such proceedings themselves. [Id.]

Art. 2113. [1415] [1415] **Transcript must contain what.**—The transcript shall, in all cases, contain a copy of the final judgment, notice of appeal, petition for writ of error and citation in error, with return of service thereon, bond on appeal or writ of error, or affidavit in lieu thereof, and assignments of errors or such of them as there may be, and also a copy from the fee book of all the costs that have accrued in the cause. [Id.]

Art. 2114. [1416] [1416] **Clerk's certificate and indorsement.**—The clerk shall certify to the correctness of the transcript, and sign the same officially with the seal of the court attached. Such certificate shall state whether the same be a transcript of all the proceedings in the cause, or the transcript provided for in articles 2110, 2111 and 2112. [Act May 13, 1846, p. 363, sec. 139. P. D. 1494.]

Art. 2115. [1417] [1416a] **Briefs filed in courts below and notice given.**—Not less than five days before the time of filing of the transcript in the court of civil appeals the appellant or plaintiff in error shall file with the clerk of the district court a copy of his brief, which shall be by the clerk deposited with the papers of the cause, with the date of filing indorsed thereon; and the clerk shall forthwith give notice to the appellee or defendant in error, or his attorney of record, of the filing of such brief, and that in twenty days after such notice the appellee or defendant in error shall file a copy of his brief with the clerk of said court below, and with the clerk of the court of civil appeals four copies. [Acts of 1892, S. S.]

Art. 2116. [1418] [1417] **Case appealed, etc., to remain on docket till, etc.**—Where a cause shall be removed by appeal or writ of error to the appellate court, the cause shall remain or be replaced on the docket to await the mandate of the appellate court.

Art. 2117. [1419] [1418] **Proceedings on return of mandate.**—Upon the return of the mandate, if the judgment of the court below be reversed by the appellate court, the cause shall stand for trial in its order on the docket.

posed of at any time before the trial of the cause. [Id. sec. 54. P. D. 1454.]

Art. 2122. [1460] [1456] **Notice of motion not in pending suit.**—Where a motion does not relate to a pending suit, and where the time of service is not elsewhere prescribed, the adverse party shall be entitled to three days' notice of the motion. [Act May 11, 1846, p. 200, sec. 5. P. D. 1408.]

Art. 2123. [1461] [1457] **Disposed of, when.**—All motions not relating to a suit pending shall be taken up and disposed of in their order as other suits are required to be. [Act May 13, 1846, p. 363, sec. 55. P. D. 1455.]

2. AUDITORS.

Art. 2124. [1494] [1471] **Auditor appointed, when.**—Whenever, in any suit, it shall appear that an investigation of accounts or examination of vouchers is necessary for the purposes of justice between the parties, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as may be. [P. D. 3760.]

Art. 2125. [1495] [1472] **Report to be verified by affidavit.**—The report of the auditor shall be verified by his affidavit, stating that he has examined carefully the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come to his knowledge.

Art. 2126. [1496] [1473] **Shall be admitted in evidence, but, etc.**—The report of the auditor shall be admitted in evidence, but may be contradicted by evidence from either party where exceptions to such report, or of any items thereof, shall have been filed before the trial. [Id.]

Art. 2127. [1497] [1474] **Compensation of.**—The court shall award reasonable compensation to such auditor, which shall be allowed and taxed in the bill of costs, as in other cases.

3. RECEIVERS.

Art. 2128. [1465] **When receivers may be appointed.**—Receivers may be appointed by any judge of a court of competent jurisdiction in this state, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity. [Acts of 1887, p. 119.]

Art. 2129. [1466] **Who disqualified to act as receiver.**—No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein, nor shall any person be appointed receiver in any case where the property lies within this state, unless the person appointed at the time of his appointment is a bona fide citizen of the state of Texas and qualified to vote; and, during the pendency of said

receivership, the person or persons so appointed receiver shall keep and maintain actual residence within this state. And if in any action for the appointment of a receiver, the property sought to be placed in the hands of a receiver is situated partly in this state and partly without, then no person shall be appointed receiver of that part of the property situated in this state, unless such person at the time is a bona fide citizen of this state and qualified to vote; and, during the pendency of said receivership, the person or persons so appointed receiver shall keep and maintain actual residence within this state. [Acts of 1889, p. 55.]

Art. 2130. [1467] **When appointment void.**—If any person should be appointed receiver of property situated in this state, or a part of which is situated in this state and a part without, who is not at the time a bona fide citizen of this state and entitled to vote, all such appointments shall be absolutely null and void in so far as the property situated within this state is concerned. [Id.]

Art. 2131. [1468] **Quo warranto to forfeit charter.**—If any corporation owning property in this state and chartered by this state shall have a receiver of its property situated in this state appointed who is not at the time of appointment a bona fide citizen of this state and qualified to vote, said corporation shall thereby forfeit its charter; and it shall be the duty of the attorney general to at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter; and the court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this state who is not qualified to act under the provisions of this article. [Id.]

Art. 2132. [1469] **Oath and bond of receiver.**—When a receiver is appointed, he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a bond, with three or more good and sufficient sureties, to be approved by the court appointing him, in such sum as the court shall see proper to fix, conditioned that he will faithfully discharge all of the duties of receiver in the action [naming it] and obey the orders of the court therein. [Acts of 1887, p. 120.]

Art. 2133. [1470] **Receiver's power.**—The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize. [Id.]

Art. 2134. [1471] **Funds, how invested.**—The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action. [Id.]

Art. 2135. [1472] **Application of funds in hand of receiver and claims preferred.**—All moneys that come into the hands of a receiver as such receiver shall be applied as follows: First, to the payment of all court costs of the suit; second, to the payment of all wages of employes due by the receiver; third, to the payment of all debts due by the receiver for materials and supplies purchased during the receivership by the receiver for the improvement of the property in his hands as receiver; fourth, to the payment of all debts due for betterments and improvements done during the receivership to the property in his hands as such receiver; fifth, to the payment of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and for all claims for stock and personal injury claims against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed; sixth, all judgments recovered against the person or persons or corporations in suits brought before the appointment of a receiver in the action.

And said claims shall have a preference lien on all of the moneys coming into the hands of the receiver which are the earnings of the property in his hands; and the court shall see that the money coming into the hands of the receiver as earnings of the property in his hands is paid out on the claims against said receiver in the order of their preference as named above; and it shall be the duty of the receiver to pay the funds in his hands which are the earnings of the property while in his hands as receiver on the claims against him in the order of preference named above. [Acts of 1889, p. 55.]

Art. 2136. [1473] **Proceedings in suits where receiver is discharged.**—If a receiver is discharged pending suits against him for causes of action growing out of, and arising during, the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver; and the plaintiff in the action may, if he sees proper, make the party or corporation to whom the receiver has delivered the property that was in his hands as receiver a party to the suit; and, if judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter up judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver. [Id.]

Art. 2137. [1474] **When property in the hands of receiver subject to execution.**—If any person should sue a receiver and obtain judgment against such receiver, and said receiver shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if the court appointing the receiver should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then, it shall be the duty of the court rendering the judgment to order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit stating the facts that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was proved to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that the court appointing the receiver refused to order the receiver to pay the judgment; said execution when so issued shall be levied upon any property in the hands of the receiver, and shall be sold as under ordinary executions; and a sale of the property will convey the title of the same to the purchaser. [Id.]

Art. 2138. [1475] **Judgments a first lien on property, and property charged with lien after receivership.**—All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all of the property in the hands of the receiver superior to the mortgage lien; and if the property should be turned back into the possession of the party or corporation who were owning same at the time of the appointment of a receiver, or any one else for them, or as their assigns or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver. [Id.]

Art. 2139. [1476] **Persons to whom property delivered liable for debts.**—If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full, then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities. [Id.]

Art. 2140. [1477] **Effect of discharge of receiver.**—The discharge of a receiver shall not work an abatement of the suit against a receiver, nor shall

it in any way affect the right of the party to sue the receiver if he sees proper. [Id.]

Art. 2141. [1478] **Property redelivered by receiver without sale still liable for debts; suits do not abate, but new party may be made.**—All parties and corporations whose property has been placed in the hands of a receiver by order of the court, and which was not sold by the receiver, and which property has been delivered back to the original parties or corporation, without any sale of said property, shall be liable and held to pay all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership; and, if there are any suits pending against the receiver at the date of discharge, on causes of action arising during the receivership, the plaintiff shall have the right to make the party or corporation to whom the receiver delivered the property which was in his hands as receiver a party defendant along with the receiver; and, if any judgment is rendered against the receiver for causes of action arising out of and during the receivership, then, the court shall also, at the same time, (if the party or corporation receiving back the property have been made parties defendant) render judgment in favor of the plaintiff against defendants for the amount so found for plaintiff and all costs; and plaintiff shall have the right to foreclose his lien on the property delivered back by said receiver to said party or corporation. [Id.]

Art. 2142. [1479] **Judgments and unsued claims have preference lien over mortgage.**—If, at the date of the discharge of the receiver, there are any judgments or claims not sued on against a receiver arising during the receivership, and which judgments and claims not sued on are unpaid at the date of the discharge of said receiver, said unpaid judgments and unpaid claims not sued on shall be a preference lien on all of the property that was in the hands of the receiver superior to the mortgage lien; and the person or corporation to whom the receiver has delivered the property that was in his hands as receiver shall be liable for all unpaid judgments and unpaid claims not sued on to the value of the property that was delivered by the receiver to said person or corporation. [Id.]

Art. 2143. [1480] **Receiver and person to whom property is delivered both liable and may be sued for unpaid claim.**—Any person having a claim against a receiver not sued on at the date of the discharge of the receiver shall have the right to sue said receiver, either alone or jointly, with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and, if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation. [Id.]

Art. 2144. [1481] **Receiver to give bond on appeal.**—In any case in which any receiver is sued in any of the courts of this state, and such receiver desires to take an appeal from any judgment which may be rendered against him in any justice or county court, or to take an appeal or writ of error from any judgment which may be rendered against him in any district court, before such appeal or writ of error shall be perfected or allowed such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest, and cost, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. In the event that the judgment of the court to which such appeal or [writ of] error is taken shall be

against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after the rendition of such judgment. [Id.]

Art. 2145. [1482] **Railroad funds, where deposited.**—When a line of railroad operated by a receiver lies wholly within this state, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this state as the court may direct, until properly disbursed; but, if any portion of the road lies in another state the receiver shall be required to deposit in this state at least such share of the funds in his hands as is proportioned to the value of the property of the company within this state. [Acts of 1887, p. 122.]

Art. 2146. [1483] **Receiver may sue or be sued without leave; effect of judgment against.**—When any property of any kind within the limits of this state has been placed, by order of court, in the hands of a receiver, who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this state having jurisdiction of the cause of action, without first having obtained leave of the court appointing such receiver to bring said suit; and, if a judgment is recovered against said receiver, it shall be the duty of the court to order said judgment paid out of any funds in the hands of said receiver as such receiver. [Id.]

Art. 2147. [1484] **Suits against receiver, where brought.**—Actions may be brought against the receiver of the property of any person where said person resides. Actions may be brought against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed, and service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county in which the suit is brought. [Id.]

Art. 2148. [1486] **Inventory to be made and returned by receiver.**—The receiver, as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver. [Id.]

Art. 2149. [1487] **Jurisdiction to appoint receiver confined to courts of this state in certain cases.**—When a person resides in this state and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this state, no court other than one within the limits of this state shall have power to appoint any receiver of said property. [Id.]

Art. 2150. [1488] **Receiver of corporation, where applied for.**—If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this state, or partly within this state, then the action to have a receiver appointed shall be brought in this state in the county where the principal office of said corporation is located. [Id.]

Art. 2151. [1489] **Where there are betterments, general creditors have rights to be protected.**—When a receiver of a corporation has, under the order of the court, made improvements upon the property of said corporation, and has also, under the order of the court appointing him, purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended such road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid; and, if there are any liens of any kind upon the property of said corporation in

the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then it shall be and is hereby made the duty of the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, to detain in the hands of the clerk of the court money to the full value of the improvements made by said receiver of said property out of the proceeds of the sale of the property sold, and pay the same over to any person or persons who has or may have a claim, debt, or judgment against said corporation; and the court, in ordering the sale of the property, shall require sufficient cash money to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver. [Id.]

Art. 2152. [1490] **Judgments and other claims have preference over mortgage.**—All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings. [Id.]

Art. 2153. [1491] **Receivership of corporations limited to three years.**—No corporation shall be administered in any court for a longer period than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation. [Id.]

Art. 2154. [1492] **Application for receiver, by whom made.**—No receiver shall ever be appointed of any joint stock, incorporated company, or of any co-partnership or private person, on the petition of such joint stock, incorporated company, partnership or person; provided, that any stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases; and provided, further, that nothing herein shall prevent a member of any co-partnership from having a receiver appointed whenever a cause of action arises between the co-partners. [Id.]

Art. 2155. [1493] **Rules of equity shall govern in receivership proceedings.**—In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with the provisions of this chapter and the general laws of the state. [Id.]

4. MASTERS IN CHANCERY.

Art. 2156. [1485] **Master in chancery, qualifications, duties and appointments.**—The court shall, in every case of the appointment of receiver, also after his qualifying, appoint a master in chancery, who shall be a citizen of this state, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as a master of chancery has in a court of equity.

5. SUBSTITUTION OF LOST RECORDS AND PAPERS.

Art. 2157. [1498] [1475] **Lost records and papers supplied, on motion.**—Whenever the records and papers of a cause, or any part thereof, may be lost or destroyed, either before or after the trial, the same may be supplied by either party, on motion before the court, upon three days' notice to the adverse party or his attorney. [Act Feb. 11, 1850, p. 160, sec. 1. P. D. 4969.]

Art. 2158. [1499] [1476] **Motion, requisites of.**—Such motion shall be in writing and signed by the party or his attorney, and shall be verified by affidavit. It shall state the loss or destruction of such record or papers, and shall be accompanied by certified copies of the originals, if they can be had, and if not, then substantial copies thereof as near as may be. [Id. sec. 2. P. D. 4970.]

Art. 2159. [1500] [1477] **If substitutes agreed to.**—If the adverse party admit the correctness of such copies, and the court be satisfied that they are correct copies in substance of the originals, an order shall be made substituting such copies for the originals.

Art. 2160. [1501] [1478] **If not agreed to, court may hear proof, etc.**—If their correctness be not admitted, or if the court do not find them to be correct, the parties shall submit their respective statements to the judge; and he shall hear proof as to the contents of such lost records and papers, and correct copies thereof shall be made up under the direction of the judge.

Art. 2161. [1502] [1479] **Adverse party may supply.**—The adverse party may, in the same proceedings, supply any other portions of such records and papers desired by him.

Art. 2162. [1503] [1480] **Parties may agree on brief statement, etc.**—The parties may, by consent in writing, with the approval of the judge, agree on a brief statement of the matters contained in such lost records and papers; and the court may, by an order, substitute such statement for the lost originals.

Art. 2163. [1504] [1481] **Substituted copies constitute record.**—Such substituted copies or brief statement of their contents, as the case may be, made up under the preceding articles of this subdivision, shall be filed with the clerk, and shall constitute a part of the record of the cause, and shall have all the force and effect of the originals. [Act to adopt and establish R. C. S. passed Feb. 21, 1879.]

6. DEPOSIT OF MONEY, ETC., IN COURT.

Art. 2164. [1462] [1458] **Custody of money and other articles deposited.**—Whenever, during the progress of any cause, any money, debt, scrip, instrument of writing, or other article, shall be paid or deposited in court to abide the result of any legal proceedings, the officer having custody thereof shall seal up the identical money, or other article received by him, in a secure package and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office, and as a part of the records thereof, in a well-bound book, a correct statement showing each and every item of money and property so received by him, on what account received, and what disposition he has made of the same. [Act May 19, 1876, p. 7, sec. 1.]

Art. 2165. [1463] [1459] **Officer shall deliver funds, etc., to his successor.**—On the expiration of his term of office, such officer shall turn over to his successor all such trust funds and other property, and the record aforesaid, and shall take his receipt therefor. [Id. sec. 2.]

Art. 2166. [1464] [1460] **Not to exempt officer and his sureties from liabilities, etc.**—The provisions of articles 2164 and 2165 shall not exempt any officer or his sureties from liability on his official bond, for any neglect or other default, in regard to the funds therein mentioned. [Id. sec. 5.]

CHAPTER TWENTY-TWO.

SUIT BY NEXT FRIEND.

	Article.		Article.
When minor may sue by next friend.....	2167	Disposition of such collections, compensation, etc.	2170
Next friend may compromise.....	2168		
May collect certain personal judgments, etc.	2169		
		Claims against such judgments, how adjusted	2171

Article 2167. [3498u] **When minor may sue by next friend.**—Any minor, lunatic, idiot or non compos mentis, having a sufficient cause of action, and who has no legal guardian, can bring suit in any of the courts of this state by next friend; and such next friend shall have the same rights concerning such suit and the matter therein involved as if he were guardian of such minor, lunatic, idiot or non compos mentis; provided, he shall not be relieved from giving security for costs or affidavit in lieu thereof, and cannot collect the proceeds of any moneyed judgment he may recover, except as herein specified. [Acts 1893, p. 3. Acts 1909, p. 176.]

Art. 2168. [3498v] **Next friend may compromise, etc.**—Such next friend or the attorney of record of such minor, lunatic, idiot or non compos mentis may enter into such agreed judgment or compromise in such suit as the court may approve; and the decree entered upon such agreement or compromise, when approved by the court, shall be forever binding on said minor, lunatic, idiot or non compos mentis, and can divest title out of the minor, lunatic, idiot, or non compos mentis or vest it in such minor, lunatic, idiot or non compos mentis, when the court is satisfied such decree is for the best interest of the minor, lunatic, idiot or non compos mentis, under all circumstances; and the court may hear evidence touching upon such agreement or compromise before approving the same. [Id.]

Art. 2169. [3498w] **May collect certain personal judgments, etc.**—Whenever, in any suit in this state, any minor, lunatic, idiot or non compos mentis recovers a personal judgment for money or other personal property in which the interest of the said minor, lunatic, idiot, or non compos mentis does not exceed the value of five hundred dollars, and said minor, lunatic, idiot or non compos mentis has no guardian, such next friend, or any person authorized by the court to do so by an order entered upon record, may take charge of said money or property for the benefit of said minor, lunatic, idiot or non compos mentis, upon giving bond in such sum as shall be ordered by the court, which shall not be less than double the value of the property, conditioned that he will pay over said money and lawful interest thereon and deliver said property and its increase to the minor when he becomes of age, or to the lunatic, idiot, or non compos mentis when he is restored to sanity or to the legally qualified guardian of such persons when demanded, and that he will pay or deliver the same to such person appointed by the court when ordered by the court to do so, and that he will use such money or property for the benefit of the minor, lunatic, idiot or non compos mentis as ordered by the court. It is provided, further, that the terms of this article shall apply to all money or other personal property now in the hands of the clerks of the courts of this state belonging to such persons; provided, further, that in any such case without regard to the amount involved, the judge of the court in which the judgment is rendered shall have authority upon an application and hearing, in term time or vacation, to provide by decree for an investment of the funds accruing under such judgment as he may deem advisable and to the best interest of the beneficiary or beneficiaries. If such decree shall be made in vacation, it shall be recorded in the minutes of the succeeding term of the court. [Id.]

Art. 2170. [3498x] **Disposition of such collections; compensation, etc.**—Such person who takes such money or property shall receive no fees or commissions for caring for or handling the same, but shall receive such compensation for caring for or handling the same as may be allowed by the court, and shall make such disposition thereof at all times as the court may order; and he may be required to return such money or property into court upon the order of the court, when the court may make such further disposition of the same as is deemed best for the minor, lunatic, idiot, or non compos mentis. [Id.]

Art. 2171. [3498y] **Claims against such judgments, how adjusted.**—Whenever any attorney or other person has any interest in such recovery or judgment, the court may hear evidence as to such interest, and, if deemed just, shall order such claim, or such part as is deemed just, to be paid to such person who is entitled to receive the same. [Acts 1893, p. 3.]

CHAPTER TWENTY-THREE.

SUITS AGAINST NON-RESIDENTS.

	Article.		Article.
Actions against non-residents.....	2172	Judgment by default can not be rendered.....	2175
Actual possession not necessary.....	2173	Procedure if suit be to extinguish lien.....	2176
Requisites of pleadings.....	2174	Judgment receivable in evidence.....	2177

Article 2172. [1504a] **Actions maintainable against non-residents.**—An action may be brought and prosecuted to final decree, judgment, or order, by any person claiming a right or interest in or to any property in this state, against any person or persons who are non-residents of this state, or whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon. [Acts of 1893, p. 77.]

Art. 2173. [1504b] **Actual possession not necessary; service, etc.**—Such action may be maintained by any such person whether he is in actual possession of such property or not; and service on the defendant or defendants may be made by publication of the writ or notice of the same, as is now or hereafter may be provided by law for publication of citation against non-residents, or persons unknown, or transient persons. [Id.]

Art. 2174. [1504c] **Requisites of pleadings.**—The pleadings in such case shall set forth the title of the complainant, as well as the claim of the defendant, if known; and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in, and to, said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment, or order, into effect. [Id.]

Art. 2175. [1504d] **Judgment by default can not be rendered.**—No judgment by default shall be taken in such case by reason of the failure of the defendant to answer; but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of the facts shall be filed as may be provided by law in suits against non-residents of this state where no appearance has been made by them. [Id.]

[Note.—See articles 1875 and 1941.]

Art. 2176. [1504e] **Procedure if suit be to extinguish lien.**—In case said suit shall be for the extinguishment of any lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court; and the same shall be deposited in the registry of the court, subject to be drawn by the defendant or defendants entitled thereto; but in such case no decree shall be entered, until said sum is deposited; which fact shall be noted in said decree. [Id.]

Art. 2177. [1504f] **Judgment in such cases receivable in evidence.**—The judgment of the court in the cases mentioned shall be received in evidence, under the rules governing evidence that may be established by law; and said judgment shall be binding on the parties thereto concerning the matters determined therein. [Id.]

CHAPTER TWENTY-FOUR.

ATTORNEY'S FEES, RECOVERY OF.

Attorney's fees recoverable in certain cases; procedure; costs.....	Article. 2178	Remedy cumulative	Article. 2179
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Article 2178. **Attorney's fees recoverable in certain cases; procedure; costs.**—Hereafter, any person in this state having a valid, bona fide claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employes, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the court or jury trying the case. [Acts 1909, p. 93.]

Art. 2179. **Remedy cumulative.**—Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons. [Id.]

CHAPTER TWENTY-FIVE.

MISCELLANEOUS PROVISIONS.

	Article.		Article.
Process, requisites of.....	2180	}	Officer failing, etc., punished for con-
Vouchers, wager of battle, etc., repealed.....	2181		tempt and liable for damages.....
Suit consolidated, when.....	2182		2183

Article 2180. [1447] [1443] **Process, requisites of.**—The style of all writs and process shall be “The State of Texas;” and, unless otherwise specially provided by law, every such writ and process shall be directed to the sheriff or any constable of the proper county, shall be made returnable on the first day of the next term of the court after the issuance thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted on the same. [Cont., art. 5, sec. 12; Acts Nov. 12, 1866, p. 199, sec. 1; May 13, 1846, p. 363, sec. 10. P. D. 1431.]

Art. 2181. [1451] [1447] **Vouchers, wager of battle, etc., repealed.**—All vouchers, views, essoins, and also trials by wager of battle and wager of law shall stand repealed. [Act May 13, 1846, p. 363, sec. 107. P. D. 1468.]

Art. 2182. [1454] [1450] **Suits consolidated, when.**—Whenever several suits may be pending in the same court, by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined, the court in which the same are pending may, in its discretion, order such suits to be consolidated. [Id. sec. 48.]

Art. 2183. [1455] [1451] **Officers failing, etc., punished for contempt and liable for damages.**—Every clerk, sheriff, constable, or other officer, neglecting or refusing to perform any duty required of him under the provisions of this title shall, in addition to the punishment prescribed in the Penal Code, be punished as for a contempt of court, and shall also be liable to damages at the suit of any person injured. [Id. sec. 20. P. D. 1436.]

TITLE 38.

COURTS—JUVENILE.

Chapter. 1. Dependent and Neglected Children.	Chapter. 2. Delinquent Children.
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CHAPTER ONE.

DEPENDENT AND NEGLECTED CHILDREN.

Article. "Dependent child" or "neglected child" defined 2184 County and district courts given jurisdiction over 2185 Who may institute proceedings in interest of child, and how 2186 Hearing; citation, etc.; service, etc.; representative; parents' rights forfeited, when 2187	Article. Hearing; facts to be ascertained; witnesses; county attorney to appear for petition or file same, etc., when 2188 Adjudication; order disposing of child as deemed best for its welfare 2189 Child to be ward of custodian; his authority; maintenance, etc.; visitation; reports; change of guardianship; child may remain with parents, etc., when, etc. 2190
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Article 2184. **"Dependent child" or "neglected child" defined.**—For the purposes of this chapter the words "dependent child" or "neglected child" shall mean any child under sixteen years of age who is dependent upon the public for support or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child. Any child, within the provisions of this chapter whose parents or guardian permits it to use except for medicinal purposes or to become addicted to the use of intoxicating liquors, or whose parents or guardian rears, keeps or permits it in or about any saloon or place where intoxicating liquors are sold, or any gambling house or house of ill fame, shall be deemed to be without proper parental care or guardianship. [Acts 1907, p. 135, sec. 1.]

Art. 2185. **County and district courts given jurisdiction over.**—The county and district courts of the various counties of this state shall have original jurisdiction in all cases coming within the terms of this chapter, and shall, at all times, be deemed in session for the disposition of same, and when so sitting it may be known as the "juvenile court." In all trials under this chapter, any person interested therein may demand a jury as in other cases; or the judge of the court, of his own motion, may order a jury to try such cases. Unless such jury is demanded, it shall be deemed to be waived. Any person interested in any case under this chapter shall have the right to appear therein and be represented by counsel. [Id. sec. 2.]

Art. 2186. **Who may institute proceedings in interest of child, and how.**—Any person who is a resident of the county having knowledge of a child in his county who appears to be a "dependent" or "neglected" child may file with the clerk of the county or district court of his county a petition in writing, setting forth the facts constituting the child "dependent" or "neglected;" which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one. [Id. sec. 3.]

Art. 2187. Hearing; citation, etc.; service, etc.; representative; parents' rights forfeited, when.—Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it shall appear that one or both of such parents, or guardian, if there be no parents, reside in said county, the clerk of said court shall immediately issue citation; which citation shall include a copy of the petition, which shall be served on such parent, parents or guardian, if any, if either can be found in said county, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a "dependent" and "neglected" child; and such citation shall be served by the sheriff or any constable of the county. In case it shall appear from the petition that neither of said parents are living, or do not reside in said county, and that said child has no guardian residing in said county, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a "dependent child," then the citation herein provided for shall not be issued; and the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said cause. In case any child is adjudged to be dependent or neglected under this chapter, then such parents or guardian shall hereafter have no right over or to the custody, services or earnings of said child except upon such conditions in the interest of such child as the court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian. [Id. sec. 4.]

Art. 2188. Hearing; facts to be ascertained; witnesses; county attorney to appear for petition or file same, etc., when.—Upon such hearing of such case the child shall be brought before said court; whereupon, it shall be the duty of said court to investigate the facts, and to ascertain whether the child is a "dependent child," its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses on such examination; and it shall be the duty of the clerk to issue all process and the sheriff and other officers of the court to serve the same as in other cases. It shall be the duty of the county attorney, when requested by the court, to appear in any such examination in behalf of the petition. It shall be the duty of the county attorney of such county, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this chapter. [Id. sec. 5.]

Art. 2189. Adjudication; order disposing of child as deemed best for its welfare.—Upon the hearing of such case, if the said child shall be found to come within any of the provisions of article 2184, it shall be adjudged a "dependent child;" and an order may be entered making disposition of said child as to the court seems best for its moral and physical welfare. It may be turned over to the care and custody of any suitable person or any suitable institution in the county or state organized for the purpose of caring for "dependent children," and which is able and willing to care for same. And when such child is so turned over to the custody of such person or institution, such person or institution shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the orders of the court. [Id. sec. 6.]

Art. 2190. Child to be ward of custodian; his authority; maintenance, etc.; visitation; reports; change of guardianship; child may remain with parents, etc., when, etc.—In any case where the court shall award any "dependent

child" to the care of any individual or institution in accordance with the provisions of this chapter, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Such institution or individual shall, with the consent of the court, have authority to place such child in a suitable family home, the head of such family being responsible for the maintenance and education of said child. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court may, at any time, require from any institution or person a report containing such information as the court shall deem proper or necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interest of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervisions for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case. [Id. sec. 7.]

CHAPTER TWO.

DELINQUENT CHILDREN.

	Article.		Article.
"Delinquent child" defined.....	2191	Hearing may be continued; disposition of child; not to be committed beyond age of twenty-one; order, requisites, change of order and custody or discharge	2197
County and district courts given jurisdiction over; jury trial; records.....	2192	Custodian to report; give information; to be satisfactory to court.....	2198
Proceedings; complaint, etc., filed by county attorney; requisites	2193	Prosecution under criminal laws may be ordered; no child under sixteen to be prosecuted without order; after conviction may stay and release, etc.....	2199
Warrant, etc.; execution thereof; no incarceration unless; noting; verbal sureties; default; contempt; alias warrant, etc., no incarceration with, when; bond	2194	District court may order dismissal of felony prosecution of person under sixteen and committed to juvenile court, etc.; after conviction may suspend judgment and release, etc.....	2200
County and district courts always in session for; child of sixteen or under if arrested to be taken before one of said courts; if taken before justice, etc., case transferred; hearing	2195	This chapter to be liberally construed in interest of child and its reformation...	2201
County judge may appoint probation officers, etc.; notice to; his authority and duties	2196		

Article 2191. "Delinquent child" defined.—For the purposes of this chapter, the words "delinquent child" shall include any child under sixteen years of age who violates any of the laws of this state, or any city ordinance, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who knowingly visits a house of ill repute, or who knowingly patronizes or visits any place where any gambling device is, or shall be operated, or who patronizes any saloon or place where any intoxicating liquors are sold, or who wanders about the streets in the night time without being on any business or occupation, or who habitually wanders about any railroad yards or tracks, or who habitually jumps on or off of any

moving train, or enters any car or engine without lawful authority, or who habitually uses vile, obscene, vulgar, profane or indecent language, or who is guilty of immoral conduct in any public place. Any child committing any of the acts herein mentioned shall be deemed a "delinquent child," and shall be proceeded against as such in the manner hereinafter provided. A disposition of any child under this chapter or any evidence given in such case shall not in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases against the same child under this chapter. [Acts 1907, p. 137, sec. 1.]

Art. 2192. County and district courts given jurisdiction over; jury trial; records.—The county and district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and provisions of this chapter. In all trials under this chapter any person interested therein may demand a jury, or the judge, of his own motion, may order a jury to try the case. The findings of the court shall be entered in a book to be kept for that purpose, known as the "Juvenile Record;" and the court when disposing of cases under this chapter may, for convenience, be called the "Juvenile Court." [Id. sec. 2.]

Art. 2193. Proceedings; complaint, etc., filed by county attorney; requisites.—All proceedings under this chapter shall be begun by sworn complaint and information filed by the county attorney, as in other cases under the laws of this state. In any such complaint and information filed under this chapter, the act or acts claimed to have been committed by the child proceeded against shall, in a general way, be stated therein as constituting such child a "delinquent child." [Id. sec. 3.]

Art. 2194. Warrant, etc.; execution thereof; no incarceration unless; noting; verbal sureties; default contempt; alias, warrant, etc.; no incarceration with, when; bond.—Upon filing of complaint under this chapter, warrant or capias may issue as in other cases; but no incarceration of the child proceeded against thereunder shall be made or had unless, in the opinion of the judge of the court, or, in the absence of the judge, then in the opinion of the sheriff or officer executing the writ, it shall be necessary to insure the attendance of such child in court at such time as shall be required. In order to avoid such incarceration, it shall be the duty of the sheriff or officer executing the process, to serve notice of the proceedings upon the parent or parents of the child, if living and known, or upon the child's legal guardian, or upon any person with whom the child at the time may be living; and the sheriff or officer executing the process may accept the verbal or written promise of such person so notified, or of any other proper person, to be responsible for the presence of such child at the hearing of such case, or at any other time to which the same may be adjourned or continued by the court. In case such child shall fail to appear at such time or times as the court may require, the person or persons responsible for its appearance, as herein provided for, unless in the opinion of the court there shall be reasonable cause for such child to fail to appear as herein provided for, may be proceeded against as in cases in contempt of court, and punished accordingly; and where any such child shall have so failed to appear, any warrant, capias or alias capias issued in such case may be executed, as in other cases; provided, however, that no child, within the provisions of this chapter shall be incarcerated in any compartment of a jail or lock-up in which persons over sixteen years of age are being kept or detained. Any such child shall also have the right to give bond or other security for its appearance at such trial of such case; and the court may appoint counsel to appear and defend on behalf of such child. [Id. sec. 4.]

Art. 2195. County and district courts always in session for; child of sixteen or under if arrested to be taken before one of said courts; if taken before

justice, etc., case transferred; hearing.—The county and district courts of the various counties of this state shall, at all times, be deemed in session for the purpose of disposing of cases under this chapter; and when any child sixteen years of age or under is arrested on any charge, with or without warrant, such child, instead of being taken before a justice of the peace or any police court, shall be taken directly before the county or district court; or, if the child should be taken before a justice of the peace or a police court upon a complaint sworn out in such court, or for any other reason, it shall be the duty of such justice of the peace or city judge to transfer the case to said county or district court; and, in any such case, the court may hear and proceed to dispose of the case in the same manner as if such child had been brought before the court upon information originally filed as herein provided. [Id. sec. 5.]

Art. 2196. **County judge may appoint probation officers, etc.; notice to; his authority and duties.**—The county judges of the several counties of this state shall have authority to appoint one or more discreet persons of good moral character who are willing to perform the services as such to serve as probation officer during the pleasure of the court. Such probation officer or officers shall serve without compensation. If practicable, the court, or the clerk of the court, shall notify such probation officer or officers when any child is to be brought before the court; such probation officer shall have the authority, and it shall be his duty, to make investigation of all cases referred to him as such officer by the court, to be present in court and to represent the interests of the child when the case is heard, to furnish to the court such information and assistance as the court may require, and to take charge of any child before and after the trial, and to perform such other services for the child as may be required by the court. [Id. sec. 6.]

Art. 2197. **Hearing may be continued; disposition of child; not to be committed beyond the age of twenty-one; order; requisites; change of order and custody or discharge.**—In any case of "delinquent child," coming under the provisions of this chapter, the court may continue the hearing from time to time, and may commit the child to the care of a probation officer or to the care or custody of any other proper person, and may allow said child to remain in its own home subject to the visitation of the probation officer or other person designated by the court, or under any other conditions that may seem proper and be imposed by the court; or the court may cause the child to be placed in the home of a suitable family under such conditions as may be imposed by the court; or it may authorize the child to be boarded out in some suitable family in case provision is made by voluntary contribution or otherwise, for the payment of the board of such child, until suitable provision may be made in a home without such payment; or the court may commit it to any institution in the county that may care for children that is willing to receive it, or which may be provided for by the state or county, suitable for the care of such children willing to receive it, or of any state institution which may now or hereafter be established for boys or girls willing to receive such child, or to any other institution in the state of Texas for the care of such children willing to receive it. In no case shall a child proceeded against under the provisions of this chapter be committed beyond the age of twenty-one. The order of the court committing such child to the care and custody of any person hereinbefore set out shall prescribe the length of time and the conditions of such commitment; and such order shall be at all times subject to change by further orders of the court with reference to said child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody, whenever, in the judgment of the court, it is to the best interest of the child so to do. [Id. sec. 7.]

Art. 2198. Custodian to report; give information; to be satisfactory to court.—The court or judge thereof may, at any time, require any institution, association or person to whose care any such child is committed to make a complete report of the care, condition and progress of such child. And such court may also require of any institution or association receiving or desiring to receive children under the provisions of this chapter, such reports, information and statements as the court shall deem proper for its action; and the court shall in no case commit a child or children to any association or institution whose standing, conduct or care of children or ability to care for children is not satisfactory to the court. [Id. sec. 8.]

Art. 2199. Prosecution under criminal laws may be ordered; no child under sixteen to be prosecuted without order; after conviction may stay and release, etc.—The county or district court, when it deems it proper and necessary, may order a child coming under the definition of this chapter, and which is charged with the commission of a misdemeanor, to be prosecuted under the criminal laws of this state as other persons charged with misdemeanors are prosecuted; but no child under sixteen years of age shall be so prosecuted, without such order being first so entered. And, after conviction of such child so prosecuted for a misdemeanor, the court shall have full power to stay the execution of such judgment, and to release such child on good behavior or other such orders as the court may see fit to make. [Id. sec. 9.]

Art. 2200. District court may order dismissal of felony prosecution of person under sixteen, and committed to juvenile court, etc., after conviction may suspend judgment and release, etc.—Whenever it shall appear to the district court of this state that any person being prosecuted in such court for a felony is a child under sixteen years of age, such court shall have authority to order such prosecution dismissed and to order such child to be committed to the juvenile court of the county in which such district court is being held, for such action and disposition as said juvenile court may think proper in the premises. Or the said district court may, after conviction on trial of such child, suspend judgment and order the defendant released on good behavior, or such other orders as, in the judgment of such district court, would be for the best interest of said child. [Id. sec. 9.]

Art. 2201. This chapter to be liberally construed in interest of child and its reformation.—This chapter shall be liberally construed, to the end that its purposes may be carried out; that is, that the interests of the child and its reformation shall, at all times, be the object in view of proceeding against it; provided, that no costs or expenses incurred in the enforcement of this chapter shall be paid by the state. [Id. sec. 10.]

TITLE 39.

CRIMINAL DISTRICT COURTS.

Chapter.	Chapter.
1. Galveston and Harris Counties Criminal District Court. The Judge.	3. Jurisdiction of the Criminal District Court.
2. The Clerk.	4. Miscellaneous Provisions.
	5. Dallas Criminal District Court.

CHAPTER ONE.

GALVESTON AND HARRIS COUNTIES CRIMINAL DISTRICT COURT. THE JUDGE.

Judge shall be appointed.....2202	Article.	Shall reside in his district.....2205	Article.
His term of office.....2203	|	May be removed from office, how.....2206	|
Shall possess certain qualifications.....2204	|	Exchange, etc., with district judge.....2207	|

Article 2202. [1505] [1482] **Judge shall be appointed.**—There shall be appointed by the governor, by and with the advice and consent of the senate, a criminal district judge of the criminal district court for the district composed of the counties of Galveston and Harris. [Act July 23, 1870, p. 47, sec. 6. P. D. 6140.]

Art. 2203. [1506] [1483] **His term of office.**—Said judge shall hold his office for the term of two years and until his successor is qualified. [Id. Const., art. 16; sec. 30.]

Art. 2204. [1507] [1484] **Shall possess certain qualifications.**—No person shall be appointed judge of said court who does not possess the following qualifications:

1. He must be at least twenty-five years of age.
2. He must be a citizen of the United States.
3. He shall have been a practicing attorney or judge of a court in this state for the period of four years.
4. He shall have resided in said district for two years next before his appointment. [Const., art. 5, sec. 7.]

Art. 2205. [1508] [1485] **Shall reside in his district.**—Said judge shall reside in his district during his term of office. [Id.]

Art. 2206. [1509] [1486] **May be removed from office, how.**—Said judge may be removed from office for the same causes and in the manner provided by law for the removal from office of a district judge. [Act July 23, 1870, p. 37, sec. 8. P. D. 6142.]

Art. 2207. [1510] [1487] **May exchange or alternate with any district judge.**—Said judge may exchange or alternate with any district judge in all criminal matters, as provided by law in the case of district judges. [Act May 18, 1871, p. 94, sec. 2. P. D. 6149.]

CHAPTER TWO.

THE CLERK.

Article.	Article.
Governor shall appoint clerks.....2208	Duties and powers of clerks.....2212
Clerk shall give bond.....2209	Fees of clerks.....2213
Shall take oath of office.....2210	Salary of clerks.....2214
Bond and oath shall be recorded.....2211	Vacancy in office of clerk, how filled.....2215

Article 2208. [1511] [1488] **Governor shall appoint clerks, etc.**—There shall be appointed by the governor a clerk of said court for each of said counties, who shall hold his office for the term of two years, or until his successor is qualified. [Act July 23, 1870, p. 37, sec. 9. P. D. 6143.]

Art. 2209. [1512] [1489] **Clerk shall give bond.**—The clerk so appointed shall, before entering upon the duties of his office, enter into bond in the sum of ten thousand dollars, payable to the state of Texas, with two or more good and sufficient sureties, conditioned as the bonds of the clerks of the district court, to be approved by the judge of said criminal district court. [Id.]

Art. 2210. [1513] [1490] **Shall take oath of office.**—The said clerk shall also take and subscribe the oath of office prescribed by the constitution of the state. [Id.]

Art. 2211. [1514] [1491] **Bond and oath shall be recorded.**—The bond and oath required by the two preceding articles shall be deposited and recorded in the office of the clerk of the county court of the county for which the clerk of said criminal district court has been appointed. [Id.]

Art. 2212. [1515] [1492] **Duties and powers of clerks.**—The duties of the clerks of said criminal district court, in all matters appertaining to said court, shall be the same as the duties prescribed by law for clerks of the district court; and they shall also, in said matters, have the same powers as are conferred by law upon clerks of the district court. [Id.]

Art. 2213. [1516] [1493] **Fees of clerks.**—Clerks of the criminal district court shall receive the same fees as are prescribed by law for clerks of the district and county court for the same services. [Id.]

Art. 2214. [1517] [1494] **Salary of clerks.**—In addition to the fees provided for in the preceding article, said clerks shall receive a salary of one thousand dollars each per annum, to be paid by the counties for which they are appointed respectively. [Id.]

Art. 2215. [1518] [1495] **Vacancy in office of clerk, how filled.**—When a vacancy occurs in the office of clerk of the criminal district court, the governor shall fill the same by appointment; and the person appointed shall hold the office for the unexpired term, and until his successor is qualified, and shall enter into bond and take the oath of office as heretofore prescribed in this chapter. [Id.]

CHAPTER THREE.

JURISDICTION OF THE CRIMINAL DISTRICT COURT.

Original jurisdiction	Article. 2216	| Jurisdiction over cases transferred to it. 2219	Article. 2219	
Appellate jurisdiction	2217		Jurisdiction over bail bonds, etc.....	2220
May grant habeas corpus, etc.....	2218			

Article 2216. [1519] [1496] **Original jurisdiction.**—The criminal district court shall have original and exclusive jurisdiction of all cases of felony and misdemeanor in the counties of Galveston and Harris of which the district and county courts have original and exclusive jurisdiction under the law. [Const., art. 5, secs. 1, 16. Act July 23, 1870. P. D. 6135.]

Art. 2217. [1520] [1497] **Appellate jurisdiction.**—The said court shall have exclusive appellate jurisdiction over all criminal cases tried and determined by justices of the peace, mayors and recorders in the said counties of Galveston and Harris, under the same rules and regulations provided by law for appeals from justices of the peace, mayors and recorders to the county court in criminal cases. [Const., art. 5, sec. 16. Act May 18, 1871, p. 94, sec. 3.]

Art. 2218. [1521] [1498] **May grant habeas corpus, etc.**—The judge of said court shall have power to grant the writ of habeas corpus, mandamus and all writs necessary to enforce the jurisdiction of his court, under the same rules and regulations which govern district judges. [P. D. 6136.]

Art. 2219. [1522] [1499] **Jurisdiction over cases transferred to it, etc.**—The said court shall have jurisdiction over all criminal cases heretofore transferred by law from other courts to said criminal district court, as fully in all respects as if said cases had been commenced in said court. [Id. P. D. 6148.]

Art. 2220. [1523] [1500] **Jurisdiction over bail bonds, etc.**—The said court shall have jurisdiction over all bail bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereon, and final judgment, and enforce the collection of the same in the same manner as is provided by law for the district court.

CHAPTER FOUR.

MISCELLANEOUS PROVISIONS.

	Article.		Article.
Seal of the court and its use.....	2221	Procedure	2225
Terms of the court.....	2222	Sheriffs shall attend.....	2226
Practice, pleading and evidence.....	2223	Same power as district court.....	2227
Selection, etc., of juries.....	2224	Appeals from	2228

Article 2221. [1524] [1501] **Seal of the court and its use.**—The said criminal district court in each of said counties of Galveston and Harris shall have a seal similar to the seal of the district court, with the words “Criminal District Court of —— County” engraved thereon, an impression of which seal shall be attached to all writs and other process except subpoenas issuing from said court, and shall be used in the authentication of all official acts of the clerks of said court. [Act July 23, 1870, p. 37, sec. 3. P. D. 6137.]

Art. 2222. [1525] [1502] **Terms of the court.**—Said judge shall hold a term of court in the city of Galveston, county of Galveston, on the first Monday in the months of November, February, May and July of each year, and may continue for four weeks, unless the business of said court be sooner disposed of. Said judge shall hold a term of said court in the city of Houston, county of Harris, on the first Monday in the months of September, December and March of each year; and said terms of said court may continue eight weeks, or until the business thereof is disposed of; and said judge shall also hold a term of said court in the city of Houston, Harris county, on the first Monday in the month of June of each year, which term may continue for four weeks, unless the business of said court be sooner disposed of. [Acts 1903, p. 26. Acts 1909, S. S., p. 283.]

Art. 2223. [1526] [1503] **Rules of practice, pleading and evidence.**—The practice in the said court shall be conducted according to the laws governing the practice of the district court; and the rules of pleading and evidence in the district courts shall govern. [Id. sec. 5. P. D. 6139.]

Art. 2224. [1527] [1504] **Selection, etc., of juries.**—All laws regulating the selection, summoning and impaneling of grand and petit juries in the district court shall govern the criminal district court, so far as the same may be applicable. [Id. sec. 11. P. D. 6245.]

Art. 2225. [1528] [1505] **Procedure.**—All the rules of criminal procedure governing the district court shall apply to, and govern, said criminal district court.

Art. 2226. [1529] [1506] **Sheriffs shall attend upon the court.**—The sheriffs of said counties of Galveston and Harris shall attend upon said court for their respective counties, and shall receive the same fees for their services as they are entitled to by law for the same services in the district court. [Id. sec. 12. P. D. 6146.]

Art. 2227. [1530] [1507] **Same power as district court.**—In all matters over which said criminal district court has jurisdiction, it shall have the same power as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of such power.

Art. 2228. [1531] [1508] **Appeals from.**—Appeals and writs of error may be prosecuted from said criminal district court to the court of criminal appeals, in the same manner and form as from the district court in like cases.

CHAPTER FIVE.

DALLAS CRIMINAL DISTRICT COURT.

	Article.		Article.
Court created; jurisdiction.....	2229	Seal of court and its uses.....	2232
Dallas county district courts to have no		Sheriff, clerk and county attorney to	
criminal jurisdiction.....	2230	serve.....	2233
Judge; qualifications, election, etc.....	2231	Terms of court and grand juries.....	2234
		Practice in.....	2235

Article 2229. [1531a] Dallas criminal district court created; jurisdiction.—There is hereby created and established at the city of Dallas a criminal district court, which shall have and exercise all the criminal jurisdiction heretofore vested in and exercised by the district courts of Dallas county. All appeals from the judgments of said court shall be to the court of criminal appeals, under the same regulations as are now or may hereafter be provided by law for appeals in criminal cases from district courts. [Acts of 1893, p. 118.]

Art. 2230. [1531b] Dallas county district courts to have no criminal jurisdiction.—The district courts of Dallas county shall not have nor exercise any criminal jurisdiction. [Id.]

Art. 2231. [1531c] Judge; qualifications, election, etc.—The judge of said criminal district court shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of a judge of the district court, and shall receive the same salary as is now, or may hereafter, be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of the judge, a special judge may be selected, elected, or appointed, as provided by law in cases of district judges. [Id.]

Art. 2232. [1531d] Seal of the court and its use.—Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments, and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this state in like manner as similar certified copies from courts of record are now or may hereafter be admissible. [Id.]

Art. 2233. [1531e] Sheriff, clerk and county attorney to serve, etc.—The sheriff, the county attorney, and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney, and clerk, respectively, of said criminal district court, under the same rules and regulations as are now, or may hereafter be, prescribed by law for the government of sheriffs, county attorneys, and clerks in the district courts of the state; and said sheriff, county attorney, and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the state, to be paid in the same manner. [Id.] *

Art. 2234. [1531f] Terms of the court and grand juries.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of January, one term beginning the first Monday of April, one term beginning the first Mon-

day of July, and one term beginning the first Monday of October. A grand jury shall be impaneled in said court for each term thereof; and jury commissioners shall be appointed for drawing jurors for said court, as is now or may hereafter be required by law in district courts, and under like rules and regulations. [Id.]

Art. 2235. [1531g] **Practice in.**—The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice, and proceedings in criminal cases in the district courts.

TITLE 40.

COURTS—COMMISSIONERS'.

Chapter.

- 1. Organization.
- 2. Powers and Duties.

Chapter.

- 3. Terms and Minutes of the Court.
- 4. Miscellaneous Provisions.

CHAPTER ONE.

ORGANIZATION.

<table border="0"> <tr> <td style="width: 50%;">Election and term of office of county commissioners</td> <td style="width: 50%; text-align: right;">Article. 2236</td> </tr> <tr> <td>Court composed of whom and the presiding officer thereof</td> <td style="text-align: right;">2237</td> </tr> </table>	Election and term of office of county commissioners	Article. 2236	Court composed of whom and the presiding officer thereof	2237	}	<table border="0"> <tr> <td style="width: 50%;">Three members constitute a quorum, except, etc.</td> <td style="width: 50%; text-align: right;">Article. 2238</td> </tr> <tr> <td>Oath and bond of county commissioner</td> <td style="text-align: right;">2239</td> </tr> <tr> <td>Vacancy in office of county commissioner, how filled</td> <td style="text-align: right;">2240</td> </tr> </table>	Three members constitute a quorum, except, etc.	Article. 2238	Oath and bond of county commissioner	2239	Vacancy in office of county commissioner, how filled	2240
Election and term of office of county commissioners	Article. 2236											
Court composed of whom and the presiding officer thereof	2237											
Three members constitute a quorum, except, etc.	Article. 2238											
Oath and bond of county commissioner	2239											
Vacancy in office of county commissioner, how filled	2240											

Article 2236. [1532] [1509] **Election and term of office of county commissioners.**—Each county shall be divided into four commissioners precincts, in each of which precincts there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years, and until his successor is elected. [Const., art. 5, sec. 18. Act July 22, 1876, p. 51, sec. 3.]

Art. 2237. [1533] [1510] **Court composed of whom and the presiding officer thereof.**—The said commissioners, together with the county judge, shall compose the commissioners' court, and the county judge, when present, shall be the presiding officer of said court. [Const., art. 5, sec. 18. Act July 22, 1876, p. 51, sec. 2.]

Art. 2238. [1534] [1511] **Three members constitute a quorum, except, etc.**—Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. [Id. sec. 12.]

Art. 2239. [1535] [1512] **Oath and bond of county commissioners.**—Before entering upon the duties of his office, the county judge and each commissioner shall take the oath of office prescribed by the constitution, and shall also take an oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office, which oath shall be in writing and taken before some officer authorized to administer oaths, and, together with the certificate of the officer who administered the same, shall be filed and recorded in the office of the clerk of the county court in a book to be provided for that purpose; and each commissioner shall execute a bond, with two or more good and sufficient sureties, to be approved by the judge of the county court of his county, in the sum of three thousand dollars, payable to the treasurer of his county, conditioned for the faithful performance of the duties of his office. [Act of 1887, p. 58.]

Art. 2240. [1536] [1513] **Vacancy in office of commissioner, how filled.**—In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. [Id. sec. 18.]

CHAPTER TWO.

POWERS AND DUTIES.

Article.		Article.	
2241	Certain powers of the court specified.....	2257	Bids to be advertised for, how.....
2242	Power to levy taxes.....	2258	Contract to be declared null and new
2243	Certain tax shall not exceed, etc.....	2259	bids advertised for, when.....
2244	Tax shall not be levied, except, etc.....	2260	May reject any and all bids.....
2245	Power to fill certain vacancies.....	2261	Preference to citizen, etc., of county,
2246	How vacancy shall be filled, etc.....	2262	when
2247	Shall send indigent sick to hospital,	2263	May receive separate bids.....
	when	2264	Stationery to be classified.....
	Commissioners' court may designate	2265	Bond with bid, requisites of bond.....
	health districts of unincorporated	2266	No commissioner or other officer to be
	towns	2267	interested in contract.....
2249	Proceedings after health districts desig-	2268	Contracts to be made in open court, with
	nated	2269	lowest bidder; bids to be spread on
2250	Failure to comply with notice provided	2270	minutes
	for in preceding article unlawful.....	2271	Contracts in writing, etc.; amount of
2251	May co-operate with cities and towns in	2272	bond, sureties, conditions, etc.....
	sanitary regulations	2273	Suit on bond, venue of.....
2252	May construct bridges in corporate	2274	Affidavit that bidder is not member of a
	limits	2275	trust, etc.....
2253	May co-operate with cities in such con-	2276	Commissioners may repeal order, when.....
	struction	2277	May provide building, etc., for county
2254	May issue bonds for such bridge purpose.....	2278	court
2255	Bridges in cities and towns, shall keep	2279	Duty as to school lands.....
	in repair	2280	Shall provide seals for the district and
2256	Stationery, etc., may contract for.....	2281	county courts
		2282	Other powers, etc., of the court.....

Article 2241. [1537] [1514] **Certain powers of the court specified.**—The said courts shall have power, and it shall be their duty:

1. To lay off their respective counties into precincts, not less than four nor more than eight, for the election of justices of the peace, and constables, and shall fix the times and places of holding the various justices' courts in their counties, and shall establish places in such precincts where elections shall be held, also shall establish justices' precincts and justices' courts for unorganized counties, as provided by law.

2. To establish public ferries whenever the public interest may require.

3. To lay out and establish, change and discontinue public roads and highways.

4. To build bridges and keep the same in repair.

5. To appoint road overseers and apportion hands.

6. To exercise general control and superintendence over all roads, highways, ferries and bridges in their counties.

7. To provide and keep in repair court houses, jails and all necessary public buildings.

8. To audit, adjust and settle all accounts against the county and direct their payment, and to audit, adjust and settle all accounts and claims in favor of the county.

9. To provide for the support of paupers, and such idiots and lunatics as can not be admitted into the lunatic asylum, residents of their counties, who are unable to support themselves.

10. To provide for the burial of paupers.

11. To punish contempt by fine of not to exceed twenty-five dollars, or by imprisonment not to exceed twenty-four hours, and, in case of fine, the party may be held in custody until the fine is paid.

12. To issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such court, and to enforce its jurisdiction. [Acts 1885, p. 89. Acts 1876, p. 51. Const., art. 5, sec. 18. Acts 1897, p. 210.]

Art. 2242. [1538] **Power to levy taxes.**—Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on

the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the constitution, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the constitution otherwise provided; provided, however, the court may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation, under the limitations and in the manner provided for in article 8, section 9, of the constitution, and in pursuance of the laws relating thereto. [Const., art. 8, sec. 9. Amendment 1899. Acts 1907, p. 40.]

Art. 2243. [1539] [1516] **Certain tax shall not exceed, etc.**—No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D., 1876 shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year. [Const., art. 8, sec. 9. Amendment 1899.]

Art. 2244. [1540] [1517] **Tax shall not be levied, except, etc.**—No county tax shall be levied except at a regular term of the court, and when all the members of said court are present. [Id. sec. 12.]

Art. 2245. [1541] [1518] **Power to fill certain vacancies.**—The said court shall have power to fill vacancies in the following named county offices, viz.: County judge, clerk of the county court, sheriff, county attorney, county treasurer, county surveyor, county hide inspector, assessor of taxes, collector of taxes, justices of the peace and constables.

Art. 2246. [1542] [1519] **How vacancy shall be filled, etc.**—Such vacancies shall be filled by a majority vote of the members of said court present and voting, and the person chosen to fill any vacancy shall hold the office until the next general election.

Art. 2247. [1543] [1520] **Shall send indigent sick to hospital, when.**—In case there is a regular established public hospital in the county, the commissioners' court shall provide for sending the indigent sick of the county to such hospital; and, if more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. [Id. sec. 21.]

Art. 2248. [1544] **Commissioners' court may designate health districts of unincorporated towns.**—The commissioners' court of any county in which an unincorporated town or village may be situated shall have power to designate the lines of such town or village, and may appoint a board of health for such town, consisting of three persons, not less than two of whom shall be regular practicing physicians. Said court, when such appointments are made, shall immediately notify the state health officer. [Acts 1899, p. 306. Acts 1889, p. 139. Acts 1901, S. S., p. 29.]

Art. 2249. [1545] **Proceedings after health districts designated.**—After the appointment provided for in the foregoing article, said board shall elect one of their number as presiding officer; and it shall be the duty of such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, to notify him of the fact, and that he must proceed at once to clean the same. [Id. Const., art. 8, sec. 9. Amendment 1889.]

Art. 2250. [1546] **Failure to comply with notice provided for in preceding article unlawful.**—Any person living in the prescribed limits of said town or village, having received the notice provided for in the foregoing article

and failing to comply therewith, shall be deemed guilty of a misdemeanor and punished as provided for in the Penal Code. [Id.]

Art. 2251. [1547] **May co-operate with cities and towns in sanitary regulations.**—The municipal authorities of towns and cities, and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor. [Acts of 1879, p. 9.]

Art. 2252. [1547a] **May construct bridges in corporate limits.**—Whenever the commissioners' court of any county shall deem it to the interest of the county to erect any bridge or bridges within the corporate limits of any city or town, said court may make contracts therefor, and erect said bridges to the same extent and under the same conditions now prescribed by law for the construction of bridges outside of the limits of any city or town. [Acts of 1895, p. 164.]

Art. 2253. [1547b] **May co-operate with cities in such construction.**—If said commissioners' court and the city council of any city or town desire to co-operate in the erection of a bridge within the corporate limits of any city or town, they may jointly erect such bridge upon such terms and conditions as may be mutually agreed upon; and either or both of the city and county may issue its bonds to pay for its proportional part of the debt; provided, that no such contract shall be made or entered into or bonds issued under the provisions of this law, unless a proposition therefor shall be submitted to the property taxpaying voters of the county at an election to be held by virtue of an order of the commissioners' court for the purpose, and a majority of such voters shall vote at such election in favor of such proposition; and the same laws governing other elections shall govern said election, canvass and return, and the county judge of said county shall declare by proclamation the result thereof by publication in some newspaper in said county. [Id.]

Art. 2254. [1547c] **May issue bonds for such bridge purposes.**—And, for the purposes herein mentioned, counties in this state may execute and issue its bonds, in the manner, under the conditions and to the same extent as they are now, or may be hereafter, authorized to issue for the erection of bridges outside of the corporate limits of cities and towns. [Id.]

Art. 2255. [1547d] **Bridges in cities and towns, shall keep in repair.**—It shall be the duty of the commissioners' courts of counties owning bridges, situated within the corporate limits of cities and towns, to keep the same in repair in the same manner as they are required by law to keep such bridges as are not so situated within the limits of a city or town; provided, that this article shall not be held to affect or diminish the liability of town and city corporations for injuries caused by the defective condition of such bridges situated within the city limits. [Acts 1897, p. 212.]

[Note.—For power of commissioners in reference to condemnation for opening, etc., streets in unincorporated towns, etc., see art. 1069.]

Art. 2256. **Stationery, etc., may contract for.**—The commissioners' court of each and every county may, by an order entered of record, be authorized and empowered to contract, as hereafter prescribed, with some suitable person or persons to supply the county with all blank books, all legal blanks and all stationery of every kind and description, as may be required by law to be furnished the county officials. [Acts 1907, p. 252.]

Art. 2257. **Bids to be advertised for, how.**—It shall be the duty of the commissioners' court to advertise, at least once in every two years, for sealed proposals to furnish said blank books, legal blanks, all stationery and such

other printing as may be required for the county for the term of such contract. Said advertisement shall be made by the county clerk, who shall notify, by registered letter, each newspaper published and each job printing house in the county, and at least three stationery and printing houses in the state, of the time said contract is to be awarded, and of the probable amount of supplies needed. [Id. sec. 2.]

Art. 2258. Contract to be declared null and new bids advertised for, when.—Should supplies, when furnished by the successful bidder under this chapter, not be of the quality designated in the contract and bond hereafter provided for, then, and in any such event, the commissioners' court may declare such contract null and void, and at the next regular or call session of said court again advertise for sealed proposals as in the first instance; and the commissioners' court shall have the right to again advertise for proposals as often and whenever from any cause supplies are not received under the previous contract. [Id. sec. 2.]

Art. 2259. May reject any and all bids.—The commissioners' court shall have the right to reject any and all bids. [Id. sec. 3.]

Art. 2260. Preference to citizen, etc., of county, when.—All bids being equal and quality the same, every contract must be awarded to a citizen or taxpayer of the county in which the contract is let. [Id. sec. 3.]

Art. 2261. May receive separate bids.—The commissioners' court may receive separate bids for the several classes herein mentioned. [Id. sec. 3.]

Art. 2262. Stationery to be classified.—The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils, penholders, ink stands and wares of like kind. Class "D," poll tax receipts and all election supplies of whatever nature and description, not furnished by the state. Each and every bid shall be upon some particular class, separate and apart from any other class. To the lowest bidder on class "A" shall be awarded the contract for all work of that class; to the lowest bidder on articles in class "B" shall be awarded the contract for supplying the articles embraced in that class; to the lowest bidder for articles in class "C" shall be awarded the contract for supplying articles in that class; and to the lowest bidder for articles in class "D" shall be awarded the contract for supplying articles in that class. [Id. sec. 3.]

Art. 2263. Bond with bid, requisites of bond.—Each bid shall be accompanied by the bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, that he will, without delay, upon being notified of such award, enter into a written contract, according to the law and with his proposal, and will give bond as may be required, for the faithful performance of said contract. [Id. sec. 4.]

Art. 2264. No commissioner or other officer to be interested in contract.—No member of the commissioners' court or any county officer shall be, either directly or indirectly, interested in any such contract. [Id. sec. 5.]

Art. 2265. Contracts to be made in open court, with lowest bidder; bids to be spread on minutes.—All contracts shall be made in open court, with the lowest bidder, and all bids shall be spread in full on the minutes of the court. [Id. sec. 5.]

Art. 2266. Contracts in writing, etc.; amount of bond, sureties, conditions, etc.—The successful bidder or bidders shall enter into a written contract with the court, and shall give bond in the sum of two hundred and fifty dollars, for each class or contract; said contract shall be signed by the successful bidder, with two or more good and sufficient sureties, and shall be conditioned

for the faithful compliance with his bid and with the law, and shall be made payable to the county judge or his successors in office. [Id. sec. 6.]

Art. 2267. **Suit on bond, venue of.**—Any suit on the bond of any contractor or bidder for failure to comply with the conditions of his contract shall be brought in the court having lawful jurisdiction of the amount alleged, in the county which is a party to the contract. [Id. sec. 6.]

Art. 2268. **Affidavit that bidder is not member of a trust, etc.**—Attached to every bid made in accordance with the provisions of this chapter, shall be an affidavit by the manager, secretary or other agent or officer of the bidder, to the effect that affiant has knowledge of the relations of the bidder with the other firms in the same line of business and that the bidder is not a member of any trust, pool or combination of any kind and has not been, for the six months last past, directly or indirectly concerned in any pool or agreement or combination to control the price of supplies bid on, or to influence any person to bid or not to bid thereon. [Id. sec. 7.]

Art. 2269. **Commissioners may repeal order, when.**—The commissioners' court of each county may, by order of record after contracts have been in force for the time specified in such contract, repeal said order. [Id. sec. 7a.]

Art. 2270. [1548] [1521] **May provide building, etc., for county court.**—Said courts may, when necessary, provide buildings, rooms or apartments at the county seats, other than the court house, for holding the sessions of the county courts. [Act Aug. 19, 1876, p. 211.]

Art. 2271. [1550] [1523] **Duty as to school lands.**—It shall be the duty of the commissioners' court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted, to the county for education or schools. [Const., art. 7, sec. 6.]

Art. 2272. [1551] [1524] **Shall provide seals for the district and county courts.**—Said court shall provide the seals required by law for the district and county courts of their respective counties.

Art. 2273. [1549] [1522] **Other powers, etc., of the court.**—Said courts shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law.

CHAPTER THREE.

TERMS AND MINUTES OF THE COURT.

	Article.		Article.
Regular terms of the court.....	2274	Minutes of the court	2276
Special terms of the court.....	2275	Minutes of proceedings in vacation.....	2277

Article 2274. [1552]. [1525] **Regular terms of the court.**—The regular terms of the commissioners' courts shall commence and be held at the court house of their respective counties on the second Mondays in February, May, August and November in every year, and may continue in session one week. [Act July 22, 1876, p. 53, sec. 13.]

Art. 2275. [1553] [1526] **Special terms of the court.**—Special terms of said courts may be called by the county judge or any three of the county commissioners, and may continue in session until the business is completed. [Id.]

Art. 2276. [1554] [1527] **Minutes of the court.**—The court shall cause to be procured and kept in the clerk's office suitable books in which shall be recorded the proceedings of each term of the court; which record shall be read over and signed by the county judge, or the member of the court presiding, at the end of each term and attested by the clerk. [Id. sec. 11.]

Art. 2277. [1555] [1528] **Minutes of proceedings in vacation.**—The clerk shall also record all the proceedings of said court authorized to take place in the vacation between the terms; and such record, so made in vacation, shall be read over and signed on the first day of the term of said court next after such proceedings took place. [Id. R. S. 1879, 1528.]

CHAPTER FOUR.

MISCELLANEOUS PROVISIONS.

	Article.		Article.
Seal of the court.....	2278	Process shall be executed, when, etc.....	2281
The clerk of the court and his duties.....	2279	Notices posted, how, instead of publication, when	2282
Clerk shall issue process.....	2280		

Article 2278. [1556] [1529] **Seal of the court.**—Each commissioners' court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners' Court, ——— county, Texas," [the blank to be filled with the name of the county], which seal shall be kept in the office of the clerk of said court, and shall be used in authentication of all official acts of said court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. [Act July 22, 1876, p. 53, sec. 7.]

Art. 2279. [1557] [1530] **The clerk of the court and his duties.**—The clerk of the county court shall be ex officio clerk of the commissioners' court; and it shall be the duty of such clerk to attend upon each term of said commissioners' court; to preserve and keep in his possession all books, papers, records and effects belonging thereto, to issue all notices, writs and process necessary for the proper execution of the powers and duties imposed upon such commissioners' court, and to perform all such other duties as may be prescribed by law. [Id. sec. 8.]

Art. 2280. [1558] [1531] **Clerk shall issue process.**—All notices, citations, writs and process issued from said court shall run in the name of "The

State of Texas," and shall be directed to the sheriff or any constable of a county, and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon, except subpoenas, which need not be under seal. [Id. sec. 9.]

Art. 2281. [1559] [1532] **Process shall be executed when, etc.**—All process of said court, when not otherwise directed by law, shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpoenas for witnesses may be executed and returned forthwith when necessary. [Id. sec. 9.]

Art. 2282. **Notices posted how instead of publication, when.**—Whenever the commissioners' court of the county shall be unable to secure the publication of any notice or report required by law to be given or made by such court in the manner and for the fee or fees provided by law therefor, such notice or report may be made and published in the following manner: The court shall cause to be made four true copies of such notice or report containing the same subject matter as is required to be set out in such notice or report under the law providing for the issuance and publication. One of said copies shall be posted at the court house door of the county, and one of said copies shall be posted at some public place in each of the commissioners' precincts of said county for thirty days prior to the next succeeding term of the commissioners' court of said county, and no two of such copies shall be posted in the same town or city. [Acts 1899, p. 39.]

TITLE 41.

COURTS—JUSTICES'.

Chapter.

1. Election and Qualification of Justices.
2. Powers and Jurisdiction.
3. Terms of the Court.
4. Dockets, Books and Papers.
5. Venue.
6. Security for Costs.
7. Parties.
8. Process and Service.
9. Pleadings.

Chapter.

10. Continuance.
11. Appearance and Trial.
12. Trial by Jury.
13. The Judgment.
14. New Trials, etc.
15. Execution.
16. Stay of Execution.
17. Appeal.
18. General Provisions.

CHAPTER ONE.

ELECTION AND QUALIFICATION OF JUSTICES.

	Article.		Article
Justices, election, bond and term of office.	2283	Two justices in certain precincts.....	2286
Appointed, how, in unorganized counties.....	2284	Commission and qualification.....	2287
Additional justices of the peace for unorganized counties.....	2285	Vacancy, how filled.....	2288
		Nearest justice to hold court, when.....	2289
		Justice disqualified, when.....	2290

Article 2283. [1560] [1533] **Justices, election, bond and term of office.**—There shall be elected by the qualified voters of each justice's precinct in the several counties of this state, at each biennial election, one justice of the peace, who shall hold his office for two years, and until his successor shall be elected and qualified. He shall enter into bond, payable to the county judge and his successors in office, in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge and perform all the duties required of him by law, and that he will promptly pay over to the party entitled to receive it all moneys that may come into his hand during his term of office. This law shall apply to all justices of the peace appointed by the county commissioners' court. [Acts of 1885, p. 90.]

Art. 2284. [1561] **Appointed, how, in unorganized counties.**—The county commissioners' courts of the several counties in this state to which unorganized counties are attached for judicial purposes shall have and are hereby given power to appoint a justice of the peace and a constable for each of the unorganized counties attached to said county for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointments in organized counties. [Acts of 1879, p. 89.]

Art. 2285. [1562] **Additional justices of the peace for unorganized counties.**—Whenever, in any unorganized county of the state of Texas, a necessity may exist for the appointment of more than one justice of the peace and constable for such county, and such fact is made known and set forth in a petition signed by one hundred qualified voters of said county, addressed to the county commissioners' court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, it shall be the duty of such commissioners' court to lay off and designate as many justices' precincts in such unorganized county as may be necessary, not exceeding four, and such commissioners' court shall have and is hereby empowered to appoint one justice of the peace and one constable for each justice's precinct in such unorganized county, in accordance with the provisions of the law now in force authorizing such appointments in organized counties; and such justices' precincts shall be and they are hereby

constituted election precincts in such unorganized county. [Acts of 1885, p. 88.]

Art. 2286. [1563] [1534] **Two justices in certain precincts.**—Where, in any justice's precinct, there may be a city of eight thousand or more inhabitants, there shall be elected two justices of the peace. [Id.]

Art. 2287. [1564] [1535] **Commission and qualification.**—Each justice of the peace shall be commissioned as justice of the peace of his precinct and ex officio notary public of his county, and shall take the oath of office prescribed in the constitution, and give the bond prescribed by law. [Const., art. 4, sec. 20. Act Aug. 17, 1876, p. 165, sec. 28.]

Art. 2288. [1565] [1536] **Vacancy, how filled.**—Where any vacancy shall occur in the office of a justice of the peace, the same shall be filled by some person appointed by the commissioners' court of the county, who shall hold his office until the next general election, and until his successor shall be elected and qualified. [Const., art. 6, sec. 28. Act Aug. 17, 1876, p. 165, sec. 2.]

Art. 2289. [1566] [1537] **Nearest justice to hold court, when.**—During the period of such vacancy, or whenever the justice of the peace in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice of the peace in the county may perform the duties of the office until such vacancy shall be filled, or such absence, inability or unwillingness shall cease. [Act Aug. 17, 1876, p. 164, sec. 25.]

Art. 2290. [1567] [1538] **Justice disqualified, when.**—No justice of the peace shall sit in any cause where he may be interested, or where he may be related to either party within the third degree of consanguinity or affinity. [Act Aug. 17, 1876, pp. 164, 165, sec. 24.]

CHAPTER TWO.

POWERS AND JURISDICTION.

	Article.		Article.
Jurisdiction in civil cases.....	2291	Other jurisdiction conferred by law.....	2295
To enter forfeitures of bail bonds.....	2292	No jurisdiction in certain cases.....	2296
To punish contempts.....	2293	To proceed with unfinished business.....	2297
To issue writs of garnishment, etc.....	2294		

Article 2291. [1568] [1539] **Jurisdiction in civil cases.**—The courts of justices of the peace shall, in addition to the powers and duties elsewhere provided for, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of all cases of forcible entry and detainer. They shall also have power to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction, as above provided. [Const., art. 5, sec. 19. Act Aug. 17, 1876, p. 155, secs. 3, 4.]

Art. 2292. [1569] [1540] **To enter forfeitures of bail bonds.**—Justices of the peace shall also have power to enter forfeitures of bail bonds given for the appearance of parties or witnesses in their courts, and to render judgments thereon without regard to the amount of such bond. [Id. sec. 3.]

Art. 2293. [1570] [1541] **To punish for contempts.**—They shall have power to punish any party guilty of a contempt of court by fine not to ex-

ceed twenty-five dollars and by imprisonment not exceeding one day. [Id.]

Art. 2294. [1571] [1542] **To issue writs of garnishment, etc.**—They shall have the same power in cases within their jurisdiction as judges and clerks of the district and county courts have to issue writs of attachment, garnishment and sequestration. [Id. sec. 26.]

Art. 2295. [1572] [1543] **Other jurisdiction conferred by law.**—They shall also have and exercise jurisdiction over all other matters not hereinbefore enumerated that are, or may be, cognizable before a justice of the peace under any law of this state. [Act Aug. 17, 1876, p. 155, sec. 3.]

Art. 2296. [1573] [1544] **No jurisdiction in certain cases.**—Justices' courts have no jurisdiction of suits in behalf of the state to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land. [Const., art. 5, sec. 8.]

Art. 2297. [1574] [1545] **To proceed with unfinished business.**—Every justice of the peace shall have power, and it shall be his duty, to proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him. [Act Aug. 17, 1876, p. 157, sec. 6.]

CHAPTER THREE.

TERMS OF THE COURT.

	Article.		Article.
Monthly terms	2298	May hold from day to day, etc.....	2300
Times and places of holding.....	2299	Failure of term.....	2301

Articlé 2298. [1575] [1546] **Monthly terms.**—Each justice of the peace shall hold a term of his court for civil business once in each month, and may transact such business out of term time as is, or may be, authorized by law. [Id. sec. 25. Act Aug. 14, 1870, p. 87, sec. 13. P. D. 6357.]

Art. 2299. [1576] [1547] **Times and places of holding.**—Justices of the peace shall hold the regular terms of their courts at their respective offices at such times as may be prescribed by the commissioners' court of the county. [Const., art. 5, sec. 19. Acts of 1881, p. 10.]

Art. 2300. [1577] [1548] **May hold from day to day, etc.**—The justices may hold the courts from day to day until all business shall be disposed of, or they may adjourn the court or the trial of any case to a particular day. [Acts of 1870, p. 87.]

Art. 2301. [1578] [1549] **Failure of term.**—If from any cause the regular term of a justice's court shall not be opened on the day fixed therefor by law, the court shall be considered as adjourned until the next regular term thereof. [Id. sec. 25.]

CHAPTER FOUR.

DOCKETS, BOOKS AND PAPERS.

	Article.		Article.
Justice's docket	2302	Books and papers to be delivered to suc- cessor	2306
Fee book	2303		2307
Other books	2304		Delivery of, may be enforced.....
Custody of books, papers, etc.....	2305		

Article 2302. [1579] [1550] **Justice's docket.**—It shall be the duty of every justice of the peace to keep a civil docket, in which he shall enter—

1. The title of all suits commenced before him.
2. The time when the first process was issued against the defendant, when returnable, and the nature thereof.
3. The time when the parties, or either of them, appeared before him, either with or without citation.
4. A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.
5. Every adjournment, stating at whose request and to what time.
6. The time when the trial was had, stating whether the same was by a jury or by the justice.
7. The verdict of the jury, if any.
8. The judgment rendered by the justice, and the time of rendering the same.
9. All applications for setting aside judgment or granting new trials, and the order of the justice thereon, with the date thereof.
10. The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such return on said docket, with the manner in which it was executed.
11. All stays and appeals that may be taken, and the time when taken, the amount of the bond and the name of the sureties. [Act Aug. 17, 1876, p. 156, sec. 5.]

Art. 2303. [1580] [1551] **Fee book.**—He shall also keep a fee book in which shall be taxed all costs accruing in every suit commenced before him. [Id. sec. 27.]

Art. 2304. [1581] [1552] **Other books.**—He shall also keep such other dockets, books and records as may be required by law.

Art. 2305. [1582] [1553] **Custody of books, papers, etc.**—Each justice of the peace shall arrange and safely keep the dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court, subject at all reasonable times to the inspection of any party interested therein.

Art. 2306. [1583] [1554] **Books and papers to be delivered to successor.**—When a justice of the peace shall vacate his office, it shall be his duty to deliver up to his successor all dockets, books and papers pertaining to his said office; and it shall be the duty of any person having possession of dockets, books or papers belonging to the office of any justice of the peace, to deliver the same over to such justice on demand. [Act Aug. 17, 1876, p. 156, sec. 6.]

Art. 2307. [1584] [1555] **Delivery of, may be enforced.**—Should any person, having such dockets, books or papers, refuse to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or in vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made. [Id.]

CHAPTER FIVE.

VENUE.

[See "Venue of Suits" in article 1830.]

Article.	Article.
Suits to be brought in the county of de-	Change of venue on affidavit.....2313
fendant's residence, except, etc.....2308	By consent.....2314
Residence of single man.....2309	When justice is disqualified.....2315
Where two justices in one precinct.....2310	Term "nearest justice" defined.....2316
Where two justices in one city or town.....2311	Order of transfer.....2317
Where justice is disqualified.....2312	Duty of justice in case of transfer.....2318

Article 2308. [1585] [1556] **Suits to be brought in the county of defendant's residence, except, etc.**—Every suit in the court of a justice of the peace shall be commenced in the county and precinct in which the defendant, or one or more of the several defendants, resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence, or in that provided in each exception:

4. Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof, are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the state, or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of mail stages or coaches, for any injury to person or property upon the road, canal or line of stages or coaches of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of stages or coaches may pass, or in any precinct where the route of such railroad, canal, stages or coaches may begin or terminate.

12. Suits against fire, marine or inland insurance companies may also be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be brought in the county and precinct in which the persons insured, or any of them, resided at the time of such death or injury.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. [Id. sec. 8.]

Art. 2309. [1586] [1557] **Residence of a single man.**—The residence of a single man is where he boards. [Id.]

Art. 2310. [1587] [1558] **Where two justices in one precinct.**—Where, in any precinct, there may be more than one justice of the peace, the suit may be brought before either of them. [Id.]

Art. 2311. [1588] [1559] **Where two or more justices in one city or town.**—Where, in any incorporated city or town, there may be more than one justice of the peace, suit may be brought before either of them. [Id.]

Art. 2312. [1589] [1560] **Where justice is disqualified.**—If there be no justice of the peace qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the peace of the county who is not disqualified to try the same. [Id.]

Art. 2313. [1590] [1561] **Change of venue on affidavit.**—If any party to a suit before any justice of the peace shall make an affidavit, supported by the affidavit of two other credible persons, citizens of the county, to the effect that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, it shall be the duty of such justice to transfer such suit to the court of the nearest justice of the peace within the county not subject to the same or some other disqualification. [Id. sec. 9.]

Art. 2314. [1591] [1562] **By consent.**—The venue may also be changed to the court of any other justice of the peace of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

Art. 2315. [1592] [1563] **When justice is disqualified.**—If any justice of the peace shall be disqualified from sitting in any civil case pending, or which may hereafter be brought before him, or should such justice of the peace be sick or absent from the precinct, the parties to said suit may agree upon some person who is qualified to try said case; and, in the event said parties fail to agree upon some person to try said cause at the first term of the court after service is perfect, it shall be the duty of the county judge in whose county said case is pending, upon the application of the justice of the peace in whose court said cause is pending, or upon the application of either party to said suit, to appoint some person who is qualified to try said cause; and the fact of the disqualification of the justice of the peace and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause. [Amend. 1895, p. 26.]

Art. 2316. [1593] [1563a] **The term "nearest justice" defined.**—By the term "nearest justice," as used in this chapter, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

Art. 2317. [1594] [1564] **Order of transfer.**—The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court in its next ensuing term.

Art. 2318. [1595] [1565] **Duty of justice in case of transfer.**—When such order of transfer is made, it shall be the duty of the justice who made the order immediately to make out a true and correct transcript of all the entries made on his docket in the cause, and certify thereto officially, and to transmit the same, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

CHAPTER SIX.

SECURITY FOR COSTS.

Rules of district courts, etc., apply as to security for costs..... Article 2319

Article 2319. [1596] [1566] **Rules of district courts, etc., apply as to security for costs.**—The rules governing the district and county courts in reference to requiring security for costs, and the effect of the rule for costs, and the penalty for non-compliance therewith shall also govern the justices' courts, in so far as they can be applied to proceedings therein. [Id. sec. 27.]

CHAPTER SEVEN.

PARTIES.

Same rules as to parties as in district courts, etc. Article 2320

Article 2320. [1597] [1567] **Same rules as to parties as in district courts, etc.**—The rules relating to parties in the district and county courts shall also govern the justices' courts, in so far as they can be applied thereto.

CHAPTER EIGHT.

PROCESS AND SERVICE.

	Article.		Article.
Process of justice's court, requisites of.....	2321	Justice may depute a person to serve process	2324
Citation to be issued, when.....	2322		Rules of district courts, etc., govern as to issuance and service of process.....
Citation shall contain, what.....	2323		2325

Article 2321. [1598] [1568] **Process of justice's court, requisites of.**—Every writ or process from the courts of justices of the peace shall be issued by the justice, and shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law, be directed to the sheriff or any constable of the proper county, and shall be made returnable to some regular term of such court; and the date of its issuance shall be noted thereon. [Act Aug. 17, 1876, p. 158, sec. 10.]

Art. 2322. [1599] [1569] **Citation to be issued, when.**—When a claim or demand is lodged with a justice of the peace for suit, it shall be his duty to issue forthwith a writ or citation for the defendant; and, if there be several defendants residing in different counties, one citation shall be issued to each of such counties. [Id.]

Art. 2323. [1600] [1570] **Citation shall contain what.**—The citation shall be directed to the sheriff or any constable of the county where the defendant is represented to be, and shall, in addition to the requirements of article 2321, require the officer to summon the defendant to appear and answer the plaintiff's suit at some regular term of the court, stating the time and place of holding the same. It shall state the names of all the parties to the suit, and the nature of the plaintiff's demand. [Id.]

Art. 2324. [1601] [1571] **Justice may depute person to serve process.**—The justice of the peace may, in case of an emergency, depute any person of good character to serve any process; and the person so deputed shall, for such purpose, have all the authority of a sheriff or constable; but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process; and such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will, to the best of his ability, execute the same according to law. [Id.]

Art. 2325. [1602] [1572] **Rules of district courts, etc., govern as to issuance and service of process.**—All the rules governing the issuance and service and the return of citations, issued out of the district and county courts, and providing for acceptance of service, and entering appearance, shall, except where otherwise provided by law, govern also the justices' courts, in so far as they can be applied to the proceedings of said court. [Id.]

CHAPTER NINE.

PLEADINGS.

	Article		Article
Pleadings oral but entered on docket.....	2326	Pleadings amendable	2328
Pleadings to be in writing and under oath	2327		

Article 2326. [1603] [1573] **Pleadings oral but entered on docket.**—The pleadings in the justices' courts shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket. [Id. secs. 5, 12.]

Art. 2327. [1604] [1574] **Pleadings to be in writing and under oath.**—An answer or other pleading setting up any of the following matters shall be in writing and signed by the party or his attorney and verified by affidavit:

1. That the suit is not commenced in the proper county or precinct.
2. That the plaintiff has not legal capacity to sue.
3. That the plaintiff is not entitled to recover in the capacity in which he sues.
4. That there is another suit pending in this state between the same parties for the same cause of action or counter claim.
5. That there is a defect of parties plaintiff or defendant.
6. That the plaintiffs or defendants suing or sued as partners or receiver are not partners or receiver as alleged.
7. That the plaintiff or defendant suing or sued as a corporation is not a corporation as alleged.
8. That a written instrument purporting to be signed by him and relied on by the other party was not executed by him or by his authority.

9. That the indorsement or assignment of a written instrument pleaded by the adverse party was not executed by the party by whom it purports to have been executed, or by his authority.

10. That a written instrument pleaded by the adverse party is without consideration, or that the consideration of the same has failed, in whole or in part.

11. That an account pleaded by the adverse party, and duly verified by affidavit, as provided in article 3712, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

12. That the contract sued upon is usurious. [Acts of 1891, p. 85.]

Art. 2328. [1605] [1575] **Pleadings amendable.**—The pleadings may be amended in accordance with the rules governing amendments of pleadings in the district and county courts, so far as the same are applicable.

CHAPTER TEN.

CONTINUANCE.

Cause may be continued, etc. Article. 2329

Article 2329. [1606] [1576] **Cause may be continued, etc.**—Any justice of the peace may, for good cause shown, supported by affidavit, continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term. [Id. sec. 11.]

CHAPTER ELEVEN.

APPEARANCE AND TRIAL.

Appearance day	Article. 2330	Call of the non-jury docket.	Article. 2335
Proceeding where defendant fails to appear	2331	Plaintiff failing to appear may be non-sued	2336
Appearance noted	2332	Proceedings, evidence, etc., to conform to rules governing district courts, etc.	2337
Jury trial may be demanded.	2333	Judgment on trial without jury.	2338
Court shall try case, when	2334		

Article 2330. [1607] [1577] **Appearance day.**—The first day of each term of the justice's court after the return of process duly served in any cause shall be appearance day; but where the service was made by publication the first day of the second term after such publication shall be appearance day. [Id. sec. 18.]

Art. 2331. [1608] [1578] **Proceedings where defendant fails to appear.**—If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a. m., on appearance day, the justice shall proceed in the following manner:

1. If the plaintiff's cause of action be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

2. If the plaintiff's cause of action is not so liquidated, and the plaintiff appears in person or by agent or attorney, the justice shall proceed to hear the testimony; and, if it shall appear therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant. [Id. sec. 18.]

Art. 2332 [1609] [1579] **Appearance noted.**—If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

Art. 2333. [1610] [1580] **Jury trial may be demanded.**—Either party may demand a jury as hereinafter provided. [Const., art. 1, sec. 15.]

Art. 2334. [1611] [1581] **Court shall try case, when.**—If neither party shall demand, and be entitled to, a jury trial, the cause shall be tried by the justice without a jury. [Id.]

Art. 2335. [1612] [1582] **Call of the non-jury docket.**—The docket of cases to be tried by the justice shall be called regularly; and the cases shall be tried when called, unless the same should be continued or postponed to some later period in the term. [Id. sec. 41. R. S. 1879, 1582.]

Art. 2336. [1613] [1583] **Plaintiff failing to appear may be non-suited.**—If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice may, on motion of the defendant, dismiss the suit. [Id. sec. 18.]

Art. 2337. [1614] [1584] **Proceedings, evidence, etc., to conform to rules governing district courts, etc.**—Upon a trial before the justice, the proceedings shall conform as near as may be to the rules governing the district and county courts; and all the rules of evidence and the provisions for procuring the attendance of witnesses, for taking the depositions of witnesses and parties, and for taking and determining the exceptions thereto, prescribed for the government of the district and county courts, shall, when not in conflict with the provisions of this title, govern the proceedings in justices' courts, so far as the same may be applicable. [Id. secs. 14, 16.]

Art. 2338. [1615] [1585] **Judgment on trial without jury.**—After hearing the evidence, the justice trying the case without a jury shall give judgment for the party who may appear to be justly entitled thereto. [Id. sec. 11.]

CHAPTER TWELVE.

TRIAL BY JURY.

Article.	Article.		
Jury trial may be demanded.....	2339	Drawing of jury.....	2353
Time of demand and deposit of jury fee.....	2340	Challenge for cause.....	2354
Jury trial day to be fixed.....	2341	Challenge for cause, proceedings on, same	
Summons for jury to be issued, when,		as in district courts, etc.....	2355
etc.....	2342	Peremptory challenges, when and how	
Oath to sheriff, etc., summoning jury.....	2343	made.....	2356
Duty of the officer.....	2344	The jury.....	2357
Summons to juror, how served.....	2345	When the jury is incomplete.....	2358
Venire of jurors to be called.....	2346	Jurors to be sworn.....	2359
Excuses of jurors.....	2347	Oath of jurors.....	2360
Defaulting jurors to be fined.....	2348	Mode of proceeding on trial before jury,	
Other jurors summoned when neces-		same as in district courts, etc.....	2361
sary.....	2349	Verdict for specific articles, to assess	
Call of jury docket.....	2350	their value separately.....	2362
Challenge to the array, when.....	2351	Pay of jurors.....	2363
Challenge to the array, how made and			
proceedings thereon.....	2352		

Article 2339. [1616] [1586] **Jury trial may be demanded.**—Either party to any suit in the justice's court shall be entitled to a trial by jury, upon making demand therefor and complying with the provisions of this chapter relating thereto. [Act Aug. 17, 1876, p. 159, sec. 11.]

Art. 2340. [1617] [1587] **Time of demand and deposit of jury fee.**—Either party desiring a jury shall, on or before the first day of the term at which the case is to be tried, make a demand for a jury, which shall be noted by the justice in his docket; and shall also deposit a jury fee of three dollars, which shall also be noted on the docket; and the case shall be set down as a jury case.

Art. 2341. [1618] [1588] **Jury trial day to be fixed.**—The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Art. 2342. [1619] [1589] **Summons for jury to be issued, when, etc.**—Whenever at any term of a justice's court there may be any jury cases pending for trial, it shall be the duty of the justice to issue a writ directed to the sheriff or any constable of the county, commanding him to summon six legally qualified jurors, or a greater number, should the justice deem it necessary, to attend as a jury before such justice at a day and place to be named in the writ.

Art. 2343. [1620] [1590] **Oath to sheriff, etc., summoning jury.**—The justice, on delivering such writ to the officer, shall administer to him the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." [Act Aug. 1, 1876, p. 80, sec. 12.]

Art. 2344. [1621] [1591] **Duty of the officer.**—The officer receiving such writ shall immediately proceed to execute the command thereof by summoning the required number of jurors to appear before the justice at the day and place named in the writ.

Art. 2345. [1622] [1592] **Summons to juror, how served.**—Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice at the day and place named.

Art. 2346. [1623] [1593] **Venire of jurors to be called.**—At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Art. 2347. [1624] [1594] **Excuses for juror.**—The court may hear any reasonable excuse of a juror, supported by oath or affirmation, and may excuse him for the trial of any particular case, or for one or more days of the term.

Art. 2348. [1625] [1595] **Defaulting jurors to be fined.**—When any person, so summoned as a juror, shall fail or refuse to attend, it shall be the duty of the justice to enter a fine nisi against him for an amount not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show some good and sufficient excuse for such failure, to be judged of by the justice.

Art. 2349. [1626] [1596] **Other jurors to be summoned when necessary.**—If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of others, having like qualifications, to make up the required number.

Art. 2350. [1627] [1597] **Call of jury docket.**—When the required number of jurors is present, the jury cases shall be called in their order on the docket.

Art. 2351. [1628] [1598] **Challenge to the array, when.**—When the parties to a jury case have announced themselves ready for trial, either party may challenge the array of jurors.

Art. 2352. [1629] [1599] **Challenge to the array, how made, and proceedings therein.**—The cause of such challenge and the manner of making it, and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts in the title "Juries."

Art. 2353. [1630] [1600] **Drawing jury.**—If no challenge to the array is made, the justice shall write the name of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys. [Act Aug. 1, 1876, p. 82, sec. 22.]

Art. 2354. [1631] [1601] **Challenge for cause.**—If either party desires to challenge any juror for cause, such challenge shall now be made. [Id.]

Art. 2355. [1632] [1602] **Challenge for cause, proceedings on, same as in district court, etc.**—The causes of such challenge, and the manner of making it, and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Art. 2356. [1633] [1603] **Peremptory challenges, when and how made.**—When a juror has been challenged for cause, his name shall be erased from the slips furnished to the parties; and, if there be remaining on such slips as many as six names, the parties shall proceed to make their peremptory challenges, if they desire to make any, which shall be governed by the same rules as are prescribed for the district and county courts.

Art. 2357. [1634] [1604] **The jury.**—When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case. The jurors not called shall retire.

Art. 2358. [1635] [1605] **When jury is left incomplete.**—Where, by peremptory challenges, the jury is left incomplete, the justice shall direct the sheriff or constable to summon others to complete the jury; and the same pro-

ceedings shall be had in selecting and impaneling such jurors as are had in the first instance. [Act Aug. 1, 1876, p. 82, sec. 22.]

Art. 2359. [1636] [1606] **Jurors to be sworn.**—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases shall be sworn by the justice.

Art. 2360. [1637] [1607] **Oath of jurors.**—The form of the oath shall be in substance as follows: “You and each of you do solemnly swear that, in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law and the evidence. So help you God.” [P. D. 3984.]

Art. 2361. [1638] [1608] **Mode of proceeding on trial before jury same as in district courts, etc.**—The mode of proceeding on the trial before the jury shall be the same, so far as applicable, as is prescribed for the district and county courts in the chapters relating thereto, except that the justice shall not deliver any charge to the jury.

Art. 2362. [1639] [1609] **Verdict for specific articles, to assess their value separately.**—Where the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof. [Act Aug. 17, 1876, p. 163, sec. 19.]

Art. 2363. [1640] [1610] **Pay of jurors.**—Before the verdict is rendered, the justice shall pay to each juror fifty cents out of the jury fee deposited in the case.

CHAPTER THIRTEEN.

THE JUDGMENT.

Article.	Article.
Judgment upon verdict of jury.....2364	Court may, in certain cases, enforce judgment by attachment, fine, etc.....2369
Case tried without jury, decision in open court .....2365	No judgment without citation, unless.....2370
Judgment .....2365	Confession of judgment.....2371
Costs .....2367	Warrant of attorney to be filed.....2372
Judgment for specific articles.....2368	Same rules as govern district courts, etc.2373

Article 2364. [1641] [1611] **Judgment upon verdict of jury.**—Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

Art. 2365. [1642] [1612] **Case tried without a jury, decision in open court.**—When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket, and shall proceed to render judgment thereon. [Id. sec. 17.]

Art. 2366. [1643] [1613] **Judgment.**—The judgment shall be recorded at length in the justice’s docket, and shall be signed by such justice. It shall clearly state the determination of the rights of the parties in the subject matter of controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

Art. 2367. [1644] [1614] **Costs.**—The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided. [Id. secs. 11, 14.]

Art. 2368. [1645] [1615] **Judgment for specific articles.**—Where judgment is for the recovery of specific articles, their value shall be separately assessed.

and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed, with interest thereon at the rate of six per cent from the date of the judgment. [Id. sec. 19.]

Art. 2369. [1646] [1616] **Court may, in certain cases, enforce judgment by attachment, fine, etc.**—The court shall cause its judgments to be carried into execution, and where the judgment is for personal property, and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. [Act May 11, 1846, p. 200, sec. 17. P. D. 1420.]

Art. 2370. [1647] [1617] **No judgment without citation, unless.**—No judgment, other than judgment by confession, shall be rendered by the justice of the peace against any party who has not entered an appearance or accepted service, unless such party has been cited either personally or by publication, or been served by the notice to serve a non-resident provided for in article 1869 of these statutes; which said article 1869 is now made applicable to the justices courts. [Acts 1876, p. 163. Acts 1870, p. 87. Acts 1909, p. 89. P. D. 6341.]

Art. 2371. [1648] [1618] **Confession of judgment.**—Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice's courts; and such judgment shall be entered on the justice's docket, as in other cases; but, in such cases, the plaintiff, his agent or attorney, shall make and file an affidavit in writing, signed by him, to the justness of his claim. [Id. sec. 17.]

Art. 2372. [1649] [1619] **Warrant of attorney to be filed.**—Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be filed with the justice and noted in the judgment. [P. D. 1477.]

Art. 2373. [1650] [1620] **Same rules as govern district courts, etc.**—The rules governing the district and county courts in relation to judgments shall apply also to the justices' courts, in so far as they may not conflict with some provisions of this title. [R. S. 1879, 1620.]

CHAPTER FOURTEEN.

NEW TRIALS, ETC.

	Article.		Article.
Judgments by default, etc., may be set		Notice	2377
aside	2374	Where motion granted, cause continued	2378
New trials may be granted.....	2375	unless, etc.	2379
Motion to be sworn to, except, etc.....	2376	But one new trial to either party.....	2379

Article 2374. [1651] [1621] **Judgments by default, etc., may be set aside.**—Any justice of the peace shall have power, at any time within ten days after the rendition of a judgment by default or of dismissal, to set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof. [Id. sec. 19.]

Art. 2375. [1652] [1622] **New trials may be granted.**—Any justice of the peace may, at any time within ten days after the rendition of any other judgment in any suit tried before him, grant a new trial therein on motion in writing, showing that justice has not been done him in the trial of the cause. [Id. sec. 17.]

Art. 2376. [1653] [1623] **Motion to be sworn to, except, etc.**—If the grounds of the motion be other than that the verdict or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit. [Id.]

Art. 2377. [1654] [1624] **Notice.**—All motions to set aside a judgment, or to grant a new trial, under the two preceding articles, shall be made within five days after the rendition of the judgment, and one day's notice thereof shall be given to the opposite party or his attorney. [Id. secs. 19, 17.]

Art. 2378. [1655] [1625] **Where motion granted, cause continued, unless, etc.**—Where a judgment is set aside, or a new trial is granted, the cause shall be continued to the next regular term of the court, unless otherwise agreed by the parties with the consent of the justice. [Id. sec. 17.]

Art. 2379. [1656] [1626] **But one new trial to either party.**—But one such new trial shall be granted to either party. [Id.]

CHAPTER FIFTEEN.

EXECUTION.

	Article.		Article.
Judgments enforced by execution, etc.	2380	Issued to another county to be attested	
Execution	2381	by clerk	2386
Returnable in sixty days	2382	Dormant judgments, etc.	2387
Taxation of costs	2383	The rules governing executions generally	
Execution to issue after ten days	2384	apply, except, etc.	2388
Within the ten days, when	2385		

Article 2380. [1657] [1627] **Judgments enforced by execution, etc.**—The judgments of the courts of justices of the peace shall be enforced by execution or other appropriate process.

Art. 2381. [1658] [1628] **Execution.**—Such execution or other process shall conform to the requirements of article 2321. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and, if for money, it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issuance of the execution, shall be attached to the writ.

Art. 2382. [1659] [1629] **Returnable in sixty days.**—Such execution or other process shall be returnable in sixty days. [Id. sec. 22.]

Art. 2383. [1660] [1630] **Taxation of costs.**—Within ten days after the rendition of any final judgment of the justice's court, it shall be the duty of the justice to tax up the costs in such suit, and to enter the same in his fee book.

Art. 2384. [1661] [1631] **Execution to issue after ten days.**—On the eleventh day after the rendition of any final judgment, if the case has not been appealed, and no stay of execution has been granted, it shall be the duty of the justice to issue an execution for the enforcement of such judgment and the collection of the costs. [Id. sec. 23.]

Art. 2385. [1662] [1632] **Within the ten days, when.**—Such execution may be issued at any time before the eleventh day, upon the filing of an affidavit by the plaintiff in the judgment, or his agent or attorney, to the effect that the defendant is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors. [Id.]

Art. 2386. [1663] [1633] **Issued to another county to be attested by clerk.**—Where an execution from a justice's court is sent to a county other than that in which the judgment was rendered, it shall be accompanied by a certificate of the county clerk, and attested by his official signature and seal of office that the officer issuing the same is an acting justice of the peace in said county; and the cost of procuring such certificate shall be collected as a part of the costs of executing the writ. [Act Jan. 27, 1842, p. 51, sec. 13. P. D. 3784.]

Art. 2387. [1664] [1634] **Dormant judgments, etc.**—If no execution is issued within twelve months after the rendition of the judgment, the judgment shall become dormant, and no execution shall issue thereon, unless such judgment be revived; but where the first execution has issued within the twelve months, the judgment shall not become dormant unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Act Nov. 9, 1866, p. 118, secs. 1, 3. P. D. 7005, 7007.]

Art. 2388. [1665] [1635] **The rules governing executions generally apply, except, etc.**—The rules prescribed for the issuance, levy and return of executions shall apply to the justices' courts where not in conflict with some provision of this chapter. [Act Aug. 17, 1876, sec. 22.]

CHAPTER SIXTEEN.

STAY OF EXECUTION.

	Article.		Article.
Stay of execution.....	2389	Judgment and execution on.....	2390

Article 2389. [1666] [1636] **Stay of execution.**—At any time within ten days after the rendition of any judgment in a court of a justice of the peace, such justice may grant a stay of execution thereon for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted, unless the party applying therefor shall first file with the justice an affidavit in writing that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him, and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. [Acts of 1887, p. 10.]

Art. 2390. [1667] [1637] **Judgment and execution on.**—Such acknowledgment shall be entered by the justice in his docket, and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day. [Id.]

CHAPTER SEVENTEEN.

APPEAL.

	Article.		Article.
Appeals may be taken.....	2391	When appeal perfected on affidavit.....	2395
Taken to district court, when.....	2392	Duty of justice in case of appeal.....	2396
Notice, bond and other proceedings on appeal	2393	Transcript, etc., to be transmitted to county court	2397
Affidavit of inability to give bond.....	2394		

Article 2391. [1668] [1638] **Appeal may be taken.**—Any party to a final judgment in the justice's court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law. [Id. sec. 21.]

Art. 2392. [1669] **Taken to district court, when.**—In all counties in which the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court.

Art. 2393. [1670] [1639] **Notice, bond and other proceedings on appeal.**—The party appealing, his agent or attorney, shall within ten days from the date of the judgment, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that the appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on such appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected; but if, upon the call of the docket upon appearance day in the court to which the appeal is taken, the appellee fails to appear in person, or by attorney, the case shall be continued, unless it is shown to the court that notice of the appeal has been given as hereinafter provided; and no judgment by default shall, at any time, be rendered against an appellee whose appearance has not been entered in the case, unless and until it is made to appear to the court that notice in writing of such appeal has been served upon the appellee, his agent or attorney, at least five days before the first day of the term at which such judgment by default is sought to be taken. Such notice may be signed by the clerk of the court, or by the appellant, his agent or attorney, and may be served by the sheriff or any constable of the county, or by any other person competent to make oath of the fact; and the service shall be made by the delivery of a copy thereof to the appellee, his agent or attorney; and such service shall be evidenced by the return thereon of the officer executing the same, or by the oath of such other competent person indorsed thereon and filed with the papers in the case. [Acts of 1883, p. 91.]

Art. 2394. [1671] [1639a] **Affidavit of inability to give bond.**—Where the appellant is unable to pay the costs of appeal, or to give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the same, at any time within ten days from and after the date of the judgment rendered therein, and shall consist of the affidavit of said party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit; whereupon, it shall be the duty of the court trying the case, or the justice of the peace of the precinct in which said case was tried, or the county

judge of the county in which the suit is pending, to hear evidence and to determine the right of the party to his appeal. [Acts of 1887, p. 113.]

Art. 2395. [1672] [1639b] **When appeal perfected on affidavit.**—When the bond, or the affidavit in lieu thereof, provided for in the two preceding articles, has been filed, and the previous requirements of this chapter have been complied with, the appeal shall be held to be perfected. [Id.]

Art. 2396. [1673] [1640] **Duty of justice in case of appeal.**—Whenever an appeal has been granted from the justice's court to the county court, it shall be the duty of the justice who made the order immediately to make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and transmit the same, together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk of the county court of his county. [Id.]

[Note.—As to amendment of appeal bond, etc., see article 2104.]

Art. 2397. [1674] [1641] **Transcript, etc., to be transmitted to county court.**—Such transcript and papers shall, if practicable, be transmitted to the clerk of the county court on or before the first day of the next term of such court; but, if there be not time to make out and transmit the same to the first term, they may be so transmitted on or before the first day of the second term of the court. [Id.]

CHAPTER EIGHTEEN.

GENERAL PROVISIONS.

	Article.		Article.
Certiorari to remove cause to county court	2398	Rules governing district courts, etc., to apply, except, etc.	2400
Duty of justice on service of writ.	2399		

Article 2398. [1675] [1642] **Certiorari to remove cause to county court.**—Any cause tried before a justice of the peace, wherein the amount in controversy, or the judgment, exceeds twenty dollars, exclusive of costs, may be removed from such justice's court to the county court by certiorari, under the rules prescribed in the title and chapter relating thereto.

Art. 2399. [1676] [1643] **Duty of justice on service of writ of certiorari.**—Whenever a writ of certiorari to remove any cause from the justice's court to the county court shall be served on any justice of the peace, it shall be his duty immediately to make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals in article 2396, and transmit the same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in that and the succeeding article.

Art. 2400. [1677] [1644] **Rules governing district courts, etc., to apply, except, etc.**—Whenever the mode of proceeding in any particular case or matter is not prescribed by the provisions of this title, or of some other law or title specially relating thereto, the same shall be governed by the provisions of the title relating to the mode of proceeding in the district and county court in civil cases, in so far as the same are applicable.

TITLE 42.

DEBT—PUBLIC.

Bonds and obligations declared valid....	Article. 2401	Laws to remain in force until obligations are discharged	Article. 2402
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Article 2401. [3835a] [3677] **Bonds and obligations declared valid.**—All outstanding bonds or other obligations issued under the provisions of either of the following acts of the legislature are hereby recognized as valid and binding obligations upon the state; and the principal and interest thereof shall be paid in accordance with the terms of the laws under which they were respectively issued:

1. An act entitled An act providing for the issuance and sale of the bonds of the state for the purpose of meeting the appropriations made for maintaining ranging companies on the frontier, approved August 5, 1870.

2. An act entitled An act to provide money to pay the floating indebtedness of the state, approved March 4, 1874; an act supplementary and amendatory thereof, entitled An act to further provide for the sale of bonds to pay the public debt, approved April 13, 1874; and an act supplemental to the last named act, entitled An act supplemental to an act to further provide for the sale of bonds to pay the public debt, approved April 13, 1874, approved April 27, 1874.

3. An act entitled An act to provide for the payment of the bonds of the state of Texas that will become due and that are retireable in the years 1876 and 1877, and to make adequate provision for the floating indebtedness of the state, and to make an appropriation to carry into effect the provisions of the same, approved July 6, 1876.

4. An act to provide for the issuance and sale of bonds for the purpose of retiring the outstanding bonds of the state, and to supply deficiencies in the revenue, and to provide the mode and manner of the sale of said bonds, approved April 21, 1879.

5. An act to provide for the payment of the bonds of the state, carry into effect the provisions of the same, approved July 6, 1876, which was approved April 5, 1889.

6. An act to provide for the retirement of the past due bonds of the state of Texas, for the payment of interest thereon, and the issuance of other bonds at a lower rate of interest in lieu thereof, approved May 2, 1893. [Sen. Jour. 1895, p. 480.]

Art. 2402. [3835b] [3678] **Laws to remain in force until obligations are discharged.**—All the provisions of the several acts mentioned in the preceding article, in so far as the same may affect the public credit, the rights of the public creditors thereunder, the payment of the principal and interest due or hereafter accruing on any bonds or obligations issued thereunder, or the creation and disposition of any sinking fund provided for therein shall remain in full force and effect as laws of this state until the principal and interest of all bonds or obligations issued or accrued under such acts are fully paid off and discharged. [Id. 481.]

TITLE 43.

DENTISTRY.

Article.	FEE	Article.	
Unlawful to practice without certificate; provided, etc.	2403	Member of board may grant license, valid only till next meeting of board; report of; inhibition	2412
Same subject	2404	Certificate to be filed with county clerk for record; fee.....	2413
Board of examiners created, powers.....	2405	Certificate may be revoked in what cases, procedure for	2414
Members of board appointed how; term, etc.; vacancies how filled.....	2406	Compensation of members of board, and expenses, paid how, etc.....	2415
Oath of members; to be filed for record, etc.; fee of county clerk.....	2407	Special fund for meeting expenses; bond of secretary; annual report and account	2416
Officers of board; meetings; quorum, etc.	2408		
Certificate to be obtained before commencing practice; examination, etc....	2409		
Examination fee	2410		
Board to keep record of persons authorized to practice dentistry, requisites..	2411		

Article 2403. **Unlawful to practice without certificate; provided, etc.**—It shall be unlawful for any person to practice, or attempt to practice, dentistry or dental surgery in the state of Texas, without first having obtained a certificate from the state board of dental examiners; provided, that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain; and provided, further, that nothing in this title shall apply to any person legally engaged in the practice of dentistry or dental surgery in this state at the time of the passage of this law. [Acts 1897, p. 123. Acts 1889, p. 91. Acts 1905, p. 143.]

Art. 2404. **Same subject.**—It shall be unlawful for any person or persons to extract teeth, or perform any other operation pertaining to dentistry, for pay or for the purpose of advertising, exhibiting or selling any medicine or instrument or business of any kind or description whatsoever, unless such person or persons shall first have complied with the provisions of this title. [Id. sec. 2.]

Art. 2405 **Board of examiners created, powers.**—A board of examiners consisting of six practicing dentists of acknowledged ability as such is hereby created, who shall have authority to issue certificates to persons in the practice of dentistry or dental surgery in the state of Texas who are legally practicing the same at the time of the passage of this law, and issue certificates to all applicants who may hereafter apply to said board and pass a satisfactory examination. [Id. sec. 3.]

Art. 2406. **Members of board appointed how; term, etc.; vacancies how filled.**—The members of said board shall be appointed by the governor and shall serve for two years. In case of vacancy occurring in said board by resignation, removal from the state, or by death such vacancy may be filled for its unexpired term by the governor. [Id. sec. 4.]

Art. 2407. **Oath of members; to be filed for record, etc.; fee of county clerk.**—Before entering upon the duties of his office, each and every member of this board shall make oath before any officer authorized to administer an obligation who shall be empowered to use a seal of office that he will faithfully discharge the duties incumbent upon him to the best of his ability. The same shall be filed for record with the county clerk of the county in which affiant resides. The county clerk shall receive for recording the same fifty cents. [Id. sec. 5.]

Art. 2408. **Officers of board; meetings; quorum, etc.**—Said board shall elect one of its members president and one secretary thereof; and it shall meet at least once in each year, and as much oftener and at such times and places as it may deem necessary. A majority of the members of said board shall constitute a quorum; and the proceedings thereof shall be open to the public. [Id. sec. 6.]

Art. 2409. Certificate to be obtained before commencing practice; examination, etc.—Any person desiring to commence the practice of dentistry or dental surgery within this state after the passage of this law shall, before commencing such practice, make application to said board, and, upon undergoing a satisfactory examination before said board, shall be entitled to a certificate from said board granting such person the right to practice dentistry or dental surgery within this state. [Id. sec. 7.]

Art. 2410. Examination fee.—To provide for the proper and effective enforcement of this title, said board of examiners shall be entitled to a fee of twenty-five dollars from each applicant examined; which said sum shall accompany the application, and which sum shall in no event be refunded to the person examined. [Id. sec. 11.]

Art. 2411. Board to keep record of persons authorized to practice dentistry, requisites.—Said board shall keep a record in which shall be registered the names and residences or places of business of all persons authorized under this title to practice dentistry or dental surgery in this state. [Id. sec. 6.]

Art. 2412. Member of board may grant license, valid only till next meeting of board; report of; inhibition.—Any member of said board may, when the board is not in session, grant a license to practice dentistry to any person whom such member finds on examination to be qualified, on the payment of two dollars by such person. A license so granted shall be valid until the next meeting of the board, but no longer. Each member shall make a report of license so granted by him at the meeting of the board following the granting of the license. A member shall not grant a license under the provisions of this article to one who has been rejected by the board as disqualified. [Id. sec. 8.]

Art. 2413. Certificate to be filed with county clerk for record; fee.—Every person to whom a certificate is issued by said board of examiners, shall, within thirty days from the date thereof, present the same to the clerk of the county in which he or she resides, or expects to practice, who shall officially record said license in his office book provided for that purpose, and shall be entitled to a fee of fifty cents for his services. [Id. sec. 9.]

Art. 2414. Certificate may be revoked in what cases; procedure for.—Said board shall have power, when it shall be made to appear to said board by satisfactory evidence from credible witnesses, that any person who has been granted a certificate to practice dentistry or dental surgery has been convicted of a felony, or who has been guilty of any fraudulent or dishonorable conduct or malpractice, or such conduct involving fraudulent or dishonorable conduct or malpractice, to revoke his or her license to practice dentistry or dental surgery in this state; provided, that the license of no person shall be so revoked by said board without first notifying such person of the charges preferred against him or her, and citing him or her to appear before said board upon some day certain at a regular meeting of said board; and provided, further, that no charge shall be considered against any person unless the same shall have first been made in writing and subscribed and sworn to by some credible person and filed with the secretary of said board, who shall furnish a copy of the same to the party so accused at least ten days before the meeting of the board at which the same is to be considered. [Id. sec. 10.]

Art. 2415. Compensation of members of board and expenses; paid how, etc.—The members of said examining board shall receive the compensation of five dollars per day for each day actually engaged in the duty of their office, which, together with all other legitimate expenses incurred in the performance of such duties, shall be paid from the fees received by the board under the provisions of this title; and no part of the expenses of said board shall at any time be paid out of the state treasury. [Id. sec. 12.]

Art. 2416. Special fund for meeting expenses; bond of secretary; annual report and account.—All moneys in excess of said per diem allowance and

other expenses shall be held by the secretary of the said board as a special fund for meeting the expenses of said board, he giving such bond as the board may from time to time direct; and said board shall make an annual report of its proceedings to the governor by the fifteenth day of December of each year, together with an account of all moneys received and disbursed by them in the pursuance of this title. [Id. sec. 12.]

TITLE 44.

DEPOSITORIES.

Chapter.

1. State Depositories.
2. County Depositories.

Chapter.

3. City, etc., Depositories.

CHAPTER ONE.

STATE DEPOSITORIES.

Article.	Article.
State treasurer to designate bank as state depository; requirements, etc....2417	Deposits in excess of \$50,000 to be re-mitted to state treasurer, etc.; forfeiture for failure, etc.; notice; suit...2429
Any such bank may become bidder; etc.; further requirement; limitation of award.....2418	Books, etc., of depository open to inspection, etc.....2430
Other depository may be selected in lieu, etc.....2419	Deposit or remittance made with or to whom, and how.....2431
Treasurer to call for bids; etc.....2420	Treasurer, comptroller, and attorney general to make rules, etc.....2432
Bids how presented, etc.; shall state what; opening of bids; selection of depository, etc., inhibition.....2421	State funds to be deposited in depositories, etc., provided, etc.....2433
New bids to be taken, how, etc., requirements; award.....2422	Penalty for refusal to deposit state funds, etc.....2434
Bank complying to receive deposit, etc.....2423	Depository shall act how long; forfeiture for what causes, etc., new depository, etc.....2435
Bank to be solvent, and shall give bond, etc.....2424	Balances in depositories to be equalized.....2436
Bonds to be deposited as collateral security, etc.....2425	Depository to issue to treasurer on demand draft, etc., on U. S. reserve bank, etc.....2437
Bonds to be delivered to treasurer; additional security when; inspection, recourse on; endorsement, etc.....2426	Interest on deposits to become part of general revenue.....2438
Depository to pay interest on average daily balance, etc.....2427	Other new bids to be taken, when, how, etc.; award; collateral securities; bonds, restrictions, etc., regulations, etc.....2439
Collectors, etc., to deposit with nearest state depository, etc.; receipts; accounts.....2428	

Article 2417. **State treasurer to designate bank as state depository; requirements, etc.**—It shall be the duty of the state treasurer, at the times and in the manner provided in this chapter, to designate a bank or banking institution in each senatorial district in the state of Texas, which shall be known as a state depository. Such bank or banking institution must be a national bank or an incorporated company authorized to do business in the state of Texas, and must have a paid up capital stock of not less than twenty-five thousand dollars. [Acts 1905, p. 387. Acts 1907, p. 183.]

Art. 2418. **Any such bank may become bidder, etc.; further requirements; limitation of award.**—Any such bank or banking institution may become a bidder under the provisions of any article of this chapter; but each such depository shall be established and conducted in accordance with, and subject to, the provisions of this chapter; and, in no instance, shall there be made to any such bank or banking institution any award of state funds greater than the amount of its paid up capital stock. [Id.]

Art. 2419. **Other depository may be selected in lieu, etc.**—Other depositories may be selected in lieu of those not selected from and for senatorial districts, as provided for in this chapter. [Id.]

Art. 2420. **Treasurer to call for bids, etc.**—Immediately upon the qualification of each state treasurer elected at a general election, it shall be his duty to cause to be printed a circular letter soliciting bids for keeping the public funds of the state for a term of two years next after the succeeding March 1, upon the conditions prescribed in this chapter. Said circular letter shall state the conditions to be complied with by the bidders, as hereinafter provided, and what each bid shall set forth, and shall require such bids to be forwarded to the state treasurer on or before twelve o'clock noon of the first Monday in

February thereafter, and shall require that each bid shall be accompanied by a certified check for the sum of five hundred dollars, payable to the order of the state treasurer, which shall become forfeited to the state in case said bid shall be accepted, and the bidder shall fail to comply with the requirements as provided by this chapter, for the qualification of depositories; otherwise, such check shall be returned to the bidder. The treasurer shall mail a copy of such circular letter to each of the banks or banking institutions in the state, of the class before mentioned, and shall immediately deposit with the comptroller and attorney general a copy of such circular letter, and attach thereto a list of those to whom it has been mailed, as above provided; such copy and list so filed to be certified by the state treasurer under his seal of office. The state treasurer shall also keep a copy of such letter, and a list of those to whom it has been sent, on file in his office for the inspection of any person desiring to examine the same. [Acts 1905, p. 387, sec. 2.]

Art. 2421. Bids how presented, etc.; shall state what; opening of bids; selection of depository, etc.; no award in excess of paid up capital stock.—Bids sent to the state treasurer shall be sealed up in a strong envelope and marked, "Bid for the safe-keeping and payment of the deposits of the state funds;" and the state treasurer shall indorse thereon the time of the receipt of such bid. Such bid shall state the interest such bank will pay on the average daily balances to the credit of the state treasury in such bank. Said bids shall be directed to the state treasurer, and by him opened on the first Monday in February thereafter, in the presence of the comptroller and attorney general, and thereupon the treasurer shall select and designate, with the approval of the comptroller and attorney general, one of such banks or banking institutions as the depository of the state for each senatorial district. The treasurer may, with the approval of the comptroller and attorney general, reject any and all bids; and, in any case, the bank or banking institution offering the highest interest from each senatorial district shall be selected, if any. No award of state money shall be made upon any bid therefor greater than the paid up capital stock of the bank making such bid. [Id. sec. 3.]

Art. 2422. New bids to be taken, how, etc.; requirements; award.—If for any one or more senatorial districts, no bids shall be submitted, or none shall be accepted, or the successful bidder shall fail to qualify as provided in this chapter, it shall thereupon become the duty of the state treasurer to cause to be printed a circular letter, soliciting bids for keeping the public funds of the state in such senatorial districts, respectively, for the remainder of the term of two years prescribed by article 2420, and upon the conditions prescribed in this chapter; which letter shall, in all other respects, conform to the requirements concerning the circular letter prescribed by article 2420, except that it shall specify that all bids thereunder must be in the hands of the state treasurer on or before twelve o'clock noon of a certain day, to be therein named, not less than twenty nor more than thirty days after the date of such circular letter; and the certified check accompanying such bid shall become forfeited to the state, in case such bid shall be accepted and the bidder shall fail to comply with the requirements as provided by this chapter for the qualification of depositories. The state treasurer shall mail a copy of such circular letter to each bank or banking institution in the state of Texas situated within any of the senatorial districts for which no bid for such term shall have been accepted, and shall immediately deposit with the comptroller and attorney general, respectively; a copy of such circular letter, and attach thereto a list of those to whom such letter has been mailed as herein provided; such copies and list to be certified by the state treasurer under his seal of office. The state treasurer shall also keep a copy of such letter, and a list of those to whom it has been sent, on file in his office for the inspection of any person who may desire to examine the same. All bids which may be sent to the state treas-

urer pursuant to such circular letter shall be sealed up in a strong envelope and marked "Bid for the safe-keeping and payment of the deposit of the state funds," and he shall indorse thereon the time of receipt of such bid. Such bid shall state the interest such bank or banking institution will pay on the average daily balances to the credit of the state treasurer in such bank or banking institution. All such bids shall be directed to the state treasurer, and shall be opened by him on the day designated in such circular letter, or as soon thereafter as practicable, in the presence of the comptroller and attorney general, and, thereupon, the state treasurer shall, with the approval of the comptroller and attorney general, select and designate one of such banks or banking institutions as the depository of the state for each such senatorial district; provided, said state treasurer may, with the approval of the comptroller and attorney general, reject any and all such bids; and provided, further, that in no instance shall any except the highest and best bidder for any senatorial district be accepted. [Acts 1907, p. 184, sec. 3a.]

Art. 2423. Bank complying to receive deposit, etc.—When said bank or banking institution of any senatorial district so designated by the state treasurer has complied with the conditions of this chapter, it shall be authorized to receive on deposit from the state treasurer, or under his direction, state funds not exceeding fifty thousand dollars for any one bank; and it shall be the duty of said state treasurer to cause the funds of the state to be deposited in said state depositories subject to the conditions and limitations of this chapter. [Acts 1905, p. 388, sec. 4.]

Art. 2424. Bank to be solvent, and shall give bond, etc.—Before the state treasurer is authorized to deposit any state funds in any state depository herein provided for, or to cause the same to be so deposited, he shall satisfy himself as to the solvency of said institution; and, in addition thereto, he shall require a bond in the amount of twenty-five thousand dollars; which bond shall be payable to the governor and to his successors in office; and said bond shall be conditioned for the safe-keeping of said funds deposited and to meet the requirements of this chapter, in such form as the attorney general shall prescribe; and the same restrictions and requirements as to sureties thereon shall apply as are now or may be hereafter required in the bond of the state treasurer. [Id. sec. 5.]

Art. 2425. Bonds to be deposited as collateral security, etc.—The state treasurer shall also require the deposit as collateral security for such deposit of state funds, of United States, state, county, independent school district, or municipal bonds in the sum of fifty thousand dollars; but before any state, county or municipal bonds shall be received as collateral security in such cases, they must be registered with the comptroller and approved by the attorney general of the state of Texas, under the same rules and regulations as are now required for bonds in which the permanent school funds of the state are to be invested; provided, such county, municipal or independent school district bonds must be worth not less than par. [Id. sec. 6.]

Art. 2426. Bonds to be delivered to treasurer; additional security when; inspection; recourse on; indorsement, etc.—The bonds above mentioned shall be delivered to the state treasurer and receipted for by him, and retained by him, in the vaults of the state treasury of this state; and if, in any case or at any time, such bonds are not satisfactory security to the comptroller and attorney general and treasurer, for the deposits made under this chapter, they may require such additional security to be given as will be satisfactory to them; and the comptroller, attorney general and treasurer, shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the state treasury; and, in the event that said bank or banks or banking institutions selected as state depositories shall fail to pay such deposits, or any part thereof, on the check or checks of the state treasurer, he shall

have power to forthwith convert such bonds into money, and disburse the same according to law upon the warrants drawn by the state comptroller, upon the funds for which said bonds are security. Any bank making deposit of bonds with the state treasurer under the provisions of this chapter may cause such bonds to be indorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral, and are not transferable, except upon the conditions of this chapter. [Id. sec. 7.]

Art. 2427. **Depository to pay interest on average daily balance, etc.**—Any state depository receiving state funds under the provisions of this chapter, shall pay to the state treasurer, at the end of each month, interest on the average daily balance for said month at the rate of interest agreed upon, which shall, in no event, be less than at the rate of two per cent per annum. [Id. sec. 8.]

Art. 2428. **Collectors, etc., to deposit in the nearest state depository, etc.; receipts; accounts.**—All tax collectors in the state of Texas and all officers charged with the duty of remitting to the state treasurer, state funds, shall, instead of remitting state funds to the state treasurer, as is now required by law, cause the same to be remitted to, or deposited with, the nearest state depository, and shall require of said depository a triplicate receipt therefor, one of which shall be preserved by the party so depositing said state funds, and the others shall be forwarded direct to the treasurer of the state of Texas and comptroller, respectively, whose duty it shall be also to keep with each state depository in Texas an accurate account, showing a true and correct statement of the account of said depository with the state of Texas, and the balance on hand in each at the close of each day's business. [Id. sec. 9.]

Art. 2429. **Deposits in excess of \$50,000 to be remitted to state treasurer, etc., forfeiture for failure, etc., notice, suit.**—If any state depository shall receive, or have on hand, state funds in excess of fifty thousand dollars, said state depository shall remit forthwith, on the first of the next month, said excess to the treasurer of the state of Texas; and, in case any state depository shall fail or refuse to remit this excess, it shall forfeit its right to act as a state depository; and the state treasurer shall, at once, close his account with said depository, notify all tax collectors and others charged with the duty of collecting public funds for the state of Texas; and the attorney general of the state shall cause such action to be taken, if any, as may be necessary to protect the state's interest in the premises. [Id. sec. 10.]

Art. 2430. **Books, etc., of depository open to inspection, etc.**—The books and accounts of any bank or banking institution designated as a state depository pertaining to public funds, shall, at all times, be open and subject to the inspection of the treasurer of the state of Texas, the attorney general or any district or county attorney of the state of Texas. [Id. sec. 11.]

Art. 2431. **Deposit or remittance made with or to whom, and how.**—Any person whose duty it is to pay over to the state of Texas any money belonging thereto, or to any funds of said state, may pay the same to the state treasurer, or he may remit the same to, or deposit the same in any state depository which is then authorized to act as a state depository under this chapter, but, in case the party is a non-resident of the state of Texas, said money so due, or to become due, shall be remitted direct to the state treasurer at Austin. In any event said money, or any money due the state or any of its funds may be sent by registered letter in due course of mail, by postoffice money order, express money order of any company authorized to do business in Texas, or by personal check, or bank draft on any incorporated state or national bank authorized to do business in Texas; but, in such cases, the liability of the person sending the same shall not cease until said money is actually received by the state treasurer or state depository, in due course of business. [Id. sec. 12.]

Art. 2432. Treasurer, comptroller and attorney general to make rules, etc.—The treasurer, comptroller, and attorney general of the state of Texas shall have the right to make such rules and regulations governing the establishment and conduct of state depositories and state funds therein, as the public interest may require, not inconsistent with this chapter, which said rules and regulations shall be in writing. [Id. sec. 13.]

Art. 2433. State fund to be deposited in depositories, etc.; provided, etc.—All state funds shall be deposited in state depositories designated under this chapter, subject to the limitations of this chapter; provided, that the state treasurer is authorized to keep and retain in the state treasury at Austin sufficient funds to meet the current expenses of the government in case he finds it advisable so to do. [Id. sec. 14.]

Art. 2434. Penalty for refusal to deposit state funds, etc.—If any officer charged with the duty of depositing state funds shall refuse to so deposit the same in a depository authorized to receive the same he shall be liable on his official bond therefor, and for interest on said amount which he has failed to so deposit, at the rate of five per cent per month, at the suit of the state or county, as the case may be; and this shall be a cause for removal from office. [Id. sec. 15.]

Art. 2435. Depository shall act how long; forfeiture for what causes, etc.; new depository, etc.—Any banking institution designated as a state depository shall continue to act as such until March first succeeding the next general election held after its designation, and until the undertaking of its successors has been accepted by the proper authority; provided, however, that in case any such institution shall fail and refuse to qualify as such depository within thirty days next after its bid for state or county funds has been accepted, in the manner provided for in this chapter, or, in case it shall fail and refuse to comply with any of the conditions of this chapter, or fail to discharge any of the duties thereunder, it shall be considered a just cause for forfeiting its rights to act as said state or county depository; and, in such case, the proper authorities shall be authorized to withdraw all state or county funds from such institution at any time after five days' notice of such intention; and, in such cases, a new state or county depository shall be established under the same rules and regulations as herein provided for the establishment thereof in the first instance. The same rules and regulations shall apply in establishing new depositories after the tenure of depositories provided for in this chapter has expired; that is, the money shall again be let to the highest bidder, as in the first instance, and all other regulations with reference thereto before provided herein shall apply; but, in any case arising under this chapter, where two or more of the highest bids are the same, another competitive bidding for said funds shall be ordered as in the first instance. [Id. sec. 16.]

Art. 2436. Balances in depositories to be equalized.—It shall be the duty of the state treasurer to keep, and maintain, as nearly as possible, a fair and equal balance of moneys on hand in each state depository established by this chapter, in proportion to the amount each is entitled to receive, by drawing warrants alternately thereon or by apportioning the warrants so drawn. [Id. sec. 17.]

Art. 2437. Depository to issue to treasurer on demand, draft, etc., on U. S. reserve bank, etc.—On demand of the state treasurer, any state depository shall issue to him or his order, free of charge, a draft or exchange on any bank in this state, designated by the United States authorities as a "Reserve Bank;" which draft may be in any sum stated by the state treasurer not exceeding the amount of the state deposit in said depository. [Id. sec. 18.]

Art. 2438. Interest on deposits to become part of general revenue.—All interest upon deposits which shall come into the state treasury from state de-

positories shall become a part of the general revenue. [Acts 1907, p. 184, sec. 18a.]

Art. 2439. Other new bids to be taken when, how, etc.; award; collateral securities; bonds, regulations, etc.—If, for any one or more senatorial districts, no bids shall be submitted, or none shall be accepted, or the successful bidder shall fail to qualify as provided in this chapter, it shall thereupon become the duty of the state treasurer immediately after the date of opening of the bids provided for in article 2422, or upon the failure of the successful bidder to qualify, as the case may be, to advertise for bids in such daily newspaper or newspapers of general circulation in the state as said state treasurer, comptroller and attorney general, or a majority of them, shall deem advisable, for proposals from banks or banking institutions of the class and character mentioned in preceding articles of this chapter, in this state, to keep a state depository; and as many thirty-firsts of the state funds as there shall then be such senatorial districts for which no depository shall have been selected, not exceeding, however, two such thirty-firsts to be awarded to any one bidder, but in no instance shall there be awarded to any one bidder any amount in excess of its paid up capital stock; all such bids to be delivered to the state treasurer upon a day to be named in such advertisement, which shall not be less than twenty, nor more than thirty, days subsequent to the first publication of such advertisement. Upon the date named in such advertisement, the state treasurer shall, in the presence of the comptroller and the attorney general, open all bids so received, and shall, with their approval and consent, award to the highest and best bidder therefor, respectively, the keeping of the number of such thirty-firsts of the state funds for which proposals have been so invited, and for which such bids have been so made; provided, that said state treasurer, comptroller and attorney general may, should they deem it to the best interests of the state, limit such award to only one such thirty-first of the state funds; at the discretion of the state treasurer, comptroller and attorney general, any one or more bidders making a proposal under the provisions of this section [article] may, respectively, be awarded the keeping of two thirty-firsts of such state funds, not exceeding, however, in any instance more than one hundred thousand dollars, and not exceeding in any instance the amount of paid-up capital stock of the bank or banking institution making such bid; and, in any and all such cases, such bidder shall deposit securities with the state treasurer of the same class and character and of double the value, and shall give indemnity bonds of similar character and in double the amount required by this chapter for depositories selected under the provisions of this chapter from senatorial districts, and shall be governed by all the restrictions and regulations imposed upon them by this chapter; provided, that any and all depositories selected and qualifying under this article shall, on the first day of each month (or if such first day be Sunday or a holiday, then on the next succeeding day) remit to the state treasurer all state funds in excess of one hundred thousand dollars, then on hand, but subject to the provisions of article 2433. All depositories selected and qualifying under this article shall, at all times, during such term be permitted to keep on deposit such amount of state funds as may have been awarded to them, respectively, under the provisions of this section [article]. All provisions concerning certified checks in article 2420 shall apply to advertisements, bids and bidders under this article, and the terms to be embraced in bids and awards under this article shall be the same as under article 2435. No award shall, in any instance, be made under this article to any bidder whose bid shall be for less than two per cent per annum on daily balances in such depositories. [Acts 1907, p. 183, sec. 19.]

CHAPTER TWO.

COUNTY DEPOSITORIES.

Article.	Article.
Commissioners' court to call for bids for county depositories, when and how.....2440	Treasurer's checks payable at county seat, penalty .....2447
Bids when and how presented; to state what, other requirements.....2441	If depository not located at county seat, requirements .....2448
Bids to be opened when, etc.; award; interest how computed and paid; credited how, etc. ....2442	Warrants how paid, etc., and charged; statements, bonds, etc.....2449
Bond of depository.....2443	If no depository selected, etc., may be selected at subsequent term, etc., period .....2450
Other designating depository; period; transfer of funds; penalty.....2444	New bond may be required; penalty if not given .....2451
If no bids, etc., funds deposited where; interest; bond.....2445	Treasurer not responsible for negligence of depository, but, etc.....2452
If two or more depositories; clearing house to be selected .....2446	Bids from adjoining county, when, requirements .....2453

Article 2440. **Commissioners' court to call for bids for county depositories, when and how.**—The commissioners' court of each county in this state is authorized and required at the February term thereof, next following each general election, to receive proposals from any banking corporation, association, or individual banker in such county that may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge, once each week for at least twenty days before commencement of such term, in some newspaper published in said county; and, if no newspaper be published therein, then, in any newspaper published in the nearest county; and, in addition thereto, notice shall be published by posting same at the courthouse door of said county. [Acts 1905, p. 392. Acts 1907, p. 208, sec. 20.]

Art. 2441. **Bids when and how presented; to state what; other requirements.**—Any banking corporation, association, or individual banker, in such county, desiring to bid, shall deliver to the county judge, on or before the first day of the term of the commissioners' court at which the selection of a depository is to be made, a sealed proposal, stating the rate of interest that said banking corporation, association, or individual banker, offers to pay on the funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent of the county revenue of the preceding year as a guarantee of the good faith on the part of the bidder, and that, if his bid should be accepted, he will enter into the bond hereinafter provided; and upon the failure of the banking corporation, association, or individual banker, that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids. [Acts 1905, p. 392, sec. 21.]

Art. 2442. **Bids to be opened when, etc.; award; interest how computed and paid; credited how, etc.**—It shall be the duty of the commissioners' court at ten o'clock a. m., on the first day of each term, at which, by article 2440, bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association, or individual banker, offering to pay the largest rate of interest per annum for said funds; provided, the commissioners' court may reject any and all bids. The interest upon such county funds shall be computed upon the daily balances to the credit of such county with such depository, and shall be payable to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners' court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected

shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners' court, and not until such bond is filed and approved. [Id. sec. 22.]

Art. 2443. Bond of depository.—Within five days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker, so selected to execute a bond or bonds, payable to the county judge and his successors in office, to be approved by the commissioners' court of said county, and filed in the office of the county clerk of said county, with not less than five solvent sureties, who shall own unencumbered real estate in this state not exempt from execution under the laws of this state, of as great value as the amount of said bond (or of as great value as the amount of all of said bonds when more than one bond); and said bond or bonds shall in no event be for less than the total amount of revenue of such county for the entire two years for which the same are made; provided, that nothing herein shall prevent the making of such bond or bonds by a surety company or companies, as provided by law, and payable as herein provided. And provided, further, that the commissioners' court may accept in lieu of such real estate or surety company security, bonds of the United States, or of the state of Texas, or of any county, city, town or independent school district in the state, which shall be deposited as the commissioners' court may direct, the penalty of said bond or bonds not to be less than the total annual revenue of the county for the years for which said bond or bonds are given, and shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of the county and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected. [Acts 1905, p. 393. Acts 1909, p. 165, sec. 23.]

Art. 2444. Order designating depository; period; transfer of funds; penalty.—As soon as said bond be given and approved by the commissioners' court, an order shall be made and entered upon the minutes of said court designating such banking corporation, association, or individual banker, as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and, thereupon, it shall be the duty of the county treasurer of said county, immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, and immediately upon the receipt of any money thereafter, to deposit the same with said depository to the credit of said county; and, for each and every failure to make such deposit, the county treasurer shall be liable to said depository for ten per cent upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county. [Acts 1905, p. 393, sec. 24.]

Art. 2445. If no bids, etc., funds deposited, where; interest; bond.—If for any reason there shall be submitted no proposals by any banking corporation, association, or individual banker, to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners' court shall have the power, and it shall be their duty, to deposit the funds of the county with any one or more banking corporations, associations, or individual bankers, in the county or in adjoining counties, in such sums and amounts and for such periods of time as may be deemed advisable by the court, and at such rate of interest, not less than one and one-half per cent per annum, as may be agreed upon by the commissioners' court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due the county treasurer; and any banker or banking concern receiving de-

posits under this section [article] shall execute a bond in the manner and form provided for depositories of all the funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern. [Id. sec. 25.]

Art. 2446. If two or more depositories; clearing house to be selected.—When the funds of any county shall be deposited with two or more depositories, the commissioners' court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [Id. sec. 26.]

Art. 2447. Treasurer's checks payable at county seat, etc., penalty.—It shall be the duty of the depository to provide for the payment, upon presentation at the county seat of the county, of all checks drawn by the county treasurer upon the funds of said county, as long as funds of said county treasurer shall be in the possession of the depository subject to such checks; and, for every failure to pay such check or checks at the county seat of such county upon presentation, said depository shall forfeit and pay to the holder of such check ten per cent of the amount thereof; and the commissioners' court shall revoke the order creating such depository; provided, however, the amount of its bid shall not be returned, but shall be forfeited to the county. [Id. sec. 27.]

Art. 2448. If depository not located at county seat, requirements.—If any depository selected by the commissioners' court be not located at the county seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment. [Id. sec. 28.]

Art. 2449. Warrants, how paid, etc., and charged; statement; bonds, etc.—It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn; but no county treasurer shall draw any check upon the funds with said depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same; and no money belonging to said county shall be paid by said depository, except upon check of the county treasurer; and it shall be the duty of such depository to make a detailed statement to the county commissioners' court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons, or other indebtedness of any county, by the terms thereof, are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners' court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity. [Id. sec. 29.]

Art. 2450. If no depository selected, etc., may select at subsequent term, etc.; period.—If for any reason, no selection of a depository be made at the time provided by law, the commissioners' court may, at any subsequent time after twenty days' notice, select a depository in the manner provided for such selection at the regular time; and the depository so selected shall remain the depository until the next regular time for selecting a depository, unless the

order selecting and naming such depository be revoked for lawful reasons. [Id. sec. 30.]

Art. 2451. **New bond may be required; penalty, if not given.**—If the commissioners' court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five days from the time of the service of a copy of said order upon said depository, the commissioners' court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [Id. sec. 31.]

Art. 2452. **Treasurer not responsible for negligence of depository; but, etc.**—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this chapter shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, or from any responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds by him. [Id. sec. 32.]

Art. 2453. **Bids from adjoining county, when; requirements.**—If there be no bank situated within the county that seeks to select a county depository, then the county commissioners' court shall advertise for bids in the adjoining counties in the manner hereinbefore provided in article 2450; provided, that when a depository has been selected by the county commissioners' court in the manner set forth in this act, said county depository shall, within five days after notice of such selection has been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [Id. sec. 33.]

CHAPTER THREE.

CITY, ETC., DEPOSITORIES.

	Article.
Council to take bids for depository when and how; bids to state what; not to be opened until, etc.....	2454
Award; bond	2455
Order designating depository; transfer of funds; penalty; penalty for failure to give bond; new bids, etc.....	2456
Warrants, how paid, etc., and charged; checks payable, when, bonds, etc., payment of	2457

	Article.
If no depository selected, etc., may select at subsequent meeting, etc., period; new bond; penalty if not given. Treasurer not responsible, except.....	2458
Restrictions upon drawing, etc., of checks. Treasurer's reports.....	2459
Application of provisions of this chapter; definition of terms.....	2460

Article 2454. **Council to take bids for depository, when and how; bids to state what; not to be opened until.**—The city council of every city in the state of Texas incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals for the custody of the city funds, from any banking corporation, association, or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatsoever source derived, of incorporated cities is part of the city funds and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some news-

paper published in the city. Any banking corporation, association, or individual banker, doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that such banking corporation, association, or individual banker, offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that such selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of such bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same; nor shall any other proposals be received after they shall have been opened. [Acts 1905, pp. 260, 395. Acts 1907, p. 132, sec. 34.]

Art. 2455. **Award; bond.**—Upon the opening of the sealed proposals submitted, the city council shall select as the depository of the funds of the city the banking corporation, association, or individual banker, offering to pay to the city the largest amount for such privileges; provided, however, the council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker, so selected, to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council, and filed with the city secretary, with not less than three solvent sureties, who shall own unencumbered real estate in the county in which said city is located, of as great value as the amount of said bond; or said depository may make said bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name. [Acts 1905, pp. 260, 396, sec. 35.]

Art. 2456. **Order designating depository; transfer of funds; penalty; penalty for failure to give bond; new bids, etc.**—As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this chapter for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and, immediately upon the receipt of any money thereafter, he shall deposit the same with said depository to the credit of the city; and, for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent per month upon the amount not so deposited, to be recovered by civil action in any court of competent jurisdiction. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this chapter, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the city council shall, after notice published in the

manner hereinbefore provided, proceed to receive new bids and select other depository. [Acts 1905, p. 261. Id. sec. 36.]

Art. 2457. Warrants how paid, etc., and charged; checks payable where; bonds, etc., payment of.—It shall be the duty of the city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, to draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but in no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository, except upon the checks of the city treasurer; and all such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein contained shall prevent the city council from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. [Acts 1905, p. 261. Id. sec. 37.]

Art. 2458. If no depository selected, etc., may select at subsequent meeting, etc., period; new bond; penalty if not given; treasurer not responsible, except.—If, for any reason, no selection of a depository is made at the time fixed by this chapter, the city council may, at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association, or individual banker, so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this chapter. If the city council shall at any time deem it necessary for the protection of the city, it may, by resolution, require the depository to execute a new bond; and, upon failure to do so within five days after the service of a copy of the resolution on said depository, the city council may proceed to select another depository in the manner hereinbefore provided. The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this chapter shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part or from responsibility for the funds of city at any time when, for any reason, there shall be no city depository, or until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him. [Acts 1905, p. 261. Id. sec. 38.]

Art. 2459. Restrictions upon drawing, etc., of checks and payment of checks; treasurer's reports.—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No city treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds, or for the purpose of making an invest-

ment of said fund according to law. The treasurer shall report to the council, on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [Acts 1905, p. 262. Id. sec. 39.]

Art. 2460. Application of provisions of this chapter; definition of terms.— All provisions of this chapter shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the term, "city council," as herein used, shall be construed to include the board of aldermen of such towns and villages; the terms, "city secretary" and "secretary," shall be construed to include the clerk or secretary of such towns and villages; the term, "city treasurer," shall be construed to include the treasurer of such towns and villages, and the term, "city," shall be construed to include towns and villages. [Acts 1905, p. 262. Id. sec. 40.]

TITLE 45.

DESCENT AND DISTRIBUTION.

[For Descent of Homestead, see title "Homestead."]

	Article.		Article.
Where intestate leaves no husband or wife	2461	Advancement brought into hotchpotch ..	2467
Where intestate leaves husband or wife ..	2462	Per capita and per stirpes	2468
No distinction on account of source of property, except in cases of adoption ..	2463	Rule as to community estate	2469
Rule as to whole and half blood	2464	Passes charged with debts	2470
No corruption of blood, forfeiture of estate, etc.	2465	Jus accrescendi abolished	2471
Persons not in being	2466	Illegitimate children and issue of void marriages	2472
		Bastards inherit from mother	2473
		Alienage no bar to inheritance	2474

Article 2461. [1688] [1645] **Where intestate leaves no husband or wife.**—Where any person, having title to any estate of inheritance, real, personal or mixed, shall die intestate, as to such estate, and shall leave no surviving husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course, that is to say :

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but, if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course, that is to say: To the grandfather and grandmother in equal portions, but, if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants. [Act March 18, 1848. P. D. 3419.]

Art. 2462. [1689] [1646] **Where intestate leaves husband or wife.**—Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows :

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased have neither

surviving father nor mother, nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate. [P. D. 3422.]

Art. 2463. [1690] [1647] **No distinction on account of source of property, except in cases of adoption.**—There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; provided, however, that if such intestate was the legally adopted heir of another, and dies, leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate. [Act March 20, 1861. P. D. 3420. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 2464. [1691] [1648] **Rule as to whole and half blood.**—In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of half blood shall inherit only half so much as those of the whole blood; but if all be of the half blood they shall have whole portions. [Act March 18, 1848. P. D. 3424.]

Art. 2465. [1692] [1649] **No corruption of blood, forfeiture of estate, etc.**—No conviction shall work corruption of blood or forfeiture of estate, nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death. [Const., Bill of Rights, sec. 21; Act March 18, 1848. P. D. 3418.]

Art. 2466. [1693] [1650] **Persons not in being.**—No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate. [Act March 18, 1848. P. D. 3423.]

Art. 2467. [1694] [1651] **Advancements brought into hotchpotch.**—Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided, that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. [P. D. 3426.]

Art. 2468. [1695] [1652] **Per capita and per stirpes.**—When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita—that is to say, by persons; and, when a part of them being dead and a part living, the descendants of those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts of 1887, p. 49.]

Art. 2469. [1696] [1653] **Rule as to community estate.**—Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no

child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts of 1887, p. 76.]

Art. 2470. [1697] [1654] **Passes charged with debts.**—In every case, the community estate passes charged with the debts against it. [P. D. 5498.]

Art. 2471. [1698] [1655] **Jus accrescendi abolished.**—Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. [Act March 18, 1848. P. D. 3429. *Ross v. Armstrong*, 25 Texas Sup., p. 366.]

Art. 2472. [1699] [1656] **Illegitimate children and issue of void marriages.**—Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate. [P. D. 3427.]

Art. 2473. [1700] [1657] **Bastards inherit from mother.**—Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distributive shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother. [P. D. 3428.]

Art. 2474. [1701] [1658] **Alienage no bar to inheritance.**—In taking title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or hath been an alien. [P. D. 44, 45, 46.]

TITLE 46.**DETECTIVES.****EMPLOYMENT OF ARMED FORCES OF DETECTIVES, OR OTHER
NON-RESIDENT PERSONS PROHIBITED.**

	Article.		Article.
Employment of non-resident detectives prohibited	2475	Penalty	2476

Article 2475. [1701a] **Employment of non-resident detectives prohibited.**—No person, corporation, or firm shall be permitted to employ any armed force of detectives, or other persons not residents of this state, in the state of Texas. [Act of 1893, p. 159.]

Art. 2476. [1701b] **Penalty.**—Any person, firm, or corporation employing such forces contrary to the provisions of preceding article shall be liable to pay to the state of Texas, as a penalty, not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this state; provided, that nothing herein shall be construed to deprive any person, firm, or corporation of the right of self-defense, or in defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense. [Id.]

TITLE 47.

DRAINAGE.

Chapter.

1. Drainage by Counties, Separately or Co-operating. Assessments of Benefits.
2. Drainage by Counties, Separately; Taxation.

Chapter.

3. Drainage by Districts, Included in One or More Counties—Bonds.
4. Drainage by Districts, One or More in Each County—Bonds.

CHAPTER ONE.

DRAINAGE BY COUNTIES, SEPARATELY, OR CO-OPERATING, ASSESSMENTS.

	Article.
Commissioners' court authorized to construct drains, etc.....	2477
Prerequisites to construction; petition; bond	2478
Jury of view, appointment of.....	2479
Oath of viewers.....	2480
Duties and powers of jury of viewers, with surveyor; survey; map; profile; table; estimate; specifications	2481
Estimate to be made by viewers in special case	2482
To report whether proposed ditch or drain will be of public utility.....	2482
Assessment of benefits by viewers.....	2484
Notice by viewers to land owners as to time when they will lay out ditch, etc., and when they will assess damages	2485
Land owners may appear before viewers and oppose	2486
Assessment of benefits by viewers, how made	2487
Benefits to public roads or railroads.....	2488
Reports signed by majority of viewers, sufficient	2489
Report to be accompanied by what; public record, etc.....	2490
Compensation of viewers.....	2491
Hearing before commissioners; their duties	2492

	Article.
Assessment, etc., of benefits by commissioners' court; lien; separate roll.....	2493
Assessment divided into installments.....	2494
Appeal from commissioners' court to county court; conditions of.....	2495
Burden of proof on such appeal.....	2496
Collection of assessments.....	2497
Lien, remedies, etc., for collecting assessments	2498
A special fund, how disbursed.....	2499
Damages paid out of county treasury.....	2500
Damages assessed against county, paid by same, how.....	2501
Construction let to lowest responsible bidder, etc.....	2502
Contractor to give bond.....	2503
Land owner may do what part of work; conditions	2504
Work done under direction of engineer; report	2505
Engineer to give estimates.....	2506
Contractor paid out of road and bridge fund; how returned from assessment collected, etc.....	2507
Where drain extends into two or more counties, procedure.....	2508
Joint viewers to co-operate, under orders, etc.	2509
Ditch to be kept open by land owner.....	2510

Article 2477. Commissioners' court authorized to construct drains, etc.— The commissioners' court of any county in this state, at any regular or called session thereof, may, in the manner hereinafter provided, and shall have power, whenever the same shall be conducive to the public health, convenience or welfare, or where and whenever the same will be of public benefit or utility, to cause to be straightened, widened, altered, deepened, any creek, bayou or other stream or water course, and shall cause to be constructed and maintained, as hereinafter provided, any ditch, drain or water course within any of the said counties, and shall have power to make the said improvement, if necessary, by removing from any adjacent lands or any stream or water course, any timber, bush, tree or other substance liable to or causing the obstruction thereof, and shall also have power to construct in connection with any such ditch or drain, any side, lateral, spur, or branch ditch or water course necessary to the accomplishment of the purposes of this chapter; provided, however, that no ditch, drain, outlet or water course shall be deepened, widened, constructed or maintained, without a sufficient outlet being provided for all water that may collect therein; provided, further, that the word "ditch," in this chapter, hereafter shall be construed to embrace any ditch, drain or water course that may be constructed under the provisions of this chapter. [Acts 1895, p. 151. Acts 1897, p. 95.]

Art. 2478. Prerequisites to construction; petition; bond.—Before the commissioners' court of such county shall establish any ditch, drain or water course, there shall be filed with the clerk of the county court of said county, a petition signed by at least five persons who are land owners and whose land will be liable to be affected by, or assessed for, the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus of the said ditch; and said petitioners shall give a bond, not to exceed one hundred dollars, with good and sufficient sureties, payable to the said county, to be approved by the clerk of the said court, conditioned to pay all expenses in case the commissioners' court shall fail to establish said proposed ditch, drain or water course. [Id. sec. 2.]

Art. 2479. Jury of view, appointment of.—As soon as said petition is filed, said court shall, if in regular session, or at their next regular session, appoint a jury of three freeholders and householders of the county, not interested in the construction of the proposed work, and not of kin to any of the parties interested therein, who shall constitute a jury of viewers, who shall meet at a time and place specified by the said court in the order making said appointment, preparatory to commencing their duties as hereinafter specified; and it shall be the duty of the said clerk of the said county court thereupon to issue to the said viewers a certified copy of the petition and order of said court; and said viewers shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer and surveyor, to make an accurate survey of the line of said ditch, drain or water course, from its source to its outlet; and they shall cause stakes or monuments to be set along said line at intervals of one hundred feet, together with such intermediate stakes as may be necessary, and numbered progressively at each one hundred feet; and they shall establish permanent bench marks along said line, at intervals of one mile or less, as may be necessary. [Id. sec. 2.]

Art. 2480. Oath of viewers.—The said viewers, before proceeding to act as such, shall take the following oath, before any officer authorized to administer oaths, to-wit: "I do solemnly swear that I will lay out the ditch or drain now directed to be laid out by the order to us directed by the commissioners' court, according to law, without favor or affection, malice or hatred, to the best of my ability, skill and knowledge. So help me God." [Id. sec. 8.]

Art. 2481. Duties and powers of jury of viewers, with surveyor; survey; map; profile; table; estimate; specifications.—The viewers shall prepare a map showing the location of said ditch, drain or water course, together with the position of stakes or monuments, with numbers corresponding with those on the ground, and the position of bench marks, with their elevation referred to on assumed or previously determined datum. The map should also show the lines and boundaries of adjacent property, and the position of county roads and railroads which may be affected by said ditch or drain, and such information should be obtained as will lead to the determination of the benefits or damages which will accrue from the construction of the same; and they shall prepare a profile of the line of said ditch, drain or water course, which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake or monument and other important features along the line, such as top of bank and bottom of all ditches or water course and surface of water, top of rail and bottom of tie, foot of embankment, bottom of borrow pits of all railroads, and center of road and bottom and top of ditches of highways. And they shall, in tabular form, give the depth of cut, width at bottom, and width at the source, outlet, and at each one hundred feet stake or monument of said ditch, drain or water course; and they shall make a computation of the total number of cubic yards of earth

to be excavated and removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work, and they shall prepare specifications in detail for the execution of the same; and they shall have power, when they find it necessary, to provide for running said ditch under ground through drain tiles or other materials as they may deem best, by specifying size of tile or other kind of material to be used in such underground work, and shall include the cost of same in the estimate of the total cost of the work. [Id. sec. 2.]

Art. 2482. Estimate to be made by viewers, in special case.—Whenever a public ditch, drain, or water course is located wholly or in part of the bed of a private ditch, already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated, and the cost of the same on each tract of land, and deduct the same from the assessment thereon. [Id. sec. 3.]

Art. 2483. To report whether proposed ditch or drain will be of public utility.—The jury of viewers shall report whether or not the proposed ditch or drain will be of public utility. [Id. sec. 2.]

Art. 2484. Assessment of benefits by viewers.—The jury of viewers shall set apart and apportion to each parcel of land and to each corporation, road or railroad, and to the county when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvement and the cost of the construction of each share or allotment separately. And they shall describe each parcel of land to be assessed in the construction of said ditch, giving the number of acres in each tract assessed and an estimate of the number of acres benefited, the amount that each tract will be benefited by the construction of said work, and the amount of each tract as assessed therefor; and they shall also ascertain and give the names of the owners of the lands that are assessed in the construction of said ditch, drain or water course, as far as they may be able to ascertain by reasonable inquiry and search of the public records. [Id. sec. 2.]

Art. 2485. Notice by viewers to land owners as to time when they will lay out ditch, etc., and when they will assess damages.—The said jury of viewers, as provided for in this chapter, shall issue a notice in writing to the land owner through whose lands such proposed ditch or drain may run, or to his or their agent or attorney, of the time when they shall proceed to lay out such ditch, or when they will assess the damage incidental to the construction of same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; if such owner is a non-resident of the county, the notice shall be given by publication in a newspaper published in the county as notices are required to be given to non-resident defendants as to actions in the district or county court. And such ditch or drain may be constructed four weeks after such publication, the cost of publishing the same to be paid as directed by the commissioners' court. [Id. sec. 5.]

Art. 2486. Land owners may appear before viewers and oppose.—All persons whose land may be affected by such ditch, drain or water course shall have the right to appear before said viewers and freely express their opinions on all matters pertaining thereto; and the owner of any such lands may, at the time stated in said notice, or previously thereto, present to the jury a statement in writing of any objections thereto or dissatisfaction therewith, and any claim for damages which he may have by reason of the making of said ditch or drain; and a failure to make such claim in writing, as herein specified, for damages or compensation, shall be deemed and held a waiver of all right thereto; which said claim or objection shall be returned to the commissioners' court, in connection with the report of the said viewers. [Id. sec. 6.]

Art. 2487. Assessment of benefits by viewers, how made.—All lands benefited by public ditch, drain or water course shall be assessed in proportion to the benefit to the said lands by the construction thereof, whether it passed through said lands or not; and the viewers, in estimating the benefit to lands in controversy by said ditch, shall not consider what benefit such lands will receive after some other ditch or ditches shall be constructed, but only the benefits that may be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands; and, in the making of the said assessment, should the viewers find that the construction of said ditch or drain would, to any extent, construct or constitute a public road of utility to the county in that section, or be a material benefit in the drainage of any public road then constructed, they will assess as against the county such sum as will represent the benefit so accruing to the public; provided, that all assessments for benefits accruing to counties or county roads shall be approved by the commissioners' courts of such counties. [Id. sec. 4.]

Art. 2488. Benefits to public roads or railroads.—When any ditch established under this chapter drains either in whole or in part any public road or railroad, or benefits any such road or railroad, so that the roadbed or travel or track of any such road will be made better by the construction of any such ditch, then the jury of viewers shall apportion to any such county, if the same be a public road, or to such railroad, if the same be a railroad, such portion of the costs and expenses thereof as herein provided for to private individuals. [Id. sec. 14.]

Art. 2489. Reports signed by majority of viewers, sufficient.—In all reports made by any jury of viewers, the same shall be sufficient if signed by a majority of said viewers. [Same as R. S. art. 1701q. Id. sec. 16.]

Art. 2490. Report to be accompanied by what; public record, etc.—They shall submit with their report a copy of the map and profile of the line of said ditch, drain or water course, and a copy of the specifications for the construction of the same, which, together with the report, shall become a public record, and shall be placed in the custody of the county clerk, to be preserved as such. [Id. sec. 2.]

Art. 2491. Compensation of viewers.—The said jury of viewers shall each receive the sum of three dollars per day as compensation for said work for each day so actually engaged. The said surveyor and engineer shall receive such compensation as shall be fixed by the commissioners' court. [This sec. same as R. S. art. 1701r. Id. sec. 17.]

Art. 2492. Hearing before commissioners; their duties.—The commissioners' court, at the time set for the hearing of said petition, shall hear and determine the same in connection with all remonstrances or objections thereto; and, if they find that the said viewers' report is made in accordance with the provisions of this title, and it be in favor of the proposed work, and if they find the proposed ditch or drain to be of public utility, or conducive to public health, or of public benefit or convenience, they shall enter an order on the minutes establishing the same, as specified in the said report, and order the same to be constructed according to the said report, and shall then or thereafter take such further action and make such other and further orders and decrees in the premises as may be proper or necessary to secure the execution of said work. But should said viewers report adversely to the said work, the board shall dismiss the petition and tax the costs as against the said petitioners. [Id. sec. 7.]

Art. 2493. Assessment, etc., of benefits less damages, by commissioners' court; lien; separate roll.—When any drain or ditch shall have been established by order of the commissioners' court, under this chapter, they shall proceed to levy and assess against the person or persons, company or corpora-

tion, shown by the report of the jury of viewers to be beneficially affected by the proposed improvement, and against each separate tract of land shown to be beneficially affected, the cost of such improvement, in proportion to the benefits to be derived, less the amount of damages to such person, company or corporation by reason of the construction of such proposed drain, ditch or water course, as shown by the report of said appraisers or adjudged by decree of court; which said assessment shall constitute a lien respectively upon the lands affected, and a separate roll of said assessments shall be made by the state and county tax assessor for the said county; and the same shall at all times be open to the inspection of the public. [Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 242, sec. 18.]

Art. 2494. Assessment divided into installments.—The assessments aforesaid shall be divided into five equal annual installments, each installment to be one-fifth of the amount assessed against each person, company or corporation or owners, respectively, of the lands affected by said assessment; and the first installment shall be payable within the same periods as provided by law for the payment of the state and county ad valorem taxes, the other four equal annual installments to be collected annually thereafter in the same manner; provided, that, upon failure to pay any two of said assessments, the whole sum shall become due and payable. [Acts 1897, p. 100. Acts 1895, p. 151. Id. sec. 18.]

Art. 2495. Appeal from commissioners' court to county court, conditions of.—Any person or corporation aggrieved thereby may appeal from the final order of the commissioners' court made in said proceedings and entered upon their record to the county court of that county within ten days thereafter, by filing within ten days thereafter a transcript of said proceedings in said county court, and also filing within the said ten days, with the clerk of the said court, an appeal bond, with at least two good sureties, to be approved by the said county clerk, conditioned that he will prosecute such appeal to effect and pay all costs that may be adjudged against him in said court; and the said appeal shall be heard and determined upon the following issues, to-wit:

1. Whether said ditch shall be conducive to the public health, convenience or welfare.
2. Whether the route thereof is practicable.
3. Whether the assessments made for the construction of such ditch are in proportion to the benefits to be derived therefrom.
4. The amount of damages, if any, to be allowed to any person or persons, or corporation; and, if more than one person appeal, the judge of the said court shall order the said cases to be consolidated and tried together, and the rights of each party shall be separately determined by the said court and jury, if any, in its verdict and final determination; and the cause so appealed and conducted in said county court shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil cases in said court. Either party to such action may appeal to such appellate court as has jurisdiction of said cause; and said action shall be returnable at once to said appellate court at either of its terms, and said action so filed shall have precedence in said appellate court of all cases of a different character therein pending. [Acts 1897, p. 98, sec. 9. Acts 1895, p. 151.]

Art. 2496. Burden of proof on such appeal.—In the trial of all cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the complainant. [Id. sec. 10.]

Art. 2497. Collection of assessments.—The state and county tax collector shall proceed to collect said assessments in the same manner provided for the

collection of state and county ad valorem taxes, and shall enforce the same, either by advertisement and sale, or by suit, as now provided by law. [Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.]

Art. 2498. **Lien, remedies, etc., for collecting assessments.**—All liens, remedies, and modes of procedure by the laws of the state of Texas, now provided for the collection of ad valorem taxes and taxes upon real estate, shall obtain and be in force and apply for the collection for the assessments herein provided for the construction of the said drains. [Acts 1895, p. 151. Acts 1897, p. 101, sec. 22.]

Art. 2499. **A special fund, how disbursed.**—All funds arising from such assessments shall be a special fund for the construction of such drain, ditch or water course, and, by order of the commissioners' court, shall be set apart for the same, and placed in the county treasury as a special fund for said purpose, to be paid to the contractor or contractors, person, company or corporation performing said work, upon the order of the commissioners' court, as provided in this chapter. [Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.]

Art. 2500. **Damages paid out of county treasury.**—All damages that the said jury of viewers or commissioners' court shall assess, or which may be found to have been suffered by judgment or decree of court, shall be paid out of the county treasury upon the order of said commissioners' court. [Acts 1897, p. 100. Acts 1895, p. 151. Id. sec. 18.]

Art. 2501. **Damages assessed against county, paid by same, how.**—Any sum assessed against any county on account of any public drain shall be paid by said county on the order of the commissioners' court. [Acts 1897, p. 100. Acts 1895, p. 151. Id. sec. 18.]

Art. 2502. **Construction let to lowest responsible bidder, etc.**—When the commissioners' court of any county shall have, by proper order, established any drain or ditch, the construction of the same shall be let by the said commissioners' court to the lowest responsible bidder, after suitable advertising, as a whole, or in such sections or subdivisions as the board may deem most advantageous. [Acts 1895, p. 151. Acts 1897, p. 100, sec. 20.]

Art. 2503. **Contractor to give bond.**—The said contractor or contractors shall be required to give a good and sufficient bond, with two or more good and sufficient sureties, to be approved by the said commissioners' court in an amount to be fixed by the said court, as in their judgment may be best for the faithful construction of the said work. [Id. sec. 20.]

Art. 2504. **Land owner may do what part of work, conditions.**—Any persons through whose lands the proposed work shall pass, upon application to the commissioners' court, before the contract is let, shall be entitled to do so much of the proposed work as is upon, or passes through, his lands; provided, such application shall be made twenty days before the advertisement for the said contract; and provided, he shall undertake to do such work upon equally favorable terms with those offered by any one else; and provided, further, that he shall execute such a bond as is required of the said contractor. And if such person should fail to construct such work as hereinbefore provided by the said contractor, within the time required by the commissioners' court, then all right to construct the same shall be forfeited and cease and determine; and the commissioners' court shall let the construction of the same as in this act provided. [Id. sec. 20.]

Art. 2505. **Work done under direction of engineer; report.**—Such work to be done under the direction and supervision of the said engineer, who shall report the same to the commissioners' court for their final action. [Id. sec. 20.]

Art. 2506. **Engineer to give estimates.**—The engineer employed by the said county to superintend the construction of the said drains and ditches shall,

upon the completion of each and every two hundred feet of any ditch, give to the contractor or contractors his certificate as such engineer, the said certificate showing the amount of work done and an estimate of the amount due for the construction of the same, less ten per cent thereof; which said certificate shall be delivered to the said contractor as an evidence of the amount of work constructed, and of the amount due therefor. [Id. sec. 19.]

Art. 2507. Contractor paid out of road and bridge fund; how returned from assessment collected, etc.—The commissioners' court shall pay the said contractor or contractors, or persons constructing the said drain, out of any funds in the county treasury not otherwise appropriated and belonging to the road and bridge fund of the said county, upon the report of the said engineer, by said court approved, from time to time as the said contract progresses, and according to such terms as they may agree upon with such contractor. The said money so drawn from the road and bridge fund of the said county shall be returned from the assessment collected upon the said drain when the same shall be put into the county treasury. Said reimbursement to be made to the said fund by order of the commissioners' court. [Id. sec. 21.]

Art. 2508. Where drain extends into two or more counties, procedure.—Whenever the route of the proposed ditch, drain or water course extends into two or more counties, then a petition shall be signed by at least five freeholders, one or more of whom are land owners in the county other than that of the filing of the petition, and whose lands will be liable to be assessed for the construction of such ditch, and file the same with the clerk of the commissioners' court, the said petition to be filed in the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the commissioners' court of that county; and thereupon the clerk of such court shall transmit to the clerk of the court of such other county or counties interested therein a certified copy of such petition; and it shall be the duty of the commissioners' court of each county interested in the proposed work, at their first regular session after such petition is filed, to appoint three disinterested freeholders and householders of their respective counties as viewers, in like manner as is provided for the appointment of viewers on a ditch in but one county, to meet and act jointly at such time and place as the board of commissioners of the county where the petition is filed may designate; and such joint viewers shall have the same power and perform the same duties as is provided in this title for the viewers on a ditch in one county; and they shall file a report of their proceedings with the clerk of each of said counties so interested at least two weeks before the next regular session of the board of commissioners, whereupon the clerk of each county shall give notice in the manner provided for as to ditches in one county; and the time for the hearing thereof shall be set by the respective courts of each county; provided, further, that, in an action of a joint board of viewers, the approval and report of a majority of the whole board shall be necessary to constitute a valid report of said board. [Id. sec. 12.]

Art. 2509. Joint viewers to co-operate under orders, etc.—The joint board of viewers, as herein provided for of the counties interested in said joint ditch, shall proceed to establish the same in the manner specified for ditches in but one county; and in all matters pertaining to such joint ditch, the board of commissioners shall act in the same manner, so far as is practicable, as is required by this title for ditches in but one county, and they shall act jointly, and the same shall be determined by the respective orders of the said respective commissioners' courts, and such further proceedings had thereon, as herein provided for in but one county. [Id. sec. 13.]

Art. 2510. Ditch to be kept open by land owner.—Every person or corporation through whose lands any public ditch is constructed shall be required to

keep the same open, free and clear from all obstructions upon his or its premises, by him or it placed therein, and, in case of failure to do so, shall be liable to pay all reasonable and necessary expenses of removing such obstructions. [Id. sec. 11.]

[Note.—For the provisions in regard to incorporation for drainage purposes, outside of cities and towns, see Arts. 1261-7, title 25, chapter 18.]

CHAPTER TWO.

DRAINAGE BY COUNTIES, SEPARATELY—TAXATION.

Article.	Article.
Commissioners' court authorized to construct drains, etc., within any of the counties of the state.....	If election carried, result announced, levy or drainage tax authorized, requirements
2511	2526
Prerequisites to construction; petition; bond	If election carried no petition for repeal in less than five years.....
2512	2527
Jury of view, appointment of.....	If election defeated another petition granted in one year.....
2513	2528
Duties and powers of jury of view, with county surveyor; estimates; survey; map; table; specifications.....	Order granting second, etc., petition may fix what rate.....
2514	2529
Right to enter on land for preliminary survey, etc., may condemn, how.....	Commissioners may lower rate without petition, when, etc.....
2515	2530
Notice by viewers to landowner of time when they will lay out ditch, etc., or when commissioners' court will assess damages	Election to repeal, levy to be ordered upon proof of what.....
2516	2531
Report to be accompanied by what; public record, etc.....	Repeal not to affect contract.....
2517	2532
Appeal to county court from commissioners judgment estimating damages; bond	Assessment and collection of tax; report, accounting and disbursement, etc.....
2518	2533
Hearing on appeal suspended until election approving construction.....	Liens, remedies, etc., for collecting assessments
2519	2534
Only damages determined on appeal.....	Taxes collected to be known as drainage fund
2520	2435
Consolidation of cases on appeal; precedence	Construction to be let to lowest responsible bidder, when.....
2521	2536
Burden of proof on appeal to county court	Contractor's bond
2522	2537
Appeal from county court when, etc., precedence	Work to be done under direction of engineer, report, etc.....
2523	2538
Election to be ordered, in what case, to authorize tax, etc., regulations as to.....	Land owner may do what part of work; conditions
2524	2539
Election, further regulations as to.....	Contractor, etc., paid out of fund so collected, how, etc.....
2525	2540
	Commissioners to audit claims and order payment
	2541

Article 2511. **Commissioners' court authorized to construct drains, etc., within any of the counties of the state.**—The commissioners' court of any county in this state, at any regular or called session thereof, may in the manner hereinafter provided, and shall have power whenever the same shall be conducive to the public health, convenience or welfare, or where and whenever the same will be of public benefit and utility, to cause to be straightened, widened, altered, deepened, any creek, bayou or other stream or water course, and shall cause to be constructed and maintained, as hereinafter provided, any ditch, drain or water course within any of the said counties, and shall have power to make the said improvement, if necessary, by removing from any adjacent lands, or any stream or water course, any timber, bush, tree or other substance liable to or causing the obstruction thereof, and shall also have power to construct, in connection with any such ditch or drain, any side, lateral, spur or branch ditch or water course necessary to the accomplishment of the purposes of this chapter; provided, however, that no ditch, drain, outlet or water course shall be deepened, widened, constructed or maintained without a sufficient outlet being provided for all water that may collect therein; provided, further, that the word "ditch" in this chapter

hereafter shall be construed to embrace any ditch, drain or water course that may be constructed under the provisions of this act. [Acts 1899, p. 95, sec. 1.]

Art. 2512. Prerequisites to construction; petition; bond.—Before the commissioners' court of said county shall cause to be straightened, widened, altered or deepened, any creek, bayou or other stream, or water course, there shall be filed with the county court of said county a petition, signed by at least fifteen qualified voters, freeholders and property taxpaying citizens of the county, setting forth the necessity thereof, with a general description of the creek, bayou or other stream or water course proposed to be straightened, widened, altered, deepened or improved, also the starting point, route and terminus of said ditch, drain or water course; and the said petitioners shall enter into a bond not to exceed the sum of five hundred dollars, with five good and sufficient sureties, payable to the said county, to be approved by said commissioners' court, conditioned to pay all the expenses of preliminary surveys, jury of view, setting of stakes and monuments, bench marks, preparation of maps, plats, profiles, estimates and specifications for said work and the filing of the same, in the event the election to be held for the purpose of determining whether a tax shall be levied to cover the cost of such improvement, as hereinafter provided, shall be against the levy of such tax. [Id. sec. 2.]

Art. 2513. Jury of view, appointment of.—As soon as said petition and bond is filed, said court shall, if in regular session or at their next regular session, appoint a jury of three freeholders and householders of the county, who shall constitute a jury of view, who shall meet at a time and place specified by said court in the order making said appointment, preparatory to the commencement of their duties as hereinafter specified; and it shall be the duty of said clerk of the said court thereupon to issue to said viewers a notice of the filing of said petition, and of the order of the court appointing them. [Id. sec. 2.]

Art. 2514. Duties and powers of jury of view, with county surveyor; estimates; surveys; map; table; specifications.—They shall proceed at the time set in said order, with the county surveyor, to make an estimate of the work necessary to straighten, alter, widen or deepen any ditch, drain or water course, and to make an accurate survey of the line of said ditch, drain or water course from its source to its outlet; and they shall establish permanent bench marks along said line, at intervals of one mile or less, as may be necessary; and they shall prepare a map showing the location of said ditch, drain or water course, together with the position of stakes or monuments with numbers corresponding with those on the ground; and they shall, in tabulated form, give the depth of cut, width at bottom and width at top and at the source and outlet of said ditch, drain or water course; and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work; and they shall prepare specifications in detail for the execution of the same; and they shall have power, when they find it necessary, to provide for running said ditch under ground through drain tiles or other materials as they may deem best, by specifying the size of tile or other kind of materials to be used in such underground work and shall include the cost of the same in the estimate of the total cost of the work. [Id. sec. 2.]

Art. 2515. Right to enter on land for preliminary survey, etc., may condemn, how.—The commissioners' court and jury of view, acting under its orders, are hereby authorized to enter upon, for the purposes of preliminary surveys, setting of stakes, etc., the property of any person, company or cor-

poration through which such ditch, drain or water course runs, and they (the commissioners' court) shall have power to condemn property for said purposes in same manner as prescribed for condemnations for right of way for railroad companies. [Id. sec. 5.]

Art. 2516. Notice by viewers to land owner of time when they will lay out ditch, etc., or when commissioners' court will assess damages.—The said jury of viewers, as provided for in this chapter, shall issue a notice in writing to the land owner through whose land such proposed ditch or drain may run, or to his or their agents or attorneys, of the time when they shall proceed to lay out such ditch or drain, or when the commissioners' court will assess the damages incidental to the construction of the same; which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; if such owner is a non-resident of the county, the notice shall be given by publication in a newspaper published in the county as notices are required to be given to non-resident defendants in actions in the district or county court. [Id. sec. 3.]

Art. 2517. Report to be accompanied by what; public record, etc.—They shall submit with their report a copy of the map and profile of the line of said ditch, drain or water course, and copy of the specifications for the construction of the same, which, together with the report, shall become a public record and shall be placed in the custody of the county clerk to be preserved as such. [Id. sec. 2.]

Art. 2518. Appeal to county court from commissioners' judgment estimating damages; bond.—Any person, company or corporation dissatisfied with the judgment of the commissioners' court estimating the amount of damages to accrue to them by reason of the proposed ditch or drain, by filing exceptions to said judgment in writing ten days after rendition, which exceptions shall be entered upon the records of the county court of the county, and also filing within said ten days and with the clerk of said court an appeal bond, with at least two good sureties to be approved by the said county clerk, conditioned that he or they will prosecute such appeal to effect and pay all costs that may be adjudged against them, may appeal from said judgment to the county court. [Id. sec. 4.]

Art. 2519. Hearing on appeal suspended until election approving construction.—Said appeal shall not be heard in the county court until after the matter of the establishment and construction of such ditch or drain shall have been determined upon by the election to be held as hereinafter provided, and the result of said election shall be in favor of the construction of such ditch or drain. [Id. sec. 4.]

Art. 2520. Only damages determined on appeal.—Upon such appeal there shall be heard and determined only the question of damage. [Id. sec. 4.]

Art. 2521. Consolidation of cases on appeal; precedence.—If more than one person shall appeal, the judge of said court shall order the said cases to be consolidated and tried together; and the rights of each party shall be separately determined by the said court and jury, if any, in its verdict and final determination; and the cause so appealed and conducted in said county court shall have precedence over all other causes on the docket of different nature and shall be tried and determined as other civil cases in said court. [Id. sec. 4.]

Art. 2522. Burden of proof on appeal to county court.—In the trial of all cases appealed from the commissioners' court, the burden of proof shall rest upon the complainant. [Id. sec. 4.]

Art. 2523. Appeal from county court when, etc., precedence.—Either party to such action may appeal to such appellate court as has jurisdiction of said cause, provided the amount of the judgment appealed from shall exceed one

hundred dollars; and said actions shall be returnable at once to said appellate court at either of its terms; and said action so filed shall have precedence in said appellate court of all cases of different character therein pending. [Id. sec. 4.]

Art. 2524. Election to be ordered, in what case, to authorize tax, etc.; regulations as to.—When the said commissioners' court shall have concluded that said ditch or drain is a public necessity and conducive to the public health, convenience or welfare, or that the straightening, cleaning, widening, altering and deepening any stream, creek, bayou or other water course, shall be a public necessity, and conducive to the public health, convenience or welfare, they shall proceed to order an election for the whole county, or any subdivision thereof, to be defined in their order, to determine whether there shall be levied upon the property within said county or such subdivision, by the said commissioners' court, a drainage tax not to exceed fifteen cents on the one hundred dollars valuation of the property within the county or such subdivision, which said order shall fix the amount to be levied; said election to be held at a time to be fixed by order of the court, not less than twenty or more than ninety days from the date of the order therefor.

It shall not be necessary to give any formal notice of such election, except the county judge shall issue his election proclamation, and the fact that such election is to be held shall be published in some newspaper of the county as fully as practicable, and tickets for the election shall be printed by the county, and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The expenses of the election shall be paid by the county. If the election be ordered within ninety days of a general election, it shall be held on the day of the general election, and in the manner of holding such general election; but otherwise, the commissioners' court shall order a special election to determine whether said tax shall be levied, which shall be conducted as other elections, and the officers to conduct the same shall be appointed as in other cases. [Id. sec. 6.]

Art. 2525. Election, further regulations as to.—Only qualified voters who pay a property tax in the county and who live in the county, shall be permitted to vote at such election. The tickets printed and to be voted shall have written or printed on them the words, "For the tax," and, "Against the tax," and those who favor the tax shall vote the ticket, for the tax, and those opposed to the tax shall vote the ticket, against the tax. [Id. sec. 7.]

Art. 2526. If election carried, result announced, levy of drainage tax authorized, requirements.—If at any such election a majority of the qualified voters, voting therefor, shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result; and the commissioners' court shall thereby be authorized and required to levy a drainage tax, in the same manner that other taxes are levied, in the amounts specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property; the levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise, it may be made at any time before the rolls are made out and settlement effected. [Id. sec. 8.]

Art. 2527. If election carried no petition for repeal in less than five years.—If at the election the proposition for said tax shall carry, no petition for its repeal shall be granted in less than five years following. [Id. sec. 8.]

Art. 2528. If election defeated another petition may be granted in one year.—If it fails to carry, another petition may be granted in one year, but no sooner. [Id. sec. 8.]

Art. 2529. **Order granting second, etc., petition may fix what rate.**—The order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property. [Id. sec. 8.]

Art. 2530. **Commissioners may lower rate without petition, when, etc.**—If no greater rate is levied for any one year than mentioned in the preceding article, the commissioners' court may lower the rate for the next year without a petition therefor. [Id. sec. 8.]

Art. 2531. **Election to repeal, levy to be ordered upon proof of what.**—An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners' court that there is great dissatisfaction with such tax, and that it is probable that a majority of the citizens of the county who are authorized to vote will vote for the repeal of the law, and unless such proof be made, the petition to repeal shall not be granted. [Id. sec. 8.]

Art. 2532. **Repeal not to affect contract.**—Whenever a contract for the construction of ditches shall have been entered into, no repeal shall affect or annul such contract; and the taxes necessary to pay the amount due and to become due on such contracts shall be levied and collected and disbursed as if there had been no repeal of the tax. [Id. sec. 7.]

Art. 2533. **Assessment and collection of tax; report, accounting and disbursement, etc.**—It shall be the duty of the tax assessor and tax collector of each county to assess and collect the taxes herein provided as in other cases; and the tax collector shall report to the county treasurer the amount of taxes collected under the provisions of this chapter; and it shall be the duty of the county treasurer to keep a separate account of all taxes paid over to him by the collector under the provisions of this chapter and it shall also be the duty of the county treasurer to pay all warrants drawn by the clerk of the county court under an order directed by the commissioners' court of the county drawn upon said funds, and make his report of said funds as in other cases. [Id. sec. 9.]

Art. 2534. **Liens, remedies, etc., for collecting assessments.**—All liens, remedies and modes of procedure, by the laws of the state of Texas now provided for the collection of ad valorem taxes and taxes upon real estate, shall obtain and be in force and apply for the collection for the assessments provided in this chapter for the construction of said drains. [Id. sec. 12.]

Art. 2535. **Taxes collected to be known as drainage fund.**—All taxes and money collected under the provisions of this chapter shall be known as the drainage fund. [Id. sec. 14.]

Art. 2536. **Construction to be let to lowest responsible bidder, when.**—When the commissioners' court of any county shall have, by proper order, established any drain or ditch, the construction of the same shall be let by the said commissioners' court to the lowest responsible bidder, after suitable advertising, as a whole, or in such sections or subdivisions as the board may deem most advantageous. [Id. sec. 10.]

Art. 2537. **Contractor's bond.**—The said contractor or contractors shall be required to give a good and sufficient bond, with two or more good and sufficient sureties, to be approved by the said commissioners' court, in an amount to be fixed by the said court, as in their judgment may be best, for the faithful construction of said work. [Id. sec. 10.]

Art. 2538. **Work to be done under direction, etc., of engineer, report, etc.**—Such work to be done under the direction and supervision of the said engineer, who shall report the same to the commissioners' court for their final action. [Id. sec. 10.]

Art. 2539. **Landowner may do what part of work; conditions.**—Any person through whose lands the proposed work shall pass, upon application to the commissioners' court before the contract is let, shall be entitled to do so much of the proposed work as is upon or passes through his lands. Such application shall be made twenty days before the advertisement for the said contract; and provided, he shall undertake to do such work upon equally favorable terms with those offered by any one else; and provided, further, that he shall execute such a bond as required by the said contractor. And if such person should fail to construct such work, as hereinbefore provided by the said contractor, within the time required by the commissioners' court, then all right to construct the same shall be forfeited and cease and determine; and the commissioners' court shall let the construction of the same as in this chapter provided. [Id. sec. 10.]

Art. 2540. **Contractor, etc., paid out of fund so collected, how, etc.**—The commissioners' court shall pay the said contractor or contractors or persons constructing the said drain out of any funds in the county treasury collected as aforesaid, upon the report of the said engineer, by said court approved, from time to time as the said contract progresses, and according to such terms as they may agree upon with such contractor. [Id. sec. 11.]

Art. 2541. **Commissioners to audit claims and order payment.**—It shall be the duty of the commissioners' court to audit all claims against the county for work and expenses under the provisions of this chapter; and for all claims allowed, said commissioners' court shall, by an order duly entered upon the minutes of said court, direct the clerk of the county court to issue a warrant payable out of the drainage fund and directed to the county treasurer for the amount allowed by said court. [Id. sec. 13.]

CHAPTER THREE.

DRAINAGE BY DISTRICTS, INCLUDED IN ONE OR MORE COUNTIES—BONDS.

	Article.
County commissioners' court may establish drainage districts, to be included in one or more counties; incidental powers; election for bonds.....	2542
On petition, etc., district may be created when, etc.....	2543
Petition, requirements as to; jury of view; surveyor, etc.; survey; report with profile and map, showing benefits, etc., to be filed, etc.....	2544
Oath of viewers and engineer.....	2545
Compensation of viewers and engineer.....	2546
Landowners, etc., resident, notified; hearing; remonstrances, etc.; order establishing district and directing improvements; objections thereto.....	2547
Name or number for such district.....	2548
District may sue and be sued; judicial knowledge of.....	2549
Appeal to county court; procedure and issues on.....	2550
Election to be held in what case; if carried, improvements made and bonds issued.....	2551
Time and place of election, state election law applies.....	2552

	Article.
Proposition and ballots, requirements as to.....	2553
Bonds, period, terms and requirements as to.....	2554
Expenses of jury of viewers, election, etc., how paid.....	2555
Tax, improvement, for interest and sinking fund.....	2556
Sinking fund, investment of; attorney general's approval.....	2557
Trustees, elected when; duties.....	2558
Trustees, commissioners may act as, if, etc.....	2559
Money and bonds in keeping of county treasurer.....	2560
Specifications for bids; advertisement; contract.....	2561
Payments for construction, how made.....	2562
Eminent domain, right of, conferred.....	2563
Road, public, assessment against county for benefits to, etc.....	2564
Obstructions in drains prohibited; provisions as to removing.....	2565
Where course of improvements extend into, etc., two or more counties, procedure, rights, etc.....	2566

Art. 2542. **County commissioners' court may establish drainage districts, to be included in one or more counties; incidental powers; election for bonds.**—

The county commissioners' courts of the several counties of this state may hereafter establish drainage districts in their respective counties; and such districts may be included in any county, or in any number of adjoining counties, and may or may not include, within their boundaries and limits, villages, towns and municipal corporations, or portions thereof. Such districts when so established may, under the direction of the commissioners' court or the district trustees, construct and maintain canals, drains and waterways for the purpose of drainage, or in aid thereof, to hold elections for the purpose of voting bonds and to issue bonds in payment therefor, which shall never be in amount greater than that of one-fourth of the assessed value of the real property of said district; and generally to do such things as shall be necessary to the completion and maintaining of a good and efficient drainage system in such district or districts, as authorized by the constitution of the state of Texas and the provisions of this chapter. This chapter shall be cumulative of, and additional to, all other general laws upon the subject of drainage not in conflict herewith. [Acts 1905, p. 212, sec. 1.]

Art. 2543. On petition, etc., district may be created when, etc.—Upon the petition of fifty or a majority of the resident property taxpayers of any county in this state, whose land shall be affected thereby, to the county commissioners' court of any county, the commissioners' court shall thereafter have power, at any regular or special session, to create a drainage district within such county; and, when the same shall appear to be for the public health, benefit or utility of such proposed drainage district, may authorize the said district or districts to construct and maintain drainage canals and ditches with laterals, spurs, branches, inlets and outlets within such proposed district or districts; provided, that in all cases of such proposed improvements, provisions shall be made for the disposal, final discharge and outlet of all waters that may be collected within such canal, streams, ditches and drains to be so made, constructed or improved. [Id. sec. 2.]

Art. 2544. Petition, requirements as to; jury of view; surveyor, etc.; survey; report with profile and map, showing benefits, etc., to be filed, etc.—Such petition shall be filed with the clerk of the county court of such county and shall set forth the necessity of such proposed drainage district, including the proposed boundaries thereof, the initial point, route and terminus of such drains and the probable cost thereof. The commissioners' court shall, at its first session, either regular or special, after the filing thereof, or, if the same be filed during the session, at once appoint a jury of three freeholders of the county, not kin to any of the petitioners therein, who shall constitute a jury of view. Such jury of view shall meet at a time and place specified by said court, and shall, at such time as directed, proceed with the county surveyor, or any other civil engineer appointed by the said court, to make an accurate survey of the proposed district and drain course for the purpose of ascertaining the advisability of such improvements and estimating the cost thereof. And said jury of view and engineers shall make report thereof to the said commissioners' court with a profile and map of the territory included, showing each parcel of land benefited and to be affected by such improvements within such proposed district, except that when a town, village or municipal corporation, or a part thereof, be included, any recognized map thereof may be filed, giving the number of estimated acres in each tract and the names of the owners thereof as far as they be able to ascertain by reasonable inquiry and search of the public records; and to further report as to the public utility and advisability of such proposed improvements. Such report, together with the maps and records thereof, shall be filed in the office of the clerk of the county court and become a public record therein and shall be preserved as such. [Id. sec. 3.]

Art. 2545. Oath of viewers and engineer.—Before said viewers and engineer shall proceed to act as such, they shall take and sign the following oath before any officer authorized to administer oaths, to-wit: "I do solemnly swear that I will view the proposed drainage district now directed by the order of the commissioners' court without favor or affection, malice or hatred, to the best of my knowledge, skill and ability. So help me God." And said oath shall be filed with the records of said case. [Id. sec. 5.]

Art. 2546. Compensation of viewers and engineer.—The jury of viewers shall each receive the sum of three dollars per day, and the engineer not less than five dollars per day, compensation, as may be fixed by the commissioners' court, while actually engaged on said work. [Id. sec. 14.]

Art. 2547. Landowners, etc., resident, notified; hearing; remonstrances, etc.; order establishing district and directing improvements; objections thereto.—All resident land owners of such proposed district shall be notified by the clerk of said court in writing or otherwise, as may be directed by the county commissioners' court, of the substance of the report of said jury of view, and shall be notified ten days in advance of the time and place when the same shall be acted upon by said commissioners' court, except that when a town or municipal corporation, or a portion thereof, is included in such district, publication for five days prior to the ten days of notice herein required, in any newspaper published therein, shall be deemed sufficient notice thereof to all persons residing in said town, village or municipal corporation, of such action. And all persons and corporations, whose lands may be affected by such improvements, shall have the right to appear before said commissioners' court, and to be heard upon all matters pertaining thereto, and, if dissatisfied with the action taken by said commissioners' court, shall file objections thereto in writing, which shall become a part of the records in such case; and a failure to make such objections, or a failure to make a claim in writing for damages or compensation, shall be deemed and held as a waiver of right and of all objections thereto. At the time set for the hearing of said petition and report of jury of view, the commissioners' court shall hear and determine all remonstrances and objections thereto; and, if it be found that such proposed improvements shall be for the public health, convenience, benefit or utility of such proposed district, they shall enter an order on the minutes establishing the same, either as specified in the petition or in the report, and shall order said district to be established and the improvements to be constructed according thereto, or according to a further and more fully particularized report and survey to be made thereafter under the direction of said court; or the board may dismiss the petition and tax the costs already accrued against the said petitioners, in whole or in part, as the justice of the case may require; and the collection thereof may be enforced as hereafter provided for as to other and additional costs. [Id. sec. 4.]

Art. 2548. Name or number for such district.—Each district shall be named or numbered or both by the county commissioners' court, and shall be so designated upon the public record of such county or counties, and the name or number or both thereof shall be designated upon the bonds of such district when issued. [Id. sec. 19.]

Art. 2549. District may sue and be sued; judicial knowledge of.—Such district may, through its trustees, sue and be sued; and all courts in this state shall take judicial notice of any and all drainage districts established under this chapter. [Id. sec. 19.]

Art. 2550. Appeal to county court; procedure and issues on.—Any persons or corporation aggrieved by the final order of the commissioners' court, made in said proceedings and entered upon the record thereof, may appeal to county court of such county by filing written notice of said appeal stating fully the reasons for such appeal, and filing therewith an appeal bond with

two or more good sureties within ten days thereafter, to be approved by the county clerk, conditioned that he will prosecute such appeal to effect and will pay all costs that may be adjudged against him in said court. Such appeal shall be heard and determined upon the following issues, to-wit:

1. Whether said proposed drainage improvement district will be conducive to the public health, utility or benefit of said district.

2. Whether such proposed improvements are practicable.

3. The question of the sufficiency of damages, if any, allowed to such appellant by the commissioners' court. If more than one person appeal to the county court, all of said cases may be consolidated and tried together, and the right of each party separately determined; and the verdict and judgment therein shall be a final determination thereof, except as to the damages. All appeals in such cases shall have precedence in the right to trial, and shall be tried and determined as all other civil cases in said court, and may be tried in vacation or term time. In the trial of such cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the complainant. [Id. sec. 6.]

Art. 2551. **Election to be held in what case; if carried, improvements made and bonds issued.**—When it shall have been determined by the commissioners' court, after all appeals and protests have been finally disposed of, except as to damages, that such drainage districts shall be established and such proposed improvements made, the proposition shall be submitted to a vote of the property taxpayers who are qualified electors and actual residents within the limits of such proposed district; and, if such proposition shall receive a two-thirds vote in favor thereof, all such drainage improvements according to such proposition shall be made and the bonds thereof issued as authorized by this chapter, under the further direction of the county commissioners' court. [Id. sec. 7.]

Art. 2552. **Time and place of election, state election law applies.**—The commissioners' court shall determine the time and place of holding the elections; and the manner of holding the same shall be governed by the laws of the state regulating general or special elections. [Id. sec. 8.]

Art. 2553. **Proposition and ballots, requirements as to.**—The proposition to be submitted for the issuance of bonds for such improvements shall specify the purpose for which the same are to be issued, the amount thereof, the time payable and rate of interest. All ballots to be voted in said election shall have written or printed thereon the words, "For the drainage and bonds" and "Against the drainage and bonds." [Id. sec. 9.]

Art. 2554. **Bonds, period, terms and requirements as to.**—Any and all bonds issued under the provisions of this chapter shall not extend in point of time beyond forty years, shall not draw a rate of interest greater than five and one-half per cent, shall not be sold for less than par, and shall be registered by the comptroller and approved by the attorney general of the state of Texas. [Id. sec. 16.]

Art. 2555. **Expenses of jury of viewers, election, etc., how paid.**—All just sums, charges, costs and expenses of the jury of viewers, engineer, election and the proceedings generally, not otherwise herein provided for, shall be paid in the following manner: If the proposition be carried at the election, the same shall be paid out of the proceeds of the sale of the bonds so voted; if the proposition be lost at the election, then, by an order of the commissioners' court, the total amount of such costs and expenses shall be paid by the county out of the road and bridge fund, or, if there be no road and bridge fund, out of the general funds of said county. [Id. sec. 15.]

Art. 2556. **Tax, improvement, for interest and sinking fund.**—Whenever any such district drainage bonds shall have been issued, the commissioners' court shall levy and cause to be assessed and collected improvement taxes

upon all property, whether real, personal, mixed or otherwise, subject to taxation, within the limits of such district, and sufficient in amount to pay the interest on such bonds as it shall fall due, together with an additional amount to be annually placed in a sinking fund, sufficient to discharge and redeem said bonds at their maturity. [Id. sec. 10.]

Art. 2557. **Sinking fund, investment of; attorney general's approval.**—If advisable, the sinking fund shall, from time to time, be invested in such bonds of the state, counties, municipalities and districts of the state as shall be approved by the attorney general. [Id. sec. 17.]

Art. 2558. **Trustees, elected when; duties.**—Whenever a drainage district shall have been created and the bonds voted, under the provisions of this chapter, there may be elected by the resident electors of such district, a board of trustees, consisting of three qualified electors who are property owners therein; and such board shall thereafter be elected biennially so long as may be required, and shall serve without compensation. The duties of such board of trustees shall be to look after the drainage interests of such district generally, and to aid and to advise the commissioners' court in regard thereto. [Id. sec. 17.]

Art. 2559. **Trustees, commissioners may act as, if, etc.**—If the property holders, or a majority thereof, of any such district shall express their desire that the county commissioners of such county shall perform the duties and services above provided to be performed by the trustees, then the county commissioners' court of such county shall do and perform all the things in connection therewith necessary to be performed for the purpose or purposes of carrying into effect the object and intent of this chapter. [Id. sec. 18.]

Art. 2560. **Money and bonds in keeping of county treasurer.**—All moneys and bonds of such district or districts shall be in the keeping of, and handled by, the county treasurer of such county or counties wherein such district or districts shall be located. [Id. sec. 18.]

Art. 2561. **Specifications for bids; advertisement; contract.**—Whenever a drainage district shall have been created, and the bonds thereof voted for proposed drainage improvements therein as hereinbefore provided, the district trustees shall, if the same has not then already been done, cause to be prepared by a competent civil engineer a complete tabulated statement, schedule and specifications of the kind, character and amount of construction, excavation and other work to be done, and all such other matters as shall be necessary for full and intelligent estimates and bids thereon by contractors or others desiring to bid for the work and construction thereof; and, thereafter, the district trustees shall advertise for bids upon the whole of said work or any part thereof, and shall let contracts therefor in the manner required by general laws, subject, however, to the approval of the county judge of said county. [Id. sec. 18.]

Art. 2562. **Payments for construction, how made.**—No money shall be paid out of the county treasury for such construction work nor for any other purpose in connection therewith, except upon warrants drawn by the district trustees and countersigned by the county judge of such county. [Id. sec. 18.]

Art. 2563. **Eminent domain, right of conferred.**—The right of eminent domain is hereby conferred upon the drainage district, acting through its trustees or commissioners' court, as the case may be, for the purposes herein indicated; and condemnation and all proceedings in relation thereto shall be had and conducted as provided by the railroad laws of this state. [Id. sec. 19.]

Art. 2564. **Road, public, assessment against county for benefits to, etc.**—Whenever any such improvements shall drain a public road, or in any way improve, better or benefit the same, the jury of viewers shall estimate the value of such proposed improvements to such public road, in a stated sum or amount, and such sum or sums, when approved and allowed by the county

commissioners' court, shall be paid by the county, and such amount shall not be included in the estimated total cost of such work for which bonds are to be issued by such district. Any estimated sum properly chargeable against a public road shall be paid out of the road fund, or any other fund of such county available for road purposes. [Id. sec. 11.]

Art. 2565. **Obstructions in drains prohibited; provisions as to removing.**—It shall be the duty of every person or corporation whose lands are benefited and through whose lands any such drainage ditch, canal or improvements are constructed, to keep same reasonably free upon such lands, and are hereby strictly prohibited from, in any manner, obstructing the same or causing the obstructing of the same, so as to prevent free flow of waters therein. For the purpose of preventing and removing obstructions therein, a special fund may be created by said district, to be expended for such purposes under the direction of the trustees of said district, or the county commissioners' court; and such fund may be created in such manner as the residents of said districts may lawfully direct. [Id. sec. 13.]

Art. 2566. **Where course of improvements extend into, etc., two or more counties, procedure, rights, etc.**—Whenever the course or route of such drainage improvements properly extend into or through two or more counties, the commissioners' courts of the several counties shall act in harmony, each furnishing the other with copies of reports, petitions, estimates and other data, and may arrange for a joint jury of view, survey, etc., but in all such cases the final consummation of the proposition shall be determined by the respective orders, proceedings and results of each county interested; provided, that whenever the natural and most practical course for a final outlet and discharge of any such drainage district lies within or passes through one or more adjoining counties, the commissioners' court of the county or counties making such drainage improvements shall have the power, and they are hereby authorized to purchase or condemn the right of drainage way into or through such adjoining county or counties by the usual mode of condemnation proceedings authorized by the general laws of the state, and shall construct and complete the drainage outlet and discharge contemplated by this chapter; provided, however, that the lands and territories in such adjoining county or counties and adjacent to such drainage improvements so constructed and made by the initial counties shall never be made to artificially drain thereinto, unless they shall pay to said initial county its just and rightful proposition [proportion] of the cost and maintenance thereof. [Id. sec. 12.]

CHAPTER FOUR.

DRAINAGE BY DISTRICTS, ONE OR MORE IN EACH COUNTY—BONDS.

Article.	Article.
Drainage districts established, how; scope; may make improvements; bonds for.....	Record of bonds, before issuance; open to inspection.....
2567	2599
Petition for drainage district, requisites; set for hearing; notice; fees.....	Sale of bonds, and disposition of proceeds.....
2568	2600
Hearing of petition; contest; exclusive and final jurisdiction of commissioners court over subject matter, except, etc.....	Bond of county judge before sale; compensation.....
2569	2601
Finding of commissioners' court, and record of same.....	Construction and maintenance fund; expenses paid out of; unless proposition defeated; deposit to meet expense in such case.....
2570	2602
If finding for petitioners, civil engineer appointed; assistants; pay.....	Tax for interest and sinking fund; investment of sinking fund; powers of assessor and collector, lien, etc.....
2571	2603
Bond of civil engineer.....	Additional tax books; assessment of property in drainage district; compensation; penalty forfeiture.....
2572	2604
Survey and location of canals, drains, etc., designation of streams, etc.; estimates; report to commissioners.....	Collector charged with assessment rolls; compensation; bond required; penalty for failure to give.....
2573	2605
Canals, drains, etc., how located.....	Collector to report delinquents to commissioners' court, duty of court.....
2574	2606
Report to be accompanied by map, showing what.....	Treasurer to keep accounts with drainage district, rendered when; payments on vouchers.....
2575	2607
Hearing before county commissioners; notice; objections.....	Treasurer's bond; compensation.....
2576	2608
Action of court on report.....	Surety company bonds allowed.....
2577	2609
Election to be ordered after approval of engineer's report.....	Contract let to lowest bidder, etc., how, etc.; proviso.....
2578	2610
Notices of election; requisites.....	Bids how presented, etc.....
2579	2611
Regulations for holding election.....	Contracts, how made.....
2580	2612
Same subject.....	Bond of contractor.....
2581	2613
Returns; canvass; declaration of result.....	Engineer to furnish profile, etc., to contractor, supervise work, etc.; report.....
2582	2614
Order establishing drainage district.....	Inspection of work by drainage commissioners, and payment for same.....
2583	2615
Drainage districts may sue and be sued; judicial knowledge of.....	Payment as work progresses.....
2584	2616
Drainage commissioners appointed; qualifications; pay; term; elected when.....	Bridges and culverts across, etc., railways, etc.....
2585	2617
Oath of drainage commissioners.....	Bridges and culverts over canals, drains, etc.....
2586	2618
Bond of drainage commissioners.....	Canals, drains, etc., public property of district, rights of land owners, etc.....
2587	2619
Organization of drainage commissioners, quorum, etc.....	No drainage into canal, etc., without acquiring right; how, etc.....
2588	2620
Drainage commissioners may employ counsel, etc.....	Permitted on condition of enlargement, when necessary.....
2589	2621
Right of eminent domain.....	Enlargement of canals, drains, etc., how done, etc.....
2590	2622
May acquire right of way how, etc.....	Drainage commissioners to keep canals, drains, etc., in repair; authority, etc.....
2591	2623
Civil engineer; salary; term; to make map and profiles, requisites.....	Annual report of drainage commissioners.....
2592	2624
Further requisites of maps and profiles.....	County judge, etc., not to be interested in contract.....
2593	2625
No trespass to go upon land for examination and location, etc.....	
2594	
Drainage bonds; order for issuance; modifications.....	
2595	
Bonds, requirements as to validating provisions.....	
2596	
Submission to attorney general; data; examination; certificate.....	
2597	
Registration of bonds, etc.; certificate preserved of record; effect as evidence, etc.....	
2598	

Article 2567. **Drainage districts established, how; scope; may make improvements; bonds for.**—The county commissioners' courts of the several counties of this state may hereafter establish one or more drainage districts in their respective counties in the manner hereinafter provided, and may or may not include, within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof; but no land shall at the same time be included within the boundaries of more than one drainage district created under this act. Such drainage districts, when so established, may make drainage improvements therein and issue bonds in payment therefor as hereinafter provided in this chapter. [Acts 1907, p. 78, sec. 1.]

Art. 2568. **Petition for drainage district, requisites; set for hearing; notice, fees.**—Upon the presentation to the county commissioners' court of any county in this state of a petition, accompanied by the deposit provided for in article 2602, signed by twenty-five of the freehold resident taxpayers, or, in the event there are less than seventy-five freehold resident citizen taxpayers in the proposed district, then by one-third of such freehold resident citizen taxpayers of any proposed drainage district, whose lands may be affected thereby,

praying for the establishing of a drainage district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such drainage district, which name shall include the name of the county, the said commissioners' court shall, at the same session when said petition is presented, set said petition down for hearing at some regular or special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk of said court to give notice of the date and place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door of said county, and four of which shall be within the limits of said proposed drainage district. The said clerk shall receive as compensation for such service one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. Such notices shall be posted for twenty days prior to the date of said public hearing. Provided, however, that in all cases wherein drainage districts have heretofore been established, or wherein a hearing has been heretofore had on the petition, and action thereon has been taken by the county commissioners' court, or wherein a public hearing is now pending upon a petition for a drainage district, and the notices thereof and therefor have been so posted for twenty days, in either or all of such cases, the notices for such public hearing as well as the notices for the hearing upon the engineer's report provided for in article 2576, shall be and they are hereby held, deemed and declared to be, and to have been, due and legal and valid notices of such public hearing or hearings under the full meaning, intent and purpose of this law. [Acts 1907, p. 79. Acts 1909, p. 24, sec. 2.]

Art. 2569. Hearing of petition; contest; exclusive and final jurisdiction of commissioners' court over subject matter, except, etc.—Upon the day set by said county commissioners' court for the hearing of said petition, any person whose land would be affected by the creation of said district may appear before said court and contest the creation of such district, or contend for the creation of said district, and may offer testimony to show that said district is, or is not, necessary, and would, or would not, be of any public utility, either sanitary, agricultural or otherwise, and that the creation of such drainage district would or would not be feasible or practicable. Said county commissioners' court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district, and all matters pertaining to the same; and said court shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing on any matter connected therewith from day to day; and all judgments rendered by said court in relation thereto shall be final, except as hereinafter otherwise provided. [Acts 1907, p. 79, sec. 3.]

Art. 2570. Finding of commissioners' court, and record of same.—If, at the hearing of said petition, it shall appear to the court that the drainage of such district is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health, or would be a public benefit or a public utility, then the court shall so find, and cause its finding to be entered of record. But if the court should find that the drainage of such district is not feasible and is not practicable, or that the drainage of such district is not needed, and that it would not be conducive to health or a public benefit, or would not be a public utility, then the court shall enter such finding of record and dismiss the petition at the cost of the petitioners. [Id. sec. 4.]

Art. 2571. If finding for petitioners, civil engineer appointed; assistants; pay.—After the hearing of the petition as provided for in articles 2569 and

2570, if the court should find in favor of the petitioners, for the establishment of a district according to the boundaries as set out in said petition, or as modified by said court, then the court shall appoint a competent civil engineer, who shall receive a sum of not more than ten dollars per day for his services for the time he is actually engaged in the work for which he is appointed; and said engineer is authorized to employ two assistants who shall each receive the sum of not more than two dollars per day for the time they are actually engaged in the work. [Id. sec. 5.]

Art. 2572. **Bond of civil engineer.**—Before entering upon his official duties, the civil engineer shall enter into a bond in the sum of five hundred dollars, with two or more sureties, to be approved by the commissioners' court and payable to the county judge, for the use and benefit of the drainage district, conditioned on the faithful discharge of his official duties under the provisions of this chapter. [Id. sec. 6.]

Art. 2573. **Survey and location of canals, drains, etc.; designation of streams, etc.; estimates; report to commissioners.**—The civil engineer shall, as soon as practicable, or within such time as may be directed by the county commissioners' court, go upon the premises and land embraced within the district and examine the land intended to be drained and protected by levees, and shall locate the necessary canals, drains and ditches, laterals and levees, and make an estimate of the probable cost of making and completing each of them, and shall also designate the stream or streams and bayous necessary to be cleaned, deepened or straightened, and estimate the cost of each, and shall also estimate the probable cost of maintaining same per year, and shall at once make a detailed report of his work to the court. [Id. sec. 7.]

Art. 2574. **Canals, drains, etc.; how located.**—In locating the canals, drains and ditches, the engineer shall, in so far as the same may be practicable, follow the lines of the original surveys, or of the sections where the land has been sectionized. [Id. sec. 8.]

Art. 2575. **Report to be accompanied by map, showing what.**—Such report of the engineer shall be accompanied by a map showing the initial or beginning point, as well as the outlets, of all canals, drains, ditches and laterals, and shall show the length, width, depth and slopes of the banks of the cut or excavation, and the estimated number of cubic yards of earth to be removed from each, and shall show the location and size of all levees and the estimated number of cubic yards of earth necessary to construct the same; a copy of the official land office map of the county, with the boundaries of the drainage district and the beginning points and outlets of all canals, drains, ditches and laterals, and other data required by this article shown thereon, shall be deemed a sufficient compliance with this article. [Id. sec. 9.]

Art. 2576.—**Hearing before county commissioners; notice; objections.**—When such report of the engineer shall have been filed with the clerk of the county commissioners' court, it shall be the duty of said court at its next regular or special session to set such report down for a hearing at some subsequent regular or special session, not less than twenty nor more than thirty days from the date of such sitting, and to instruct the clerk of said court to give notice of said hearing by posting notices in the same manner and for the same compensation as provided for in article 2568 of this act in regard to the original notices of the filing of the petition. At the hearing on said engineer's report, any freehold taxpayer of said district whose lands may be affected by said drainage improvements, whether he be a resident of such district or not, may appear and object to any and all of said canals, drains, ditches and levees, for the reason that they are not located at the proper places, or that they are not sufficient in number or capacity to properly drain said territory. [Id. sec. 10.]

Art. 2577. Action of court on report.—If there should be no objection to said report, or if there should be objection thereto, and the court should find that the objections are not well taken, the report shall be approved, and the fact of such approval entered of record on the minutes of said court; but the commissioners' court shall not be confined to the number of drains, ditches, canals or levees, or to the initial point or outlets of same, as located and shown by said report of the engineer, and may change the location of any of said improvements, or may add to the number of same or reduce the number of same, and order the engineer to locate any additional canals, drains, ditches or levees, which levees may be constructed for the purpose of conducting waters from the lands of said district, or to prevent the overflow of waters from streams or otherwise onto the lands of said district proposed to be drained, or otherwise in aid of said purpose, as directed by the court; and the commissioners' court, if it deem it necessary, may refer the entire report back to the engineer for a compliance with the orders of the court and require a further report; provided, that notices shall be given as provided in article 2576, and shall state that the public hearing shall be upon such report of the engineer, and also upon any changes or modifications that may be made by the county commissioners' court. Provided, further, that in all such public hearings heretofore had under sections 10 and 11 of the Acts of the Thirtieth Legislature of Texas, chapter 40, approved March 23, 1907, wherein twenty days notice or more was given, such notices and hearings shall be, and the same are hereby held, deemed and declared to be, and to have been legal, regular and valid notices and hearings in all respects under the full intent, meaning and purpose of this law. [Acts 1907, p. 81. Acts 1909, p. 24, sec. 11.]

Art. 2578. Election to be ordered after approval of engineer's report.—After the approval of the report of the engineer as presented, or as modified by the county commissioners' court, as provided for in the preceding article, the county commissioners' court shall order an election to be held within such proposed drainage district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the drainage district and the issuance of bonds and levy of tax in payment therefor;" "Against the drainage district and the issuance of bonds and levy of tax in payment therefor." [Id. sec. 12.]

Art. 2579. Notices of election; requisites.—Notice of such election, reciting the establishment of the drainage district, stating the amount of bonds, which shall not exceed the engineer's estimate and the cost of any additional work which may become necessary by any change or modification made by the commissioners' court, as provided for in article 2577, stating the time and place or places of holding the election, shall be given by the county clerk by posting notices thereof in four public places in such proposed drainage district, and one at the court house door of the county in which such district is situated. Such notices shall be posted for twenty days previous to the date of the election, and shall contain the proposition to be voted upon as set forth in article 2578, and shall also specify the purposes for which said bonds are to be issued; provided, that the said notices of election in all drainage districts wherein such elections have heretofore been held or are now pending, and wherein twenty days notice was had, shall be, and the same are hereby, held, deemed and declared to be and to have been legal and valid notices of such elections, under the full meaning, intent and purpose of this law. [Id. sec. 13.]

Art. 2580. Regulations for holding election.—The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county

commissioners' court at such election. The county commissioners' court shall name a polling place for such election at each voting precinct or part of a precinct embraced in said drainage district, each of which shall be in the proposed drainage district, and shall also select and appoint the judges and other necessary officers of the election; and shall provide one and a half times as many ballots for said election as there are qualified resident taxpaying voters within such drainage district, as shown by the tax rolls of said county. Said ballot shall have printed thereon the words, and no others: "For the drainage district and issuance of bonds and levy of tax in payment therefor;" "Against the drainage district and issuance of bonds and levy of tax in payment therefor." [Acts 1907, p. 81, sec. 14.]

Art. 2581. **Same subject.**—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of county, and that I am a resident property taxpayer of the proposed drainage district voted on at this election, and I have not voted before at this election." [Id. sec. 15.]

Art. 2582. **Returns; canvass; declaration of result.**—Immediately after the election, the presiding judge at each polling place shall make return of the result in the same manner as provided for in general elections for state and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the commissioners' court, at its next regular session or special session called for the purpose of canvassing the vote, and the county commissioners' court shall at such session canvass the vote. [Acts 1907, p. 82. Acts 1909, p. 25, sec. 16.]

Art. 2583. **Order establishing drainage district.**—If it be found that two-thirds majority of the resident property taxpayers voting thereon shall have been cast in favor of the drainage district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said drainage district, the levy of tax, issuance of bonds, and shall enter the same in the minutes of the court substantially as follows:

"In the matter of the petition of and others, praying for the establishment of a drainage district in said petition, described and designated as County Drainage District No. be it known that at an election called for that purpose in said district held on the day of, A. D. 19.., a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said drainage district, and the issuance of bonds and the levy of a tax, now, therefore, it is considered and ordered by the court that said drainage district be, and the same is, hereby established by the name of County Drainage District No. ..., within the following metes and bounds;" which field-notes shall be copied into the record.

All drainage districts hereafter created shall bear the name of the county in which they may be located, as a part of their names, and shall be numbered consecutively as created and established by order of the commissioners' court; provided, however, that all districts heretofore established and otherwise named, but which have not, so far, issued bonds, may by an order of the county commissioners' court of such county, have such district or districts renamed and numbered in accordance with the requirements of this chapter. [Id. sec. 16.]

Art. 2584. **Drainage districts may sue and be sued; judicial knowledge of.**—All drainage districts established under this chapter may, by and through the drainage commissioners, sue and be sued in all courts of this state, in

the name of such drainage district; and all courts of this state shall take judicial notice of the establishment of all such districts. [Acts 1907, p. 91, sec. 53.]

Art. 2585. Drainage commissioners appointed; qualifications; pay; term; elected when.—After the establishment of any drainage district as herein provided, the commissioners' court shall appoint three drainage commissioners, all of whom shall be residents of the proposed drainage district, who shall be freehold taxpayers and legal voters of the county, and shall have resided in such county for at least three years, whose duty shall be as herein-after provided, and who shall each receive for their services a sum of not more than two dollars and fifty cents per day for the time actually engaged in the work of said district; provided, the compensation, if any, shall have been definitely fixed in the order of the court; and, before any amount shall be paid said commissioners, or either of them, they shall make a detailed report to the commissioners' court of the time actually consumed in the work for said district, and of the work done; and such report shall be audited and approved by the commissioners' court. Said drainage commissioners shall hold office for the term of two years and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners for malfeasance or nonfeasance in office. Upon expiration of the term of office of said drainage commissioners, or in case of the resignation of any such commissioners, the commissioners' court shall appoint their successors by a majority vote; provided, that after the election establishing a drainage district, if a majority of the real property taxpayers of such district residing in such county present a petition to the county commissioners' court, praying for an election in said district for the purpose of electing three drainage commissioners therefor, the county commissioners' court shall immediately order an election to be held in said district for said purpose at the earliest legal time; and an election shall be held and the returns thereof made as hereinbefore provided for other elections, and the same qualifications hereinbefore provided for voting at other elections shall apply in said election. The commissioners' court shall canvass said returns and declare the result at their next regular or special session; and the three persons receiving the highest number of votes shall be declared elected. In the event the third highest vote be tied, the commissioners' court shall elect the third drainage commissioner from among those receiving the third highest vote; provided, further, that in districts wherein drainage commissioners have been heretofore appointed, whenever a majority of the real property tax-paying voters of such district shall file a petition with the county clerk of the county in which such district is situated, requesting an election for drainage commissioners, the commissioners' court shall, at its next session, regular or special, order an election to be held in said district for said purpose in accordance with the provisions of this chapter. Such commissioners so elected when duly qualified as required by this chapter shall be the legal and rightful drainage commissioners for such district within the full meaning, intent and purpose of this law. All drainage district commissioners elected as herein provided shall hold their offices until the next regular election for state and county officers, and shall then and thereafter be elected every two years at such general election. [Acts 1907, p. 82. Acts 1909, p. 26, sec. 17.]

Art. 2586. Oath of drainage commissioners.—Before entering upon their duties, all drainage commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court by which they are appointed, whenever requested to do so, which oath shall be

filed by the clerk of the commissioners' court and preserved as a part of the records of said drainage district. [Acts 1907, p. 82, sec. 18.]

Art. 2587. Bond of drainage commissioners.—Before entering upon their duties, each of the drainage commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars, payable to the county judge for the use and benefit of said drainage district, conditioned upon the faithful performance of their duties. [Id. sec. 18.]

Art. 2588. Organization of drainage commissioners; quorum, etc.—The drainage commissioners shall organize by electing one of their number chairman and one secretary, and two of whom shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district, except the letting of contracts and the drawing of warrants on the treasury, which shall require the concurrence of all of said commissioners. [Id. sec. 19.]

Art. 2589. Drainage commissioners may employ counsel, etc.—The drainage commissioners are hereby empowered and authorized to employ counsel to represent such district in the preparation of any contract or the conducting of any proceedings, in or out of court, and to be the legal adviser of such drainage commissioners, upon such terms and for such fees as may be agreed upon by them and approved by the county judge, and such commissioners shall draw a warrant or warrants in payment for such legal services. [Id. sec. 51.]

Art. 2590. Right of eminent domain.—The right of eminent domain is hereby conferred upon all drainage districts, established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for making the canals, drains, ditches and levees, and all improvements necessary to the drainage of the district. All such condemnation proceedings shall be instituted under the direction of the drainage commissioners and in the name of the drainage district, and the assessing of damages shall be in conformity to the statutes of the state of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the drainage commissioners in prosecuting the work of drainage in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town. [Id. sec. 36.]

Art. 2591. May acquire right of way, how, etc.—The drainage commissioners of any district are hereby empowered to acquire the necessary right of way for all canals, drains, ditches and levees, and other necessary improvements contemplated by this chapter by gift, grant, purchase or condemnation proceedings, and, if acquired by purchase, such purchase shall be subject to approval by the county commissioners' court. [Id. sec. 37.]

Art. 2592. Civil engineer; salary; term; to make map and profiles; requisites.—After the establishment of any such district, the drainage commissioners shall employ a competent civil engineer upon a salary not to exceed ten dollars per day for the time actually engaged in work, and whose term of office shall be at the will of said drainage commissioners, which civil engineer shall proceed to make a map of such district showing the boundary lines thereof, with the original surveys therein, and also to make maps and profiles of the several canals, drains, ditches and levees located in such district; but a copy of the land office map of the county, as it applies to such district, showing the name and number of each survey, and showing the area or number of acres contained in such district, shall be a sufficient

compliance with such order in so far as making a map of the district is required; and any recognized map of any city or town which may be embraced within the boundaries of said district shall be sufficient as to such city or town; provided, however, that where boundary lines of such drainage district, or any of them, cross an original survey, the map shall show how many acres of such original survey are included within such drainage district. [Id. sec. 20.]

Art. 2593. Further requisites of maps and profiles.—The map and profiles of each drain, ditch and levee required by the provisions of this act to be made, shall show the relation that each canal, drain, ditch or levee bears to each tract of land through which it passes and the shape into which it divides each tract; and, where the canal, drain, ditch or levee cuts off any tract less than twenty acres of land, the map shall show the number of acres so divided therefrom and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal, ditch, drain or levee. And such profile map shall also show the number of cubic yards necessary to be excavated in order to make each canal, drain or ditch, and to build any levee located in such district, and give the estimated cost of each; and, when said map, profiles and estimates, shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the clerk of said county commissioners' court. [Id. sec. 21.]

Art. 2594. No trespass to go upon land for examination and location, etc.—The drainage commissioners of any district and the civil engineer from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, locating the canals, drains, ditches and levees, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. [Id. sec. 40.]

Art. 2595. Drainage bonds; order for issuance; modifications.—After the establishment of any such drainage district, and after making and filing of such map, profiles and estimates as provided for in article 2593, the commissioners' court shall make an order directing the issuance of drainage bonds for such district, sufficient in amount to pay for such proposed improvements, together with all necessary, actual and incidental expenses connected therewith; provided, however, that said bonds shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof, made for state and county taxation, nor exceeding the amount specified in said order and notice of election. Provided, however, that, if after an election has been held establishing the district, the tax authorized or levied, and bonds authorized to be issued, or have been issued, as provided in this chapter, the commissioners' court shall consider it necessary to make any modification in the said drainage district, or in any of the improvements therein, and issue additional bonds, upon the report of the engineer appointed by the drainage commissioners, as authorized by this chapter, or upon the report of said drainage commissioners, or upon its own motion, shall have the right to order a hearing for said purposes, or either or any of them, and notice thereof shall be given as for original hearings, as in this chapter provided; and, upon the hearing of said matters, or any or either of them, the said commissioners' court shall make such orders as it deems proper in the premises; and, if such drainage district is modified or changed, or if the improvements therein proposed are changed or altered, and, if additional bonds are considered necessary, the said commissioners' court shall so find, and such findings entered of record, and a notice shall be given and an election for such changes in said district and improvements and the issuance of said bonds shall be held within such time and the returns of

elections made as in this chapter provided for in case of an original election, and, if two-thirds majority of the property taxpaying voters of the district voting thereon in favor of such change in such district, or improvements and issuance of bonds, the court shall enter the same of record and order such bonds to be issued as in the manner otherwise provided in this chapter. [Acts 1907, p. 83. Acts 1909, p. 27, sec. 22.]

Art. 2596. Bonds, requirements as to validating provisions.—All bonds issued under the provisions of this chapter shall be issued in the name of the drainage district, signed by the county judge and attested by the clerk of the county court, with the seal of the county commissioners' court affixed thereto; and such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars each, and such bonds shall bear interest at the rate not to exceed five per cent per annum, payable annually or semi-annually. Such bonds shall, by their terms, provide the time, place or places, manner and conditions of their payment and the interest thereon, as may be determined and ordered by the county commissioners' court, but none of such bonds shall be made payable more than forty years after the date thereof. Provided, however, in all drainage districts heretofore created and which have issued and registered bonds with the comptroller, under chapter 40 of the Acts of the Thirtieth Legislature of Texas, approved March 23, 1907, all proceedings had and done in connection with, and leading up to, the creation of such districts and the issuance of such bonds so registered, except such bonds that were issued and registered with the comptroller under chapter 40 of the Acts of the Thirtieth Legislature of Texas, in excess of the estimate before the commissioners' court, when the election was ordered and held, be and the same are hereby held, deemed and declared to be, and to have been, regular, valid and legal proceedings under the full intent, purpose and meaning of this law; and all such bonds so issued thereunder are hereby held, deemed and declared to be valid and binding obligations upon such drainage districts. [Acts 1907, p. 84. Id. sec. 23.]

Art. 2597. Submission to attorney general; data; examination; certificate.—Any drainage district in the state of Texas desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, forward to the attorney general a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such drainage district as such including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the attorney general may require, whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds; and if, as the result of such examination, the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such drainage district by which they are issued, he shall so officially certify. [Acts 1907, p. 84, sec. 24.]

Art. 2598. Registration of bonds, etc., certificate preserved of record; effect as evidence, etc.—When said bonds have been examined by the attorney general and his certificate attached thereto, they shall be registered by the state comptroller in a book to be kept for that purpose; and the certificate of the attorney general to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question,

prima facie valid and binding obligations. And in every action brought to enforce collection of said bonds, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. [Id. sec. 25.]

Art. 2599. Record of bonds before issuance; open to inspection.—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate per cent assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment. And said book shall, at all times, be open to the inspection of all parties interested in said district either as taxpayers or bondholders, and upon the payment of any bond an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the drainage district the same fees as provided by law for other like records. [Id. sec. 26.]

Art. 2600. Sale of bonds, and disposition of proceeds.—When such bonds have been registered, as provided for in the preceding section [article] of this chapter, the county judge shall, with the additional assistance that the county commissioners' court may direct and authorize, offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid by the county judge to the county treasurer, and shall by him be placed to the credit of such drainage district. [Id. sec. 27.]

Art. 2601. Bond of county judge before sale; compensation.—Before the county judge shall be authorized to sell any of the drainage bonds, he shall execute a good and sufficient bond, payable to the commissioners of such drainage district, to be approved by the county commissioners' court of said county, for an amount not less than the amount of bonds issued, conditioned upon the faithful discharge of his duties, which bond shall be subject to the approval of the said drainage commissioners; and the county judge shall be allowed one per cent of the amount received on the sale of any bonds sold by him in full payment for his services in that behalf. [Id. sec. 28.]

Art. 2602. Construction and maintenance fund; expenses paid out of, unless proposition defeated; deposit to meet expense in such case.—All expenses, debts and obligations, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any drainage district organized under the provisions of this chapter, shall be paid out of the construction and maintenance fund of such drainage district, which fund shall consist of all money received by said district from whatever source, except such portion of the tax collection necessary to be applied to the sinking fund and payment of interest on the drainage bonds; provided, that should the proposition of the creation of such drainage district and the issuance of bonds be defeated at the election called to vote upon the same, then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a drainage district is filed with the county commissioners' court, it shall be accompanied by two hundred dollars in cash, which shall be deposited with the

clerk of said commissioners' court, and by him held until after the result of the election for the creation of said drainage district has been declared and entered of record by the commissioners' court, as hereinbefore provided, and, should the result of said election be in favor of the establishment of said district, then the said two hundred dollars shall be by said clerk returned to the signers of said original petition or their agent or attorney; but should the result of said election be against the establishment of said drainage district, then the said clerk shall pay out of the said two hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed drainage district up to and including the said election, and shall return the balance, if any, of said two hundred dollars to the signers of said original petition or their agent or attorney. [Acts 1907, p. 85. Acts 1909, p. 28, sec. 29.]

Art. 2603. Tax for interest and sinking fund; investment of sinking fund; powers of assessor and collector, lien, etc.—Whenever any such district drainage bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected taxes upon all property within said drainage district, whether real, personal, mixed or otherwise, and sufficient in amount annually to pay the interest on such bonds, as it shall fall due, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity. If advisable, the sinking fund shall, from time to time, be invested in such county, municipal, district or other bonds as shall be approved by the attorney general of the state for the benefit of such drainage district. Provided that, in the assessment and collection of the taxes authorized by this chapter, and in all matters pertaining thereto or connected therewith, said assessor and collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this state for the assessment and collection of taxes for state and county purposes, unless otherwise provided for in this chapter. The taxes levied or authorized to be levied by this chapter shall be a lien upon the property for which said taxes are assessed; and it shall be the duty of the commissioners' court, and the said court shall have authority, to fix and determine when said taxes shall mature; and, upon the failure to pay said taxes when due, the penalty provided by the laws of Texas for the failure to pay state and county taxes at maturity shall in every respect apply to taxes herein authorized to be assessed and levied. [Acts 1907, p. 86. Id. sec. 30.]

Art. 2604. Additional tax books; assessment of property in drainage district; compensation; penalty, forfeiture.—The county commissioners' court shall provide all necessary additional books for the uses of the assessor and collector of taxes and the county clerk for such drainage district, and charge the cost of same to the said drainage district. It shall be the duty of the county tax assessor, when ordered to do so by the county commissioners' court, to assess all property within such drainage districts and list the same for taxation in the books or rolls furnished him by said commissioners' court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval; and, if the said commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said drainage district. The tax assessor shall receive for said services such compensation as the said county commissioners' court shall deem proper to compensate him for the amount of work done; provided, that said county assessor shall in no event be allowed less than what he is now allowed by law for the like services. Should the tax assessor fail or refuse to comply

with the orders of the commissioners' court requiring him to assess and list for taxation all the property in such drainage districts as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. [Acts 1907, p. 86. sec. 31.]

Art. 2605. Collector charged with assessment rolls; compensation; bond required; penalty for failure to give.—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the drainage district, and he shall be allowed such compensation for the collection of said taxes as he is now allowed for the collection of other taxes. The county commissioners' court shall require the tax collector of the county to give an additional bond or security, in such a sum as they deem proper and safe, to secure the collection of said taxes; and, should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Id. sec. 32.]

Art. 2606. Collector to report delinquents to commissioners' court, duty of court.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the drainage tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property, in the same manner as is now provided for the sale of property for the collection of state and county taxes; and, at the sale of any property for any delinquent drainage tax, the drainage commissioners may become the purchasers of the same for the benefit of the drainage district. [Id. sec. 33.]

Art. 2607. Treasurer to keep accounts with drainage district, rendered when; payments on vouchers.—It shall be the duty of the county treasurer to open an account with the drainage district and to keep an accurate account of all moneys received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the drainage commissioners and countersigned by the county judge; and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said drainage commissioners or the county commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [Id. sec. 34.]

Art. 2608. Treasurer's bond; compensation.—The county treasurer shall be the treasurer for such district, and shall execute a good and sufficient bond, payable to the drainage commissioners of such district in a sum equal to the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer of such district, which bond shall be approved by the said drainage commissioners; and the treasurer shall be allowed as compensation for his services as treasurer one-half of one per cent upon all moneys by him so paid out upon orders of such districts. [Acts 1907, p. 87. Acts 1909, p. 29, sec. 35.]

Art. 2609. Surety company bonds allowed.—The county judge, county treasurer, contractor and all bonded officers of such district or districts may be officially bonded in some surety company approved by said drainage commissioners. [Acts 1907, p. 87. Id. sec. 35.]

Art. 2610. Contract let to lowest bidder, etc., how, etc.; proviso.—Contracts for making and constructing canals, drains, ditches and levees, straightening and cleaning water courses, and other necessary work in connection with any drainage district, shall be let by the drainage commissioners to the lowest bidder, after giving notice by advertising the same in one or more newspapers

of general circulation in the state of Texas, once a week for four consecutive weeks, and by posting notices for at least twenty days, in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said drainage district, and the contract for each drain, canal, ditch or levee, may be let separately or all together; provided, that all the improvements included in the report of the drainage engineer and adopted by the county commissioners' court, as provided for in articles 2592 and 2593, shall be constructed. [Id. sec. 41.]

Art. 2611. Bids how presented, etc.—Any person or corporation or firm desiring to bid on the construction of any work advertised for as provided for in the preceding article shall, upon application to the drainage commissioner, be furnished with a copy of the engineer's report showing the location, profiles and estimates of such work as provided for in this act, and all bids or offers to do any of such work shall be in writing and sealed and delivered to the chairman of the drainage commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected if deemed too high. [Acts 1907, p. 88, sec. 42.]

Art. 2612. Contracts how made.—All contracts made by the drainage commissioners shall be reduced to writing and signed by the contractors and drainage commissioners and approved by the county judge, and a copy of same filed with the county clerk for reference. [Id. sec. 43.]

Art. 2613. Bond of contractor.—The party, firm or corporation to whom any such contract is let shall give bond, payable to the drainage commissioners of said district, in the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contracts, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such drainage commissioners and the county judge. [Acts 1907, p. 88. Acts 1909, p. 30, sec. 44.]

Art. 2614. Engineer to furnish profile, etc., to contractor, supervise work, etc.; report.—The drainage engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the depth, width and slope of all canals, drains, ditches and levees, and the number of cubic yards to be removed and other work to be done by the contractor; and such work shall be done by the contractor under the supervision of the drainage engineer, who shall indicate to the said contractor the points at which the laterals shall intersect the main canal; and no earth shall be deposited by the contractor so as to interfere with the construction of such laterals or other contemplated work in said drainage district, or the building of bridges or other work on the public roads; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the drainage commissioners, showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been so complied with. [Acts 1907, p. 89, sec. 45.]

Art. 2615. Inspection of work by drainage commissioners, and payment for same.—The drainage commissioners shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee; which warrant shall, when approved by the county judge, be paid out of the drainage fund of such district. [Id. sec. 47.]

Art. 2616. Payment as work progresses.—If the drainage commissioners shall deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate seventy-five per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certified report by the engineer, and no payment to be made for work not completed. [Id. sec. 48.]

Art. 2617. Bridges and culverts across, etc., railways, etc.—The drainage commissioners are hereby authorized and empowered to make all necessary bridges and culverts across or under any railroad track and right of way of such railway, to enable them to construct and maintain any canal, drain or ditch necessary to be constructed as a part of the drainage system of such district, such bridges or culverts to be paid for by the drainage district; provided, however, that notice shall first be given by such drainage commissioners to the railway authorities authorized to build or construct bridges and culverts; and the railway company shall be allowed thirty days in which to build such bridges or culverts at their own expense, if it should so desire, according to its own plans; provided, such bridge or culvert shall be constructed as to not interfere with the free and unobstructed flow of the water passing through the canal or drain, and shall be placed at such points as are designated by the drainage engineer. [Id. sec. 46.]

Art. 2618. Bridges and culverts over canals, drains, etc.—The drainage commissioners are hereby authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals and levees made and constructed under the provisions of this chapter whenever the same crosses a county or a public road, and shall pay for the same out of the drainage fund; and they are hereby authorized to draw warrants on the county treasurer therefor, which warrants must be approved by the county judge. [Id. sec. 46a.]

Art. 2619. Canals, drains, etc., public property of district, rights of land owners, etc.—All canals, drains, ditches and levees made and water courses cleaned or constructed by any district shall be the public property of such district; and every person owning land within said district shall have the right to drain into one or more of such public drains, and for such purpose shall be permitted at his own expense to make drains according to the natural slope of the land through such other lands as intervene between his land and the nearest public drain or water course, or along a public highway; provided, that no such drain through another's property, or along a public highway, shall be made until authorized by the drainage commissioners, who shall, after notice by the party desiring to make such drain, go upon the premises and act as a jury of view and determine the place where such drain may be made. [Id. sec. 38.]

Art. 2620. No drainage into canal, etc., without acquiring right; how, etc.—Whenever a drainage district has been established under the provisions of this act, no private individual, company or corporation or adjoining drainage district, shall have the right to artificially drain adjacent lands located outside of such drainage district into any canals, drains or ditches, until they have acquired the legal right to do so as provided in this chapter. Whenever any private individual, company or corporation, or adjoining drainage district shall desire to secure an outlet for drainage by making a connection with any canal, drain or ditch already constructed by any established drainage district, he, they or it, shall make written application to the drainage commissioners of such established district for permission to make such connection; which application shall show the width, depth and length of such connecting drains or ditches; and, when such application has been filed with the drainage com-

missioners of the established district, the civil engineer shall make an estimate of the quantity of water which such connecting drains or ditches would probably empty into such established canals or drains, and whether such established drains or canals have sufficient capacity to carry such excess of water without risk or damage thereto or the adjacent territory. And the engineer shall make a report showing the result of his examination and estimate; and the drainage commissioners of the established district may, if they deem advisable, authorize such connection, on condition, however, that such private individual, company or corporation or adjoining drainage district shall first pay into the county treasury for the benefit of the construction and maintenance fund of such established drainage district, a sum of money which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet, that the water to be emptied therein by the connecting drain or canal bears to the water then tributary to and being carried by the original canal or drain, as estimated by the drainage engineer, unless the drainage commissioners for the established district shall otherwise agree with such parties making application for such connection. [Id. sec. 49.]

Art. 2621. Permitted on condition of enlargement, when necessary.—Whenever it becomes necessary or advantageous for an individual, corporation or drainage district, established, or to be established, under this chapter, to secure drainage outlets through one or more drainage districts already established, as provided in the preceding sections [articles] of this act, and when it shall appear from the report of the engineer of such established district that the canals, drains or outlets of such established district are not of sufficient capacity to carry the excess of water that would be discharged therein by reason of such connections, or that such additional discharge of water would endanger the initial canals and drains, or the lands and property adjacent thereto, then, and in that case, the county court in which the initial district is situated shall nevertheless authorize such individual, corporation, company, or drainage district, as the case may be, to make such connection and secure the desired outlets only on condition, however, that he, they or it, shall first at their own cost and expense make the necessary enlargement of the canals and drains with which it is proposed to make connections and such increased capacity shall be amply sufficient to carry any increase of water that may be caused by such connections without danger to said canals and drains or to lands adjacent thereto. [Id. sec. 49a.]

Art. 2622. Enlargement of canals, drains, etc., how done, etc.—The work of enlarging such canals and drains shall be done under the supervision and direction of the engineer of the initial district, whose salary shall, by order of the county court, be paid by the person, company, corporation or district, doing such work to secure connection, as aforesaid. When the work of enlarging the initial canals and drains is fully complete to the satisfaction of the said engineer, he shall make a report to the county court, under his official certificate, showing the kind and character of work done and to what extent any of the canals and drains have been enlarged, and shall show that the increased capacity of the same is sufficient to carry any excess of water that may be added thereto by reason of such connection; and the engineer shall, as a part of his report, show the number of days he was actually employed in supervising said work, and also show the amount due him for such services; and, on the approval of such report, the court shall make an order authorizing the connections desired with such canals and drains, on payment of the amount shown to be due the engineer by said report. [Id. sec. 49.]

Art. 2623. Drainage commissioners to keep canals, drains, etc., in repair; authority, etc.—It shall be the duty of the drainage commissioners to keep the canals, drains, ditches and levees, and other improvements made under

the provisions of this chapter, in repair, and they shall have general authority to supervise and control the construction and maintenance of same. [Id. sec. 40a.]

Art. 2624. **Annual report of drainage commissioners.**—The drainage commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same and the amount paid out on orders, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter. [Id. sec. 50.]

Art. 2625. **County judge, etc., not to be interested in contract.**—Neither the county judge nor any county commissioner or drainage commissioner, nor the drainage engineer, shall be, directly or indirectly, interested for themselves or as agents for any one else in the contract for the construction of any work to be performed by such drainage district. [Id. sec. 52.]

TITLE 48.

EDUCATION—PUBLIC.

“A”—STATE INSTITUTIONS.

Chapter.

1. University of Texas.
2. Agricultural and Mechanical College.
3. Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences.
4. Sam Houston Normal Institute.
5. North Texas State Normal College.
6. Southwest Texas State Normal School.
7. West Texas State Normal College.
8. Prairie View State Normal and Industrial College.

“B”—THE PUBLIC FREE SCHOOLS.

Chapter.

9. Available Fund.
10. State Board of Education.
11. Duties of Comptroller and Treasurer as to School Funds.
12. County Superintendent and Other Officers.
13. Scholastic Census.
14. Teachers' Certificates and Examinations.
15. Common School Districts.
16. Independent Districts.
17. Exclusive Control by Cities and Towns—Independent Districts.
18. Independent District School Trustees.
19. General Provisions.
20. State Text-Book Board.

CHAPTER ONE.

UNIVERSITY OF TEXAS.

Article.	Article.		
University funds	2626	May remove officers, when	2640
Shall be held in trust and invested	2627	Admission fee limited	2641
Title by donation may be vested	2628	Treasurer of funds	2642
Donor may direct transmission	2629	Available fund	2643
Shall vest in state in trust, when	2630	Expenditures, how made	2644
Must be subject to laws, etc.	2631	No religious qualifications	2645
Copies of donation must be filed with board, when	2632	Elementary agriculture required to be taught	2646
Control of university lands confided to regents	2633	Shall confer teachers diplomas, when	2647
Control of mineral lands confided to regents	2634	Law licenses to issue on diplomas	2648
Duty of commissioner of land office	2635	Annual reports to board of education	2649
Government of, how vested	2636	Board of visitors	2650
Board of regents classified	2637	Expenses of regents, etc.	2651
May use seal	2638	Manuscript bonds	2652
How organized	2639	Character of bonds	2653
		Form of bonds	2654

Article 2626. [3836] **University funds.**—The following shall constitute a permanent fund for the university of Texas, to be used for the benefit of said university:

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the university of Texas under any previous law.
2. One million acres of the unappropriated public domain of the state set apart for that purpose by the present constitution, and one million acres of land set apart by act of April 10, 1883.
3. All bonds that have heretofore or that may hereafter be purchased with the proceeds of the sales of the university lands.
4. All proceeds of the sales of university lands that are now, or may hereafter be, placed in the treasury of the state.
5. In addition to the foregoing, all grants, donations and appropriations that may be hereafter made, or that may be received from any other source. [Const., art. 5, secs. 10-15. Act Feb. 11, 1858, p. 148. P. D. 3573. See acts 1879, extra session, ch. 18.]

Art. 2627. [3837] **Shall be held in trust and invested.**—Such portions of the funds specified in the preceding article as are now in the possession of the

state, or that may hereafter be received, shall be held in trust by the state for the use and maintenance of said university; and all such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such university in the manner provided in the constitution and laws on that subject. [Id.]

Art. 2628. [3838] **Title by donation may be vested, how.**—Any person, association of persons or body corporate making a donation of property for the purposes of establishing or assisting in the establishment of a professorship or scholarship in the university or any of its branches, either temporarily or permanently, may vest the legal title to the property in any person or persons, body corporate, or the state of Texas, to be held in trust for said purpose, under such directions, limitations and provisions as may be declared in writing in the donation which are not inconsistent with the objects and proper management of said institution or its branches. [Acts of 1889, p. 143, sec. 1.]

Art. 2629. [3839] **Donor may direct transmission of title.**—It shall be lawful for the person or persons or body corporate to declare and direct the manner in which said title to said property shall thereafter pass or be transmitted from the person or persons or body corporate receiving it to others in continued succession, to be held and appropriated to the use aforesaid, and it shall be lawful for the donor or donors to declare and direct the person or class of persons who shall receive the benefit of said donation, together with the manner in which the person or persons who shall receive said benefits shall be from time to time selected, as it may become necessary to carry out the objects of the donation; provided, said declarations and directions are not inconsistent with the objects and proper management of said institution or its branches. [Id. sec. 2.]

Art. 2630. [3840] **Shall vest in the state in trust, when.**—In the event there is a failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or in the event they, or either of them, should become impracticable from the change of circumstances, the title to the property, unless otherwise directed expressly by the donor, shall vest in the state of Texas, to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor. [Id. sec. 3.]

Art. 2631. [3841] **Must be subject to laws, etc.**—The title to said property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation. [Id. sec. 4.]

Art. 2632. [3842] **Copies to be filed with board, etc.**—Copies of said donation shall be procured and filed with the board which may have control of the university or any of its branches to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution. [Id. sec. 5.]

Art. 2633. [4263a] **Control of university lands confided to regents.**—The board of regents of the university of Texas are invested with the sole and exclusive management and control of the lands which have heretofore been, or which may hereafter be, set aside and appropriated to, or acquired by, the university of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as may to them seem best for the interest of the university, not in conflict with the constitution of this state; provided, that such land

shall not be sold at a less price per acre than the same class of land of other funds may be sold at under the statutes. [Acts of 1895, p. 19.]

Art. 2634. **Control of mineral lands confided to regents.**—Said board of regents are invested with the sole and exclusive management and control of all mineral lands within the domain which has been, or may hereafter be, appropriated, set aside or acquired by the university of Texas; and said board of regents are hereby empowered and authorized to sell, lease, manage and control said mineral lands belonging to said university as may seem best to them for the interest of the university; and they are further empowered with authority to explore and have explored and develop said mineral lands and to make any contract with any persons whomsoever for the exploration and development of said mineral lands, and pay the expenses for such exploration or development out of the proceeds of the lease or sale of said land. [Acts 1901, p. 266, sec. 1.]

Art. 2635. [4263b] **Duty of commissioner of land office.**—The commissioner of the general land office is hereby directed to furnish to the said board of regents complete and accurate maps, and all other data necessary, to show the location and condition of every tract of said university lands, and shall at all times furnish to said board such additional information as they may require, and shall at all times render to said board such assistance as may be possible and as they shall request in the discharge of the duties hereby imposed on said board. [Act 1895, p. 19.]

Art. 2636. [3843] **Government of university, how vested.**—The government of the university shall be vested in a board of eight regents, selected from different portions of the state, who shall be nominated by the governor and appointed by and with the advice and consent of the senate. [Acts of 1881, p. 94; amend. 1895, p. 169.]

Art. 2637. [3844] **Board of regents classified.**—The board of regents shall be divided into classes, numbered one, two, three and four, as heretofore determined by the board, who shall hold their office two, four, six and eight years respectively, from the time of their appointment. Two members shall be appointed at each session of the legislature to supply the vacancies made by the provisions of this article, and in the manner provided for in the preceding article, who shall hold their offices for eight years respectively. [Acts of 1881, p. 80, sec. 6.]

Art. 2638. [3845] **Shall have right to use seal.**—The regents and their successors in office shall have the right of making and using a common seal and altering the same at pleasure. [Id. sec. 7.]

Art. 2639. [3846] **How organized.**—The regents shall elect a chairman of the board of regents from their own number, who shall hold his office during the pleasure of the board. They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries, and they shall enact such by-laws, rules and regulations as may be necessary for the successful management and government of the university; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities. [Id. sec. 8; amend. 1895, p. 169.]

Art. 2640. [3848] **May remove officers.**—The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the university shall require it. [Id. sec. 10.]

Art. 2641. [3849] **Admission fee limited.**—The fee of admission to the university shall never exceed thirty dollars, and shall be open to all persons in the state who may wish to avail themselves of its advantages, and to male and female on equal terms, without charge for tuition, under the regulations prescribed by the regents, and all others under such regulations as the board of regents may prescribe. [Id. sec. 11.]

Art. 2642. [3850] **Treasurer.**—The treasurer of the state shall be the treasurer of the university. [Id. sec. 12.]

Art. 2643. [3851] **Available fund.**—The regents shall have authority to expend the interest which has heretofore accrued, and may hereafter accrue, on the permanent university fund, for the purposes herein specified, and for the maintenance of the branches of the university. [Id. sec. 18.]

Art. 2644. [3852] **Expenditures how made.**—All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants of the comptroller, based on vouchers approved by the president and countersigned by the secretary. [Id. sec. 19.]

Art. 2645. [3853] **No religious qualification required for admission.**—No religious qualification shall be required for admission to any office or privilege in the university; nor shall any course of instruction of a sectarian character be taught therein. [Id. sec. 20.]

Art. 2646. **Elementary agriculture to be taught.**—The board of regents shall require the teaching of elementary agriculture in the summer session of the university, as provided in chapter 10 of this title. [Acts 1909, p. 221, sec. 2.]

Art. 2647. **Shall confer teachers' diplomas, when.**—The university shall also confer teachers' diplomas and certificates in such cases and under such circumstances and conditions as are prescribed in chapter 14 of this title. [Acts 1909, 2 S. S., p. 394.]

Art. 2648. **Law licenses to issue on diplomas.**—Law licenses shall be granted upon the diplomas of the law department of the university, as prescribed by article 317. [Acts 1905, p. 150.]

Art. 2649. [3854] **Annual report to board of education.**—The board of regents shall report to the board of education annually, and to each regular session of the legislature, the condition of the university, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated. [Acts 1881, p. 80, sec. 21.]

Art. 2650. [3855] **Board of visitors.**—There shall be appointed by the legislature at each regular session a board of visitors, who shall attend the annual examinations of the university and its branches and report to the legislature thereon. [Id. sec. 22.]

Art. 2651. [3856] **Expenses of regents and visitors to be paid.**—The reasonable expenses incurred by the board of regency and visitation in the discharge of their duties shall be paid from the available university fund.

Art. 2652. [3857] **Governor to have issued manuscript bonds.**—The governor is authorized and directed to have issued manuscript bonds of the state of Texas to be sold or exchanged at par for the permanent university fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars. [Acts of 1889, p. 81.]

Art. 2653. [3858] **Character of bonds.**—Said bonds shall be of such denomination as the governor may direct, and shall be redeemable at the pleasure of the state, and shall bear interest at the rate of five per centum per annum, payable annually at the state treasury on the first day of March of each year. [Id. sec. 2.]

Art. 2654. [3859] **Form of bonds.**—The bonds issued under this chapter shall recite the title and date of passage of the act of 1889, page 81, shall be signed by the governor and treasurer and countersigned by the comptroller, and shall be registered in the office of the state treasurer; and, after said bonds have been registered, the governor shall offer said bonds to the board of education as an investment for the permanent university fund then on hand in cash which are by law authorized to be invested; and, if the board of education take said bonds, the treasurer and comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books; and, if the board of education shall not take said bonds thus offered, the same shall be destroyed and canceled and of no effect whatever. [Id. sec. 3.]

CHAPTER TWO.

AGRICULTURAL AND MECHANICAL COLLEGE.

Article.	Article.
Made branch of university.....2655	Board to establish department for in-
Leading objects of same.....2656	struction in manufacture of cotton....2669
Board of directors.....2657	Duty of professor of chemistry as to
How appointed—term of office.....2658	commercial fertilizers and poisons....2670
Vacancies, how filled.....2659	To furnish analysis free to whom.....2671
Quorum, what constitutes.....2660	Fees from sale of labels to be appropri-
Expenses of directors, how paid.....2661	ated, how .....2672
Certificate of appointment, etc.....2662	Copy of official analysis admissible as
Number of students receiving free in-	evidence .....2673
struction .....2663	May make by-laws, etc.....2674
Board shall appoint, etc.....2664	By-laws, etc., to be printed.....2675
Board to employ expert entomologist....2665	Elementary agriculture to be taught....2676
Board to establish department of instruc-	Perpetual fund .....2677
tion in valuing, classifying and grad-	Accrued interest, how invested.....2678
ing cotton .....2666	Duty of state board of education.....2679
To provide summer school for said de-	Money, how drawn from treasury, and
partment .....2667	for what purposes.....2680
Powers of board to make all necessary	Duty of comptroller to issue warrants,
provisions for said department.....2668	when .....2681

Article 2655. [3860] **Agricultural and Mechanical College made a branch of the university of Texas.**—The agricultural and mechanical college of Texas, established by an act of the legislature passed April 17, 1871, located in the county of Brazos, and by the constitution made and constituted a branch of the university of Texas, for instruction in agriculture, the mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided. [Const., art. 7, sec. 13; 12 U. S. Stat., p. 503; 14 Id. p. 203; act March 9, 1875, p. 72 P. D. 5693 et seq.]

Art. 2656. [3861] **Leading object of the college.**—The leading object of this college shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. [12 U. S. Stat., p. 503; act Cong. July 2, 1862, sec. 4.]

Art. 2657. [3862] **Board of directors.**—The government of the agricultural and mechanical college of Texas shall be vested in a board of eight directors, one of whom shall be the commissioner of agriculture, who shall reside in different portions of the state, who shall be appointed by the governor, by and with the advice and consent of the senate. [Acts of 1881, p. 75; amended acts 1899, p. 21.]

Art. 2658. [3863] **Directors how appointed, term of office.**—The board of directors shall be divided into classes, numbered one, two, three and four, as determined by the governor, shall hold their office two, four, six and eight years, respectively, from the date of their appointment and until their successors are appointed and qualified. Two members shall be appointed at each session of the legislature to supply the vacancies made by the provisions of this article, and in the manner provided for in the preceding article, who shall hold their office for eight years respectively. [Amended acts 1899, p. 21.]

Art. 2659. [3864] **Vacancy, how filled.**—Should a vacancy occur in the said board by the death, resignation or otherwise of any one of the directors so appointed, the governor shall fill the same by appointment, which shall continue until the term for which he was appointed shall expire. [Acts 1881, p. 75.]

Art. 2660. [3865] **Quorum, what constitutes.**—Said board shall elect from their number a president of the board, who shall call said board together for the transaction of business whenever he deems it expedient, and a majority of said board shall constitute a quorum for the transaction of business. [Id.]

Art. 2661. [3866] **Expenses of directors, how paid.**—Said directors shall serve without compensation, but shall receive their actual expenses incurred in attending the meetings of the board or in the transaction of any business of the college imposed by said board. [Id. Amended act 1899, p. 21.]

Art. 2662. [3867] **Certificate of appointment to be sent.**—The secretary of state shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and, should any director so appointed and notified fail for ten days to give notice to the governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy. [Acts 1881, p. 75.]

Art. 2663. [3868] **Number of students to receive instruction free of charge.**—There shall be maintained and instructed at said college annually, free of charge to them, three students from each senatorial district in this state, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural, and the other half a mechanical, course of study, to be assigned thereto by the president of said college; and, in order to pay their expenses, the comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the state treasurer against any appropriation made for that purpose. [Id.]

Art. 2664. [3869] **Board shall appoint president, professors, etc., of the college, etc.**—The board of directors shall, when necessary, appoint the president and professors of the college and such other officers as, from time to time, they may think proper to keep the college in successful operation, and may, from time to time, abolish any office that is in their judgment unnecessary. [Acts of 1875, p. 74.]

Art. 2665. **Board to employ expert entomologist.**—The president and board of directors of the college shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests, and to perform the duties of professor of entomology in the college. [Acts 1899, p. 9, sec. 1.]

Art. 2666. **To establish department of instruction in valuing, etc., cotton.**—Said board shall establish at and in connection with the said college a school or department for the instruction in the theory and practical arts of grading, classing and determining the spinable value of cotton, whose main purpose

shall be to train students in the theory and practical art of cotton classing in all its branches from the field to the factory. [Acts 1909, p. 220, sec. 1.]

Art. 2667. To provide summer school for said department.—In addition to the regular school provided for above, said board shall provide for a special summer school of at least two months each year for the training of special students, and there shall be no entrance examination for said special summer schools. [Id. sec. 2.]

Art. 2668. Power to make necessary provisions.—The board of directors is invested with full power and authority to make provisions for said school or department, and to purchase the necessary equipment, and generally to do and perform all acts necessary to establish and maintain said school or department. [Id. sec. 3.]

Art. 2669. To establish department for instruction in manufacture of cotton.—Said board shall establish at and in connection with the said college a school or department for instruction in the theory and practical art of textile and kindred branches of industry, whose main purpose shall be to train students in the theory and practice of cotton manufacturing, in all its branches, from the raw cotton to the finished fabric, and said board shall do and perform all acts necessary to establish and maintain said school or department. [Acts 1903, p. 74, sec. 1.]

Art. 2670. Duty of professor of chemistry as to commercial fertilizers and poisons.—Besides his other duties, it shall be the duty of the professor of chemistry in this institution to analyze commercial fertilizers and commercial poisons and chemical mixtures used as commercial fertilizers or commercial poisons, as may be required by any statute, criminal or civil, in this state, and print the result of such analysis in the form of a label to be attached to such articles exposed for sale in form and manner as prescribed by law, and to do and perform such other duties in relation thereto as may be required by the laws of this state. [Acts 1899, p. 64.]

Art. 2671. To furnish analysis free.—Any agriculturist or farmer, a purchaser of any commercial fertilizer or commercial poison in this state, may take a sample of the same under rules and regulations to be prescribed by the professor of chemistry, and forward the same to him for analysis, which analysis shall be made free of charge. [Id. sec. 7.]

Art. 2672. Fees from sale of labels appropriated, how.—The revenues accruing from the analysis fees and sale of labels as provided for shall be expended by the board of directors of the college for the maintenance of the chemical department, and for such other purposes as they may determine. [Id. sec. 8.]

Art. 2673. Copy of official analysis admissible as evidence.—A copy of the official analysis of any fertilizer or commercial poison or chemical, certified to by the professor of chemistry, shall be admissible as evidence in any court of this state, on the trial of any issue involving the merits of said fertilizer or commercial poison. [Id. sec. 9.]

Art. 2674. [3870] May make by-laws, etc.—Said board of directors of said college shall also, from time to time, make such by-laws, rules and regulations for the government of said college as they may deem meet and proper for that purpose, and shall regulate the course of study, the rates of tuition, the manner of performing labor, and the kind of labor to be performed by the students of said college, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students. [Act 1875, p. 74.]

Art. 2675. [3871] By-laws, etc., shall be printed.—It shall be the duty of the board to have printed, for the benefit of the people of the state and offi-

cers and students of the said college, such by-laws, rules and regulations as they are authorized by the preceding article to prescribe. [Id.]

Art. 2676. **Elementary agriculture to be taught.**—The board of directors shall require the teaching of elementary agriculture for teachers in the summer sessions of the college as provided in chapter 10 of this title. [Acts 1909, p. 221, sec. 3.]

Art. 2677. [3872] **Perpetual fund.**—The money arising from the sale of the one hundred and eighty thousand acres of land donated to this state by the United States under the provisions of an act of congress passed on the second day of July, 1862, and an amended act of congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said college; and the investment of the same, heretofore made in the bonds of the state, shall continue until the legislature shall, by law, direct it to be invested otherwise in furtherance of the interests of said college and in accordance with the terms on which it was received. [12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203. Act March 9, 1875, p. 73, sec. 8. P. D. 5793.]

Art. 2678. [3873] **Accrued interest on bonds, how invested.**—The interest heretofore collected by the state board of education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said agricultural and mechanical college and invested in six per cent state bonds, shall also constitute a part of the perpetual fund of said college until the legislature shall otherwise provide. [Act Aug. 21, 1876, p. 283, sec. 1.]

Art. 2679. [3874] **Duty of state board of education.**—It shall be the duty of the state board of education to collect the semi-annual interest on the bonds mentioned in the two preceding articles as the same becomes due, and place the same in the treasury of the state to the credit of said college fund. [Const., art. 7, sec. 8. Acts Aug. 21, 1876, p. 283, sec. 2; March 9, 1875.]

Art. 2680. [3875] **Money, how drawn from the treasury, and for what purpose.**—The interest on the bonds which were purchased with the proceeds of the said land scrip, and also the interest on the bonds in which the accrued interest of the said bonds was invested, as heretofore set out in this chapter, is set apart exclusively for the use of said college, and shall be drawn from the treasury by the board of directors on vouchers audited by said board, or approved by the governor and attested by the secretary of the board. [Act March 9, 1875, p. 73, sec. 8. See acts 1879, extra session, ch. 18.]

Art. 2681. [3876] **Duty of comptroller to issue warrant, when.**—On such vouchers being filed with the comptroller, it shall be his duty to draw his warrant on the state treasurer for the same, from time to time, as the same may be needed to pay the directors, professors and officers of the college. [Id.]

CHAPTER THREE.

TEXAS INDUSTRIAL INSTITUTE AND COLLEGE FOR THE EDUCATION OF WHITE GIRLS OF THE STATE OF TEXAS IN THE ARTS AND SCIENCES.

	Article.		Article.
Name of institute.....	2682	Compensation of regents.....	2687
Board of regents, how appointed.....	2683	Number of students apportioned to counties.....	2688
Duties of the board to elect president; meetings, how called; duties of secretary, etc.....	2684	Board of regents to fix salaries.....	2689
What shall be taught in the institute.....	2685	Elementary agriculture required to be taught; teachers diplomas conferred.....	2690
General duties of regents.....	2686		

Article 2682. **Name of institute.**—The industrial institute and college located at Denton, in Denton county, Texas, for the education of white girls in the arts and sciences shall be known as the Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences. [Acts 1901, p. 306, sec. 1.]

Art. 2683. **Board of regents, how appointed.**—The governor shall nominate and appoint, by and with the consent of the senate, seven persons to serve as a board of regents for said college, who shall serve as such for two years, and until their successors are appointed and qualified. In all cases of vacancy, the appointment to fill such vacancy and the reappointment to fill the position shall, from time to time, be made by the governor, as hereinbefore provided, but, if the legislature be not in session, the governor may fill such vacancy by appointment until the next session of the legislature, when, if the senate shall not confirm the appointment, the appointment of some other person shall be made as hereinbefore provided. [Id. secs. 2 and 3.]

Art. 2684. **Board to elect president; meetings; how called; duties of secretary, etc.**—The board of regents shall have the power incident to their position, and in the same and to the same extent, so far as may be applicable, as is conferred by law on the regents of the university of Texas. Said board of regents shall elect a president, a secretary and a treasurer, whose terms of office shall be two years. The president so elected shall convene the board of regents of said industrial institute and college to consider any business connected with the same, whenever he shall deem it expedient to do so; it shall be the duty of the secretary to record in a well bound book all of the proceedings had by said board, and he shall be paid such salary as the board may prescribe; it shall be the duty of the treasurer to receive and disburse all moneys under the direction of the board. He shall be required to give bond in such sum as may be prescribed by the board. [Id. sec. 4.]

Art. 2685. **What shall be taught in the institute.**—The board of regents shall possess all the powers necessary to accomplish and carry out the provisions of this chapter, the establishment and maintenance of a first-class industrial institute and college for the education of white girls in this state in the arts and sciences, at which such girls may acquire a literary education, together with a knowledge of kindergarten instruction; also a knowledge of telegraphy, stenography and photography; also a knowledge of drawing, painting, designing and engraving, in their industrial application; also a knowledge of general needle-work, including dressmaking; also a knowledge of bookkeeping; also a thorough knowledge of scientific and practical cooking, including a chemical study of food; also a knowledge of practical housekeeping; also a knowledge of trained nursing, caring for the sick; also a knowledge of the care and culture of children; with such other practical industries as, from time to time, may be suggested by experience, or tend to promote the general object of said institute and college, to wit: Fitting and preparing such girls for the practical industries of the age. [Id. sec. 5.]

Art. 2686. **General duties of regents.**—The board of regents herein mentioned shall appoint a president and professor of the said industrial institute and college, and such other officers as they may think proper to continue the same in successful operation, and to make such rules and regulations for the government of said officers as they may deem advisable. They shall regulate rates of tuition, together with course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall divide the course of instruction into departments, so as to secure a thorough education and the best possible instruction in all of said industrial studies, selecting careful and efficient professors in each department, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. [Id. sec. 6.]

Art. 2687. **Compensation of regents.**—The board of regents shall receive such compensation as is now allowed to the board of regents for the university of Texas, to be paid out of the appropriation for this industrial institute and college. [Id. sec. 7.]

Art. 2688. **Number of students apportioned to counties.**—The board of regents shall apportion to each county its quota of pupils or students, on the basis of the number of the educatable white girls in the state and several counties; and the several superintendents of education of the several counties shall, after having given notice in some newspaper of the county, and three weeks after such publication, under such regulations as the board of regents may adopt, appoint such number of white girls to such industrial institute and college as such county may be entitled to. [Id. sec. 10.]

Art. 2689. **Board of regents to fix salaries.**—The board of regents shall determine and fix the salary of each officer, employe and professor, in said industrial institute and college; provided, that the salaries of professors in any one department shall not exceed that which is now fixed for the professors of the agricultural and mechanical college. [Id. sec. 11.]

Art. 2690. **Elementary agriculture to be taught.**—The board of regents shall require the teaching of elementary agriculture for teachers in the summer sessions of the college as provided in chapter 10 of this title. [Acts 1909, p. 221.]

Teachers' diplomas conferred.—The college shall also confer teachers' diplomas in such cases and under such circumstances and conditions as are prescribed in chapter 14 of this title. [Act 1909, 2 S. S., p. 394]

CHAPTER FOUR.

SAM HOUSTON NORMAL INSTITUTE.

	Article.		Article.
Sam Houston Normal Institute at Hunts-		Manual training, domestic sciences and	
ville	2691	agriculture to be taught.....	2695
Free tuition to how many students.....	2692	Diplomas; teachers' certificates.....	2696
Obligations of students.....	2693	Local board of directors.....	2697
Pay students	2694	Appropriations therefor	2698

Article 2691. [3879] **The Sam Houston Normal Institute at Huntsville.**—The board of education shall have possession and charge of the Sam Houston Normal Institute, which shall be conducted in a first-class manner, and under such rules and regulations as to the government and discipline thereof as may be prescribed by said board. [Acts of 1879, p. 182, sec. 2.]

Art. 2692. [3880] **Number of students to receive free tuition, etc.**—Not less than two students from each senatorial district, and six from the state at large, shall be received in said institution as state students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made, but in no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of education shall make all necessary rules and regulations for the admission of students and the manner of their appointment or selection. No student shall be received who is not a resident of this state and at least of the age of sixteen years and of good moral character. [Id. sec. 3.]

Art. 2693. [3881] **Obligation of students.**—All students attending said institute at expense of the state, as provided in the foregoing article, shall sign a written obligation in a book to be kept at the institute for that purpose, binding said students to teach in the public free schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools; and said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without further examination. [Id. sec. 4.]

Art. 2694.—[3882] **Pay students.**—The board of education may authorize other students to be admitted into said institute, who shall be required to pay tuition, in whole or in part, as may be prescribed by the board. [Id. sec. 5.]

Art. 2695. **Manual training, domestic sciences and agriculture to be taught.**—Manual training, domestic sciences and agriculture shall be taught in the institute under the requirements of the state board of education, as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said institute for teachers as prescribed in said chapter. [Act 1909, p. 221, secs. 1 and 3.]

Art. 2696. **Diplomas; teachers' certificates.**—Diplomas and teachers' certificates of the Sam Houston normal institute shall authorize the holders to teach in the public schools of Texas as provided in chapter 14 of this title. [Act 1905, p. 263, sec. 121.]

Art. 2697. [3883] **Local board of directors.**—The board of education shall appoint a local board of three directors, who shall hold frequent meetings at the institute, have general supervision of the building and grounds and shall perform such other duties pertaining to the institute, and make such reports to the board of education as said board may require. Said directors shall each receive an annual salary, not to exceed one hundred dollars, to be paid out of the fund hereinafter appropriated. [Acts 1879, p. 182, sec. 6.]

Art. 2698. [3884] **Annual appropriation from available school fund.**—It shall be the duty of the comptroller of public accounts, annually, to set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said normal school and place the same to its credit, and which may be drawn upon by the board of education for the current expenses of said school on vouchers audited by said board or approved by the governor and attested by the secretary; and, on filing said vouchers, the comptroller shall draw his warrant on the state treasurer for the same. The board of education is authorized to receive from the agent of the trustees of the Peabody education fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said institute. [Id. sec. 7.]

CHAPTER FIVE.

NORTH TEXAS STATE NORMAL COLLEGE.

	Article.		Article.
Name of college; under control of state board of education.....	2699	Semi-annual visits of state superintendent	2703
Powers and duties of board of education.....	2700	State board may appoint local board of directors	2704
Funds set apart for college.....	2701	Manual training, domestic sciences and agriculture to be taught.....	2705
Qualifications of students; shall be obligated to teach.....	2702	Diplomas; teachers' certificates.....	2706

Article 2699. **Name of college; under control of state board of education.**—The normal college located at Denton, Texas, shall be known as the North Texas State Normal College. Said college shall be conducted for a session of not less than thirty-six weeks each year, upon improved methods and plans for first class schools designed for the special training of teachers, and said school shall be under the control and management of the state board of education. [Acts 1899, p. 74, sec. 2.]

Art. 2700. **Powers and duties of board of education.**—Said board shall have power to prescribe rules and regulations for the management, control and discipline of said state normal school; to prescribe courses of study and text books for the same; to regulate the admission of pupils thereto; to select a president and such teachers as may be deemed necessary therefor, and fix their compensation, and to do and perform all other acts not inconsistent with the laws of this state, as may be necessary or proper for the successful management and conduct of said school. [Id. sec. 3.]

Art. 2701. **Funds set apart for college.**—It shall be the duty of the comptroller of public accounts to set apart annually, out of the general revenue, the sum of twenty thousand dollars for the maintenance of said normal school, together with such other sums as may be appropriated by the legislature for defraying a part of the expenses of the students appointed from year to year by senators and representatives, such sum or sums to be placed to the credit of such state normal school, and which shall be paid out upon warrants approved by the governor and attested by the state board of education. The board of education is hereby authorized to receive from the agent of the Peabody education fund such sums as he may tender for the aid of the said state normal school, to be disbursed in such manner as may be prescribed by the donor. [Id. sec. 4. Amended Act 1901, p. 10.]

Art. 2702. **Qualifications of students; shall be obligated to teach.**—Tuition in said normal shall be free to all students who are at least sixteen-years of age, of good moral character, and who wish to prepare themselves for the profession of teaching. All state students attending such college shall sign a written obligation, in a book to be kept for that purpose, binding said students to teach in the public schools of this state for as long a period of time as they attend said college, for which teaching they shall receive the same compensation as other teachers; and said board of education shall make rules by which students may receive diplomas and certificates as qualifications as teachers, authorizing them to teach without further examination. [Acts 1899, p. 74, sec. 4. Amended Acts 1901, p. 10.]

Art. 2703. **Semi-annual visits of state superintendent.**—It shall be the duty of the state superintendent to visit said school and investigate the operations thereof at least twice during each year, and report to the state board of education the condition, progress and need of said school; and the said state board may appoint other persons to visit said school and report thereon. [Acts 1899, p. 74, sec. 5.]

Art. 2704. **State board may appoint local board of directors.**—The state board of education may appoint a local board of directors for said normal school, to be composed of three resident citizens of Denton county, to perform such duties as may be prescribed by said state board. [Id. sec. 6.]

Art. 2705. **Manual training, etc., to be taught.**—Manual training, domestic sciences and agriculture shall be taught in the college under the requirements of the state board of education, as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said college for teachers as prescribed in said chapter. [Act 1909, p. 221, secs. 1 and 3.]

Art. 2706. **Diplomas; teachers' certificates.**—Diplomas and teachers' certificates of the north Texas state normal college shall authorize the holders to teach in the public schools of Texas as provided in chapter 14 of this title. [Act 1905, p. 263, sec. 121.]

CHAPTER SIX.

SOUTHWEST TEXAS STATE NORMAL SCHOOL.

Name of school; under control of state board of education.....2707 Admission of pupils; same rules as in Sam Houston normal Institute.....2708	Article Article	Local board of trustees; their powers and duties 2709 Manual training, etc., to be taught..... 2710 Diplomas; teachers' certificates..... 2711
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Article 2707. **Name of school; under control of state board of education.**—The institution established at San Marcos, in Hays county, Texas, shall be known as the Southwest Texas State Normal School, and the same shall be under the management and control of the state board of education. [Acts 1899, p. 175, sec. 1. Acts 1901, p. 33, sec. 1.]

Art. 2708. **Admission of pupils; same rules as in S. H. N. I.**—The board of education shall have the same power and control as to admission of the pupils to the southwest Texas normal school as it has to the admission of the pupils to the Sam Houston normal institute, and the rules and regulations provided by law for the government of the Sam Houston normal institute shall apply in all respects so far as applicable to the government and control of the southwest Texas normal school. [Acts 1901, p. 33, sec. 2.]

Art. 2709. **Local board of trustees, duties and powers.**—The state board of education shall appoint a local board of three trustees for the said southwest Texas normal school, who shall be residents of the city of San Marcos, and who shall perform such duties as may be required by the state board of education, and such other duties as are required by law of the local board of the Sam Houston normal institute, and shall receive the same compensation; and the state board of education shall exercise all of the powers and control over the southwest Texas normal school that said board is authorized by law to exercise over the Sam Houston normal institute, and the salaries of teachers shall never exceed what is allowed by law for teachers in the Sam Houston normal. [Id. sec. 3.]

Art. 2710. **Manual training, etc., to be taught.**—Manual training, domestic sciences and agriculture shall be taught in the school under the requirements of the state board of education, as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said school for teachers as prescribed in said chapter. [Acts 1909, p. 221, secs. 1 and 3.]

Art. 2711. **Diplomas; teachers' certificates.**—Diplomas and teachers' certificates of the southwest Texas state normal school shall authorize the holders to teach in the public schools of Texas, as provided in chapter 14 of this title. [Acts 1905, p. 263, sec. 121.]

CHAPTER SEVEN.

WEST TEXAS STATE NORMAL COLLEGE.

Name and location of college.....	Article. 2712	Same rights as to appointment of students, etc., as other normal schools.....	Article. 2716	
Shall appoint local board.....	2713		Manual training, etc., to be taught.....	2717
Powers and duties of state board as to.....	2714			
Same	2715			

Article 2712. **Name and location.**—This college shall be known as the West Texas State Normal College, and shall be located at Canyon City, Randall county, Texas. [Act 1909, p. 235.]

Art. 2713. **Shall appoint local board.**—The state board of education shall name a local board of three citizens resident in the city or county aforesaid, who shall perform such services as the state board of education may prescribe. [Id. sec. 6.]

Art. 2714. **Powers and duties of state board as to.**—The state board of education shall name the departments to be established in said west Texas state normal college, and shall elect the president, professors, instructors and other employes necessary for the management of the same, and shall fix the salaries and compensation of those employed; provided, that the said west Texas state normal college shall be strictly first class in every particular and not below the standards set for the other normal schools of this state; provided, further, that the state board of education shall have authority to regulate the fees required of students and the salaries allowed all persons in any manner employed in connection with the said normal school. [Id. sec. 8.]

Art. 2715. **Same.**—The state board of education shall name the fees, if any are to be paid by students, and shall fix the requirements for entrance into said normal college, and shall prescribe the conditions of certification and

graduation of students of said normal college; provided, that the requirements to obtain certificates, the length of time they shall be valid and the conditions of cancellation of same, shall be those prescribed for other certificates of the same grades issued by the state. [Id. sec. 9.]

Art. 2716. **Same rights as to appointment of students, etc., as other normal schools.**—Students shall be appointed to said west Texas state normal college by the same authorities and in the same way that students are appointed to other normal schools in this state; and such students shall share equally with students appointed to other normal schools in any scholarship funds that may be appropriated to the normal schools of this state, for the year 1910-11, and any subsequent year or years. [Id. sec. 13.]

Art. 2717. **Manual training, etc., to be taught.**—Manual training, domestic sciences and agriculture shall be taught in the school under the requirements of the state board of education, as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said school for teachers as prescribed in said chapter. [Act 1909, p. 221, secs. 1 and 3.]

CHAPTER EIGHT.

PRAIRIE VIEW STATE NORMAL AND INDUSTRIAL COLLEGE.

	Article.		Article.
Under what management.....	2718	Four years' course of studies to be maintained	2722
How many admitted.....	2719		2723
Duties of the board.....	2720		2724
Admission and obligation of students, etc.	2721		

Article 2718. [3885] **Under what management.**—The normal school for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the agricultural and mechanical college, and said board of directors shall in all respects have the same powers and perform the same duties in reference to this college as they are clothed with in reference to the agricultural and mechanical college, located in Brazos county. [Acts of 1879, p. 181.]

Art. 2719. [3886] **How many to be admitted.**—Said board of directors shall admit one student from each senatorial district, who shall be appointed by the senator representing said district, and one student from each representative district, who shall be appointed by the member of the legislature representing said district; provided, that, where there are more than one representative in a district, each representative of such district shall appoint one student, said students to be taken from the colored population of this state, which said students shall not be less than sixteen years of age at the time of their admission; provided, the said school shall hereafter be called and known as Prairie View State Normal and Industrial College. [Id. sec. 2. Amended Act 1899, p. 325.]

Art. 2720. [3887] **Duties of board.**—Said board shall appoint a principal teacher and such assistant teacher or teachers of said school and such other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for the government of said school as they may deem necessary and proper, and shall regulate the course of study and the manner of performing labor to be performed by the students, and shall provide for the board and lodging and instruction to the students, without pecuniary charge to

them, other than that each student shall be required to pay one-third of the cost of said board, lodging and instruction, quarterly, in advance; and said board of directors shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employes of said school, and shall have the same printed and circulated for the benefit of the people of the state and the officers, teachers, students and employes of said school. [Id. Amended Act 1899, p. 325.]

Art. 2721. [3888] **Admissions, obligations of students, etc.**—The board of directors may provide for receiving such a number of students of both sexes as, in the judgment of said board, the school can best accommodate, and shall require all students admitted to said school to sign a written obligation, in a proper book kept for that purpose, binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged students shall receive the same rate of compensation allowed other teachers of such schools with like qualifications. [Id.]

Art. 2722. **Four years' course of studies to be maintained.**—There shall be maintained a four-year college course of classical and scientific studies at said college, to which graduates of the normal course shall be admitted without examination, and to which others may be admitted after having passed a satisfactory examination in the branches comprised in the normal course; provided, that no state student shall be admitted to the privileges of the said course; and provided, further, that the diploma conferred on the completion of the said course shall entitle the holder without other or further examination to teach in any of the colored public free schools of the state. [Act 1901, p. 35.]

Art. 2723. [3889] **Appropriations for.**—It shall be the duty of the comptroller of public accounts annually to set apart out of the interest accruing from the university fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal school, and the same may be drawn by the board of directors on vouchers audited by the board or approved by the governor and attested by the secretary; and, on filing such vouchers, the comptroller shall draw his warrant on the state treasury for the same from time to time as the same may be needed. [Act 1879, p. 181; Id. sec. 4.]

Art. 2724. [3890] **Rules for teacher's certificate without further examination.**—The board shall make rules by which students can obtain certificates of qualification as teachers that will entitle them to teach without other or further examination. [Id. sec. 1.]

CHAPTER NINE.

AVAILABLE PUBLIC FREE SCHOOL FUND.

What shall constitute state school fund.	Article. 2725	County school fund, income from lease of land	Article. 2726
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Article 2725. **What shall constitute school fund.**—Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collection, the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of sales of land heretofore set apart for the permanent school fund, which have hitherto, or may hereafter, come into the state treasury, all moneys arising from the lease of school lands, and such an amount of state tax, not to exceed twenty cents on the one hundred dollars valuation of property, as may be, from time to time, levied by the legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this state, according to the scholastic population of each, for the support and maintenance of the public free schools. [Act 1905, p. 263, sec. 10.]

Art. 2726. **County school fund; income from lease of land.**—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the state of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners' courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners' court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. [Id. sec. 12.]

CHAPTER TEN.

STATE BOARD OF EDUCATION.

	Article.		Article.
Members	2727	Authorized to invest state permanent school fund	2736
Secretary	2728	Duties of parties offering bonds for sale	2737
Shall make apportionment	2729	Board must examine bonds	2738
Authority over state normal schools	2730	Estoppel	2739
Summer sessions of schools	2731	Bonds must be offered to state board	2740
Shall duplicate appropriations of school districts	2732	Payment of interest on bonds to be waived	2741
May create school districts at eleemosynary institutions	2733	Jurisdiction in district court of Travis county	2742
Trustees for such districts	2734	Extent of these provisions	2743
Transfer of funds	2735		

Article 2727. **Members.**—The governor, secretary of state and comptroller shall constitute a state board of education, which shall hold its sessions at the seat of government. The governor shall be ex officio president of the board, and a majority of the members shall constitute a quorum for the transaction of business. [Act 1905, p. 263, sec. 21.]

Art. 2728. **Secretary.**—The state superintendent shall be ex officio secretary of the state board of education, and shall keep a complete record of all its proceedings, which shall be signed by the president of the board and attested by the superintendent. [Id. sec. 22.]

Art. 2729. **Shall make apportionment.**—The state board of education shall, on or before the first day of August in each year, based on the estimate theretofore furnished said board by the comptroller, make an apportionment for the succeeding scholastic year of the available state school fund among the several counties of the state, and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each; and, thereupon, the state superintendent of public instruction, as secretary of such board, shall certify to the treasurer of each county, city or town, and of each school district constituting a separate school organization, the total amount of available school fund so apportioned to each such county, city or town or school district, which certificate shall be signed by the governor, as president of such board, countersigned by the comptroller, and attested by the state superintendent of public instruction, as secretary of such board. [Act 1909, 2 S. S., p. 432, sec. 4.]

Art. 2730. **Authority over state normal schools.**—The state board of education shall require the teaching of manual training, domestic science and agriculture in the state normal schools at Huntsville, Denton, San Marcos and Canyon City, and in such other normal schools for white teachers as may hereafter be established by law, respectively, as a part of the regular curricula of said normal schools. The state board of education is hereby empowered and required to provide rooms, appliances and teachers for giving instruction in the subjects of manual training, domestic science and agriculture in said state normal schools. The state board of education is further empowered and instructed to employ a teacher or teachers that have been trained and equipped to give instruction in these subjects in the said state normal schools; provided, that the state board of education is hereby authorized to fix the salaries of the presidents, principals, professors, instructors, teachers and other employes in said normal schools. [Acts 1909, p. 221, sec. 1.]

Art. 2731. **Summer sessions of schools.**—The state board of education shall require the teaching of elementary agriculture for teachers in the summer sessions of the state normal schools at Huntsville, Denton and San Marcos, and the boards of directors of the agricultural and mechanical college at Bryan, of the college of industrial arts for girls at Denton, and of the state university at Austin, shall require the teaching of elementary agriculture for teachers in the summer sessions of these several institutions. [Id. sec. 3.]

Art. 2732. Shall duplicate appropriations of school districts.—It shall be the duty of the state board of education to duplicate by an appropriation out of money provided by the Acts of the Thirty-first Legislature, chapter 113, any amount not less than five hundred dollars and not more than two thousand dollars, that shall have been appropriated and set apart by the trustees of any common school district or independent school district, for the purpose of establishing, equipping and maintaining departments in their respective schools for giving instruction in agriculture, including such courses in manual training and domestic economy as are subsidiary to agriculture; provided, such appropriation or donation shall not be made more than twice to the same school; and provided, that in granting such appropriations to high schools the state board of education shall consider the geographical location of the school applying, with a view of locating, if possible, one school in each of the senatorial districts of the state. The board of trustees of a school seeking aid in establishing, equipping and maintaining in their high schools a department for the teaching of agriculture, including such courses in manual training and domestic economy as are subsidiary to agriculture, shall provide ample room and laboratories for instructions in botany, zoology and such other elementary sciences as are necessary to instruction in secondary agriculture, and shall provide a tract of land conveniently located which shall be sufficiently large and well adapted to the production of farm and garden plants, and shall employ a teacher who has received special training in agriculture and allied branches. The state superintendent of public instruction shall make accurate and full investigation of the school property, appliances and ground possessed by any board of trustees that may seek aid under the provisions of this chapter, and he shall also inquire into the qualifications of the teacher or teachers who are to give instruction in agriculture, manual training and domestic economy in the school or schools seeking aid under the provisions of this chapter, and shall make a report of the result of his investigation to the state board of education, together with his conclusions and recommendations touching the same. The state board of education shall grant aid to those high schools that have complied with the provisions of this chapter and that have been recommended by the state superintendent of public instruction and that shall give evidence that, after the state aid is withdrawn, the district will continue to maintain the department for instruction in agriculture out of its own funds. [Id. sec. 5.]

Art. 2733. Board may create school districts at eleemosynary institutions.—The state board of education is hereby authorized and empowered to create new school districts at such of the several eleemosynary institutions of this state, including the state orphan asylum, or at any and all orphan homes or like institutions now existing, or that may hereafter be established by the Odd Fellows, Masons, Knights of Pythias and other fraternal organizations; provided only, that the number of children within the scholastic age in each instance be sufficient to justify such action. The territorial limits in each case shall be co-extensive with the property lines of the institution. [Acts 1905, p. 263, sec. 176.]

Art. 2734. Trustees for such districts.—Upon the exercise of the power here granted, the state superintendent of public instruction shall appoint a board of three trustees for each district so created; and such trustees need not be residents of such district, and the fact shall be duly certified to local authorities for information and observance; and upon the creation of such districts the trustees shall take and certify the census of the children within the scholastic age, and the funds shall thereafter be apportioned directly to such district; and the law pertaining to independent districts shall govern so far as applicable, though the state board of education may make special regu-

lations and orders for the government of such districts as they may deem expedient. [Id. sec. 177.]

Art. 2735. Transfer of funds.—Upon the creation of a district as above provided, it shall be the duty of the county school superintendent to transfer to such district whatever amount of money may have been apportioned for the current school year to the old district, for and in behalf of the children included in the new district; provided only, such children may not have had the advantage of such fund in the old district. [Id. sec 178.]

BOARD AUTHORIZED TO INVEST SCHOOL FUND.

Art. 2736. Authorized to invest state permanent school fund.—The board of education is authorized and empowered to invest the permanent public free school funds of the state in bonds of the United States, the state of Texas, the bonds of the counties of the state, and the independent or common school districts, road precinct, drainage, irrigation, navigation, and levee districts of said state, and the bonds of incorporated cities and towns, and the bonds of road precincts of any county of Texas, and the bonds of drainage, irrigation, navigation, and levee districts of any county or counties of Texas. [Acts 1905, p. 263, sec. 2. Amended 1909, p. 216.]

Art. 2737. Duties of parties offering bonds for sale.—Hereafter when any county bonds, or the bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts are offered for sale, the party offering, or proposing to sell, such bonds shall first submit them to the attorney general of the state, who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds were issued in conformity with law, and that they are valid and binding obligations upon the county or incorporated city, or common school district, road precinct, drainage, irrigation, navigation and levee districts, by which they were issued, he shall thereupon certify to their validity; and his certificate to that effect, so procured by the party offering such bonds for sale, shall be submitted to the comptroller or board of education, with the bonds so offered for sale; and, should the same be purchased as an investment for the permanent public free school fund from the county or incorporated city or common school district, road precinct, drainage, irrigation, navigation and levee districts issuing the same, or from any person authorized by said county or incorporated city or common school district, road precinct, drainage, irrigation, navigation and levee districts to act for it in the negotiations or sale of such bonds, they shall thereafter be held in every action or proceeding in which their validity is, or may be, called in question, to be valid and binding obligations of the county, or incorporated city, or common school district, road precinct, drainage, irrigation, navigation and levee districts issuing the same, unless fraudulently issued, or issued in violation of the constitutional limitation; and, in every such action, a certificate of the attorney general as aforesaid (which shall be carefully preserved by the comptroller), shall be admitted and received as prima facie evidence of the validity of the bonds and coupons thereto, which may have been so purchased; and it is further provided, that the commissioners' courts of the counties of this state are hereby authorized to invest the permanent school fund belonging to their counties in the manner provided in this article for the investment of the state fund. [Id. sec. 3.]

Art. 2738. Board must examine bonds.—Nothing in the preceding article shall be so construed as to relieve the comptroller or board of education from the duty of a careful examination of the bonds offered as an investment for the permanent public free school fund of the state, an investigation of the

facts tending to show the validity thereof; and such board of education may decline to purchase same, unless satisfied that they are a safe and proper investment for such fund; and no bonds shall be purchased as an investment for the permanent public free school fund that do not bear as great a rate of interest as at least three per cent per annum; and no county bond or bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts shall be purchased as an investment for the permanent public free school fund when the indebtedness of such county, incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, inclusive of the bonds so offered, shall exceed seven per cent of the assessed value of the real estate in such county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts; and, if any default be made in the payment of interest due upon such bonds, the board of education may at any time prior to the payment of such overdue interest, elect to treat the principal as also due, and the same shall thereupon, at the option of the board of education, become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in such manner as is or may be provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. [Id. sec. 4.]

Art. 2739. **Estoppel.**—In all cases where the proceeds of the sales of any bonds have been received by the proper officers of the county, or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, or by the party acting for it in negotiating the sale thereof, such county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts shall thereafter be estopped from denying the validity of such bonds so issued, and the same shall be held to be valid and binding obligations of the county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts for the amount of bonds sued on and interest thereon, at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon. [Act 1905, p. 263, sec. 5. Amended Act 1909, p. 216.]

Art. 2740. **Bonds must be offered to state board.**—Whenever any county, or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts of this state issues any bonds, and they have been approved by the attorney general, as is required by the previous articles of this chapter, the county judge of the county, or the mayor of the incorporated city, or the president of the board of trustees of the independent or common school district, or the county judge or party authorized by law to sell the bonds of road precincts, or drainage, irrigation, navigation, or levee districts, as the case may be, shall notify the state board of education of all bids received for such bonds; and the county judge, or mayor, or president of the board of trustees, as the case may be, shall give the state board of education an option of ten days in which to purchase such bonds; provided, that the board of education will pay the price offered for such bonds by the best bona fide bidder; and, if the board of education shall fail to purchase such bonds within the prescribed time, then the county judge, or mayor, or president of the board of trustees, as the case may be, shall sell the bonds to the best bona fide bidder. In the event the state board of education shall pay a premium out of the permanent school fund on any bonds purchased as an investment for the permanent school fund, then the principal of such bonds and an amount of the interest first accruing on such bonds equal to the premium so paid, shall be and be treated as the principal in such investment, and, when such first interest is collected, such sum of the same shall

be returned to the permanent school fund, and, if they purchase said bonds for less than par, the discount they receive in the purchase of said bonds shall be paid to the available school fund when the bonds are paid off and discharged. The price paid for bonds shall be endorsed thereon at the time the same are purchased; provided, that where said board shall refuse to purchase bonds from the county, city, or independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, or the parties to whom said bonds were issued, then in no event shall said board purchase said bonds from any subsequent owner or holder of the same. [Id. sec. 6.]

Art. 2741. **Payment of interest on bonds to be waiver.**—The payment of any interest upon any bonds heretofore purchased with public school funds, or belonging thereto, shall be deemed and held a waiver of any supposed error, irregularity or want of authority affecting, or tending to affect, the validity of any such bonds, and the same shall thereafter be held to be valid and binding obligations upon the county by which they appear or purport to have been issued, notwithstanding any such supposed error, irregularity or want of authority as aforesaid. [Act 1905, p. 263, sec. 7.]

Art. 2742. **Jurisdiction in district court of Travis county.**—The district court of Travis county shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that of any other court having jurisdiction in said case. [Id. sec. 8.]

Art. 2743. **Extent of these provisions.**—The provisions of this chapter shall extend to any bonds or securities other than the bonds of the state or of the United States, in which the public school funds are, or may hereafter be, invested, as now or hereafter authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any of the asylums or other institutions of this state. [Id. sec. 9.]

CHAPTER ELEVEN.

DUTIES OF COMPTROLLER AND TREASURER AS TO SCHOOL FUNDS.

Article.	Article.
Shall keep separate account of school fund.....2744	Shall keep account of school funds.....2747
Shall draw warrants.....2745	Shall report condition of funds.....2748
Report.....2746	Shall not use school funds for other purposes.....2749

Article 2744. **Shall keep separate account of school fund.**—The comptroller shall keep a separate account of the available state school fund arising from every source, and shall, on or before the meeting of the state board of education on or before the first day of August of each year, make an estimate of the amount of available school fund to be received from every source, and to be available for the succeeding scholastic year, and report the same to the state board of education. [Acts 1909, 2 S. S., p. 432, sec. 1.]

Art. 2745. **Shall draw warrants.**—The comptroller shall, on the first working day of each month, certify to the state superintendent of public instruction the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund, and shall draw his warrant on the state treasurer, and in favor of the treasurer of the available school fund of each county, city or town, and each school

district having control of its public schools, for the amount stated in, and upon receipt of, the certificate therefor issued to him on the first day of each month by the state superintendent of public instruction, and shall register such warrants and transmit them to the state treasurer. [Id. sec. 2.]

Art. 2746. **Report.**—The comptroller shall, on or before the meeting of each regular session of the legislature, report to the legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools. [Acts 1905, p. 263, sec. 15.]

Art. 2747. **Shall keep account of school funds.**—The state treasurer shall receive and hold as a special deposit all money belonging to the available school fund, and keep an account of the same. He shall register every warrant drawn by the comptroller on such fund in favor of the treasurer of the available school fund of any county, city, or town, or school district having control of its public schools, and transmit such warrants to the superintendent of public instruction. On presentation to him for payment properly endorsed, he shall pay such warrants each in the order in which presented. [Acts 1909, 2 S. S. 432, sec. 3.]

Art. 2748. **Shall report condition of funds.**—The state treasurer shall, thirty days before each regular session of the legislature, and ten days before any special session, at which any legislation can be had respecting the public schools, report to the governor the condition of the permanent and available school funds, the amount of each, and the manner of its disbursement; and he shall also make any additional report required by the board of education. [Acts 1905, p. 263, sec. 19.]

Art. 2749. **Shall not use school funds for other purposes.**—The treasurer shall not, under any circumstances, use any portion of the permanent or available school funds in payment of any warrant drawn against any other fund whatever. [Id. sec. 20.]

CHAPTER TWELVE.

COUNTY SUPERINTENDENT AND OTHER OFFICERS.

Article.	Article.
Office established	To district in adjoining county.....
Shall give bond.....	By agreement of trustees.....
Shall have immediate supervision of schools	County judge shall be, when.....
Shall conduct county teachers' institute.....	Shall give bond.....
Shall keep record of attendance and certify to same.....	Compensation.....
Shall apportion funds among school districts.....	Shall take constitutional oath.....
Shall approve contracts and vouchers.....	Treasurers to keep funds in depositories.....
Authorized to administer oaths.....	Bond.....
Salary	Depository shall keep accounts.....
Authority of county superintendent as to transfers	Balances
Application of parent or guardian.....	Treasurer of independent districts.....
	Purposes for which the funds may be expended
	Treasurers shall make reports.....

Article 2750. **Office established.**—The office of county superintendent of public instruction is hereby created; and the commissioners' court of every county in the state, having three thousand scholastic population as shown by the preceding scholastic census, shall provide for the election of a county superintendent of public instruction at each general election, who shall be a

person of educational attainments, good moral character, and executive ability, and who shall be provided by the commissioners' court with an office in the court house, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate, or teacher's permanent certificate, and he shall hold his office for the term of two years, and until his successor is elected and qualified. In every county that shall attain three thousand scholastic population or more, the commissioners' court shall appoint a county superintendent of public instruction, with qualifications above described, who shall perform the duties of such office until a county superintendent shall have been elected as hereinbefore provided, and shall have qualified; provided, that in counties having less than three thousand scholastic population, whenever more than twenty-five per cent of the qualified voters of said county, as shown by the vote for governor at the last preceding general election, shall petition the commissioners' court therefor, the commissioners' court shall order an election for said county to determine whether or not the office of county superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters, voting at said election, shall vote for the creation of the office of county superintendent in said county, the commissioners' court, at its next regular term, after the holding of said election, shall create the office of county superintendent, and name a county superintendent, who shall qualify under this chapter, and hold such office until the next general election, and until his successor shall have been elected and qualified. [Acts 1905, p. 263, sec. 36. Amended Acts 1907, p. 210.]

Art. 2751. Shall give bond.—The county superintendent of public instruction, before entering upon the discharge of his duties, shall take the oath of office prescribed by the constitution, and shall enter into a bond in the sum of one thousand dollars, with good and sufficient sureties, to be approved by the county commissioners' court, and to be filed with the county clerk of his county. Said bond shall be made payable to the county commissioners' court and their successors in office, in trust for the available school fund of the county, and be conditioned upon the faithful performance of the duties of his office. In case said bond should be forfeited and collected, the sum so collected shall become a part of the available school fund of the county. [Acts 1905, p. 263, sec. 38.]

Art. 2752. Shall have immediate supervision of schools.—The county superintendent of public instruction shall have, under the direction of the state superintendent of public instruction, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend as much as four days in each week visiting the schools while they are in session, when it is possible for him to do. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the state department of education shall be approved by the county superintendent before they are forwarded to the state superintendent; and all appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the state superintendent of public instruction, and to the state board of education. [Id. sec. 37. Amended Acts 1907, p. 210.]

Art. 2753. Shall conduct county teachers' institute.—The county superintendent shall organize and hold, with such assistance as may be necessary, within the first four months of the scholastic year, one institute of five consecutive days for white and for colored teachers, respectively, and he shall

require the attendance of white teachers upon the institute for white teachers and the attendance of colored teachers upon the institute for colored teachers; provided, that a failure to comply with these requirements shall be a sufficient cause for his removal from office; provided, further, that the county superintendent of public instruction shall be authorized to cancel the certificate of any teacher who wilfully and persistently absents himself from attendance upon the county teachers' institute; provided, that the board of school trustees in any independent school district, having five hundred or more scholastic population, may authorize the superintendent or principal to organize and hold institutes for the teachers of such district, in lieu of the county institute; and the work of the teachers in said city institutes shall be counted toward the extension of their certificates; provided, that the plan, scope and quality of the work of said city institutes shall be approved by the state superintendent of public instruction. [Id.]

Art. 2754. **Shall keep record of attendance and certify to same.**—It shall be the duty of the county superintendent of public instruction, or the county judge when acting as such, to keep a correct account of the attendance of the teachers who attend the institutes, and also an account of the teachers who attend the summer normals held in the county of which he is such county superintendent of public instruction, or county judge when acting as such, and to certify the attendance of the holders of such certificates on said certificates. The conductor of each summer normal in this state shall report to the county superintendent, or ex officio county superintendent, of the county wherein said normal is held, a correct record of the daily attendance of teachers on said normal, and shall certify to the faithful performance of the duties of said teachers while in attendance on said normal; provided, that teachers who attend the county teachers' institutes shall receive full pay as provided under their contracts for each day they are absent from the schools they have contracted to teach, and are in actual attendance at the sessions of said institutes. [Acts 1905, p. 263, sec. 126.]

Art. 2755. **Shall apportion funds among school districts.**—The county superintendent, or county judge who is ex officio county superintendent, upon the receipt of the certificate issued by the board of education for the state fund belonging to his county, shall apportion the same to the several school districts, not including the independent school districts of the county, making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school fund to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after such apportionment by the county superintendent of education, or county judge who is ex officio county superintendent of education, the trustees of each district shall, if possible, agree upon a division of the funds of the district among the schools thereof, and shall fix the term for which the schools of the district shall be maintained for the year. Should they agree upon a division of the funds of the district or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent, or county judge who is ex officio county superintendent, who shall not approve any contracts with teachers of the district until such agreement is received. Should the trustees fail to agree upon a division of the funds of the district, or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their disagreement to the county superintendent, or the county judge who is ex officio county superintendent, who shall proceed to fix the school term of such school district and declare the division of the school fund of the district among the schools thereof, endeavoring as far as practicable to provide, for

the schools of such district, school terms of the same length. [Id. sec. 94. Amended Acts 1907, p. 204.]

Art. 2756. Shall approve contracts and vouchers.—The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the state superintendent as may be required by that officer. Immediately after qualifying, he shall appoint a county board of examiners, consisting of three resident white teachers holding first grade certificates, who shall serve during the pleasure of the county superintendent of public instruction, subject to the provisions hereafter made. He shall discharge such other duties as may be prescribed by the state superintendent. [Acts 1905, p. 263, sec. 39.]

Art. 2757. Authorized to administer oaths.—The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; provided, that they shall receive no compensation for administering said oaths. [Id. sec 41.]

Art. 2758. Salary.—The county superintendent of public instruction herein provided for shall receive from the available school fund of their respective counties annual salaries, as follows: In every county in Texas that has a scholastic population of two thousand or less, in which the office of county superintendent has been created or may be created hereafter, the county school superintendent shall receive an annual salary of nine hundred dollars; in every county in the state of Texas that has a scholastic population of not less than two thousand nor more than three thousand, the county school superintendent shall receive an annual salary of eleven hundred dollars; in every county that has a scholastic population of not less than three thousand nor more than four thousand, the county school superintendent shall receive an annual salary of thirteen hundred dollars; in every county that has a scholastic population of not less than four thousand nor more than five thousand, the county school superintendent shall receive an annual salary of fourteen hundred dollars; in every county that has a scholastic population greater than five thousand, the county school superintendent shall receive an annual salary of fifteen hundred dollars; provided, that the county superintendent shall be allowed any sum not to exceed one hundred dollars per year for stamps, stationery, expressage and printing, to be paid by the commissioner's court out of the county general fund. The compensation herein provided for shall be paid quarterly by the county treasurer on the order of the commissioners' court; provided, that the salary for the quarter ending on the second Monday in November shall not be paid until the county superintendent presents a receipt from the state superintendent of public instruction showing that he has made all reports required of him. [Id. sec. 40. Amended Acts 1907, p. 210.]

Art. 2759. Authority of county superintendent as to transfers.—Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. [Id. sec. 54.]

Art. 2760. Application of parent or guardian.—Any child lawfully enrolled in any district, or independent district, may be transferred to the enrollment of any other district, or independent district, in the same county, upon the written application of the parent or guardian or person having the lawful control of such child, filed with the county superintendent; but no child shall be transferred more than once; provided, the party making application for transfer shall state in said application that it is the bona fide intention of applicant to send child to the school to which transfer is asked. Upon the transfer of any child, its portion of the school funds shall follow and be paid over to the district, or independent district, to which such child is transferred; provided, no transfer shall be made after August first, after the enrollment was made. [Id. sec. 91.]

Art. 2761. To district in adjoining county.—Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjacent district in another county, in the same manner as is provided in said article for the transfer of such child or children from one district to another in the same county; provided, that it must be shown to the county superintendent that the school in the district in which such child or children resides on account of distance or some uncontrollable and dangerous obstacle is inaccessible to such child or children. [Acts 1907, p. 242, sec. 91a.]

Art. 2762. By agreement of trustees.—Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided, that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. [Acts 1905, p. 263, sec. 92.]

COUNTY JUDGE EX OFFICIO COUNTY SUPERINTENDENT.

Art. 2763. County judge shall be, when.—In each county in this state having no school superintendent, the county judge shall be ex officio county superintendent of public instruction, and shall perform all the duties required of the county superintendent in this chapter. [Id. sec. 42.]

Art. 2764. Shall give bond.—The county judge shall give a bond in the sum of one thousand dollars, to be approved by the county commissioners' court, and filed with the county clerk, said bond made payable to the commissioners' court and their successors in office, and conditioned for the faithful performance of his duties. He shall also take the oath of office prescribed by the constitution. [Id. sec. 43.]

Art. 2765. Compensation.—In a county where the county judge acts as superintendent of public instruction, he shall receive for his services as superintendent such salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. [Id. sec. 44.]

Art. 2766. Shall take constitutional oath.—County superintendents, county judges, and all school officers, shall take the oath prescribed by the constitution to faithfully and impartially discharge the duties of their respective offices. [Id. sec. 45.]

TREASURERS OF SCHOOL FUNDS.

Art. 2767. Funds must be kept in depositories.—The terms, county treasurer, and county treasury, as used in all provisions of law relating to school funds, shall be construed to mean the county depository; and the state department of education shall be notified of the treasurer of the school funds in

a given county by the commissioners' court filing in said department a copy of the bond of said depository to cover school funds; provided, that no commission shall be paid for receiving and disbursing school funds. [Acts 1905, p. 263. Added Acts 1909, p. 17, sec. 154a.]

Art. 2768. Bond.—Within twenty days after the receipt of a certificate of its selection, it shall be the duty of the county depository to execute a bond, with two or more good and sufficient sureties, payable to the county judge and his successors in office, for the faithful performance of his duties under this title; said bond shall be in an amount equal to the probable amount of available school fund and of the permanent county fund, which may come into his hands, to be estimated by the county superintendent, or county commissioners' court in a county having no superintendent, and shall be conditioned that the depository will safely keep and faithfully disburse the school fund according to law, and pay such warrants as may be drawn on said fund by competent authority. [Acts 1905, p. 263, sec. 31. Art. 921, R. S., 1895.]

Art. 2769. Depository shall keep accounts.—The county treasurer, upon receiving notice from the state superintendent of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholastic census; and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. It shall also be the duty of the county treasurer to keep a separate account with each district, showing the amount apportioned, according to the certificate of apportionment, and the amount paid out to each school and district; provided, in no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent. [Acts 1905, p. 263, sec. 34.]

Art. 2770. Balances.—All balances of the general school fund not appropriated for the current year shall be carried over by the treasurer as part of the general school fund for the county for the succeeding year, and unexpended balances to the credit of any district shall be carried over for the benefit of such school district; provided, that, if any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess over five dollars per capita shall be re-apportioned to the school districts of the county. [Id. sec. 35.]

Art. 2771. Treasurer of independent district.—In an independent district of more than one hundred and fifty scholastics, whether it be a city which has assumed control of the schools within its limits, or a corporation for school purposes only, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances for the privilege of acting as such treasurer. The treasurer shall be required to give bond in double the estimated amount of the receipts coming annually into his hands. Said bond shall be made payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurer's duties and the payment of the funds received by him upon the draft of the president, drawn upon order, duly entered, of the board of trustees. It shall be approved by the school board, and the state department of education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. [Acts 1905, p. 263, sec. 165. Added 1909, p. 17, sec. 154a.]

Art. 2772. Purposes for which funds may be expended.—The public school funds hereafter shall not be expended except for the following purposes:

1. The state and county available school funds shall be used exclusively for the payment of teachers' and superintendents' salaries and fees for taking scholastic census.

2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition, and other local sources, may be used for the purposes enumer-

ated for state and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools, to be determined by the board of trustees, the accounts and vouchers for county districts and communities to be approved by the county superintendent; provided, that, when the state available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months and leave a surplus, such surplus may be expended for the purposes mentioned herein. [Id. sec. 83.]

Art. 2773. **Treasurers shall make reports.**—Each treasurer receiving or having control of any school funds shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall, on or before the first day of October of each year, file with the state superintendent of public instruction an itemized report in duplicate of the receipts and disbursements of the school funds for the preceding school year ending August 31; which report and duplicate shall be on the prescribed form furnished by the department of education; and the duplicate report, after examination by the state superintendent, shall be returned to the commissioners' court of the proper county for approval, and shall be accompanied by such objections or recommendations as the state superintendent may make in regard to the same. The state superintendent in examining any report may call for vouchers and make such investigation of the correctness and legality of the different items as he may deem necessary; and, when the duplicate is sent to the commissioners' court, all vouchers shall be presented to the court. [Id. sec. 49.]

CHAPTER THIRTEEN.

SCHOLASTIC CENSUS.

Manner of taking census.....	Article. 2774	Compensation of census trustee.....	Article. 2778
Duty of census trustee.....	2775	Above articles apply to cities and towns,	
Duty of county superintendent, as to.....	2776	except, etc.....	2779
Duty and power of state superintendent,			
as to.....	2777		

Article 2774. **Manner of taking census.**—The county superintendent of public instruction shall, on the first day of January of each year, or as soon as practicable thereafter, appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. It shall be the duty of the census trustee to take, between the first day of May and the first day of June after his appointment, a census of all the children that will be over seven and under seventeen years of age on the first day of the following September, and who are residents of the school district on said first day of May, and to make report under oath to the county superintendent on or before the first day of June next thereafter. In taking the said census he shall visit each home, residence, habitation and place of abode, and shall, by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, guardian or person having control of any such children, a prescribed form showing the name, color, and nationality of the person rendering such children, the name and number of the school district in which the

children reside, and the name, sex and date of birth of each child of which he is the parent or guardian, or of which he has control, and which child will be over seven and under seventeen years of age on the first day of September next following. The census trustee shall require such form to be subscribed and sworn to by the person rendering the children, and he is hereby authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, it shall be the duty of the census trustee to leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of child or children, requiring that the form be filled out, sworn and subscribed to before the census trustee, or any officer authorized to administer oaths, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee. [Acts 1905, p. 263, sec. 89.]

Art. 2775. Duty of census trustee.—Only children of the same family shall be listed on one form; and, if one person has under his control children of different family name, he should use a separate form for each family name. The census trustee shall arrange the forms for white and colored children separately, in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said child, by whom it is reported. He shall also make a summary of his rolls showing the number of children of each race that will be of the different ages over seven and under seventeen on the first day of next September, which shall continue to be the scholastic age, as is now provided by law, he shall make oath to his rolls and summaries, and to the faithful and accurate discharge of his duties, deliver the rolls, together with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment. [Id.]

Art. 2776. Duty of county superintendent as to.—The rolls and summaries of the census trustee shall be preserved by the county superintendent in his office for three years after they are filed. The county superintendent shall make, on prescribed forms, separate consolidated rolls for the white and colored children of his county, showing the name, age and sex of each, together with the number of the district in which it lives, and the name of the parent or guardian, arranging the names of the children according to the alphabetical order of their family names. In making these consolidated rolls, he shall scrutinize carefully the work of the census trustees, and shall have power to summon witnesses, take affidavits and correct any errors he may find in any census trustee's roll, and he shall carefully exclude all duplicates. If he deems it necessary, he may reject any roll, and appoint another census trustee to take the census of the district, in which case he shall not approve the warrant to pay the census trustee, whose work has been rejected, for his services. When the county superintendent has prepared his consolidated census rolls, one for each race, he shall make a duplicate of each, and he shall make affidavit to the correctness of both originals and duplicates. The originals he shall, on or before July first, forward to the state superintendent of public instruction at Austin, and the duplicates shall be filed with the county clerk and become permanent records of his office. The county superintendent shall forward with his consolidated rolls and abstract on the prescribed form, under oath, showing the number of children of each race, of the different years of the school age, and the total number of children of each race and the total of both races in his county. In making his consolidated rolls and in investigating the work of any census trustee, the county superintendent shall refer

to the forms and rolls of previous years, when necessary, and they shall be carefully preserved for this purpose. [Id.]

Art. 2777. Duty and powers of state superintendent as to.—The state superintendent shall have authority to investigate the census of any county, to correct errors, and, in extreme cases when he believes gross errors have occurred, or that fraud has been practiced, he may, with the approval of the state board of education, reject any county's roll and require the census of the county to be retaken. [Id.]

Art. 2778. Compensation of census trustees.—For their services, the census trustees shall receive four cents per capita of the children of scholastic age taken by them in county districts, and three cents per capita in towns of twenty-five hundred inhabitants and upwards to five thousand inhabitants, and two cents per capita in cities of more than five thousand inhabitants; and the county superintendent shall receive one cent per capita of the scholastic population reported by him; but these amounts shall not be paid until the census of the county is accepted by the state superintendent, and shall be forfeited as follows: The trustee's compensation, if his work is rejected by the county superintendent, and the census of his district ordered retaken, and both the county superintendent's and the trustee's compensation, if the census of the county is rejected and ordered by the state superintendent and the state board of education to be retaken. [Id.]

Art. 2779. Above articles apply to cities and towns, except, etc.—The provisions of this chapter shall apply to the taking of the scholastic census in cities and towns constituting independent districts, except as specially provided herein below, to-wit: The census trustee shall be appointed by the president of the board of trustees, and a census trustee may be appointed for each ward or school subdistrict, at the discretion of the president of the school board making such appointment. The forms for the parent and the rolls shall show the street and house number, or location of the house or place in which each child resides. [Id.]

CHAPTER FOURTEEN.

TEACHERS' CERTIFICATES AND EXAMINATIONS.

Article.	Article.
Shall present valid certificate.....	Requirements for third grade certificate.....
Salaries of teachers.....	Requirements for second grade certificate.....
Instruction must be given in English.....	Requirements for first grade certificate.....
Prescribed studies.....	Permanent certificate.....
Shall keep records and make reports.....	Grades and qualifications for permanent certificate.....
Shall attend summer normals and county institutes.....	Building to higher grade certificates.....
County board of examiners.....	Normal school and summer school certificates.....
Applicant for certificate.....	University of Texas diplomas and certificates.....
Applicant must know English.....	Diploma of College of Industrial Arts.....
Examinations must be conducted in English.....	Certificates based on college degrees.....
Examiners shall grade papers.....	Course of study for first grade certificates in certain institutions.....
Applicant may receive lower grade certificate.....	City certificates.....
Duties of county superintendent.....	Kindergartens.....
Dates of examinations.....	Kindergarten certificates.....
State board of examiners.....	Extension of term of validity of certificates.....
When papers shall be forwarded.....	Cancellation of certificates.....
Examination of papers.....	
Kinds of certificates.....	
Classes of county certificates; record.....	

Article 2780. Shall present valid certificate.—Any teacher desiring to teach in any city, town or district in this state shall, before contracting with any

board of trustees, or with any city school board, exhibit a teacher's certificate, valid in the city, town or school district; and any teacher who shall teach in any public school in this state without having a valid certificate shall not receive from the free school funds any compensation for such services. [Acts 1905, p. 262, sec. 101.]

Art. 2781. **Salaries of teachers.**—Trustees in making a contract with a teacher shall determine the salary to be allowed, or wages to be paid, upon the following rates of tuition: To a teacher holding a first grade certificate not more than two dollars and fifty cents; to one holding a second grade certificate, not more than two dollars; and to one holding a third grade certificate, not more than one dollar and fifty cents per month per capita shall be allowed for pupils within the scholastic age; and it shall not be lawful for trustees or teachers to demand, as a condition of admittance into school, the payment of extra tuition of pupils of scholastic age; provided, that in no event shall a teacher holding a permanent certificate receive from the public free school fund more than eighty-five dollars per month, or one holding a first grade certificate receive from the public free school fund more than seventy-five dollars per month, or one holding a second grade certificate more than sixty dollars per month, or one holding a third grade certificate, more than forty dollars per month; provided, that this restriction shall not apply to salaries of teachers in a district which levies a local tax for school purposes. [Id. sec. 73.]

Art. 2782. **Instructions must be given in English.**—It shall be the duty of every teacher in the public free schools of this state to use the English language exclusively, and to conduct all recitations and school exercises exclusively in the English language; provided, that this provision shall not prevent the teaching of any other language as a branch of study, but, when any other language is so taught, the use of said language shall be limited to the recitations and exercises devoted to the teaching of said language as such branch of study. [Id. sec. 102.]

Art. 2783. **Prescribed studies.**—All public schools in this state shall be required to have taught in them spelling, reading in English, writing, arithmetic, English grammar, modern geography, composition, physiology and hygiene, including the effects of alcoholic stimulants and narcotics on the human system, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, and other branches as may be agreed upon by the trustees, or directed by the state superintendent of public education; provided, that the subject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, unless so ordered by the school boards; provided, further, that suitable instruction shall be given in the primary grades once each week regarding kindness to animals of the brute creation and the protection of birds and their nests and eggs. [Id. sec. 100, as amended Acts 1907, p. 316.]

Art. 2784. **Shall keep records and make reports.**—Teachers shall keep daily registers, in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the state superintendent. Said registers shall be open to the inspection of all parents, school officers and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the state superintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the state superintendent, and, until such term reports are made, the trustees shall not approve vouchers for last month's salaries, nor shall the

county treasurers pay the same. All monthly and term reports shall be made under oath, and county superintendents are hereby empowered to administer oaths for such purposes. County superintendents and county judges shall receive no compensation for administering oaths necessary in transacting any business relating to school affairs. [Acts 1905, p. 263, sec. 103.]

Art. 2785. Shall attend summer normals and county institutes.—It shall be the duty of all teachers in the public schools of this state to attend the summer normal and county institutes as far as possible. [Id. sec. 104.]

Art. 2786. County board of examiners.—There shall be in each organized county in this state, a county board of examiners. Said board shall be composed of three members, to be appointed by the county superintendent; provided, that in counties having no county superintendent, the county judge shall appoint a county board of examiners. The persons so appointed shall be teachers residing in the county for which they are appointed, holding first grade certificates, or certificates of some higher rank, which certificates shall be valid in the county for which said persons are appointed at the time of appointment; provided, that if the services of such persons can not be secured, the superintendent may appoint other qualified persons residing in the county for which they are appointed. The members of the county board of examiners shall serve during the pleasure of the county superintendent of the county for which they are appointed. Said board of examiners shall meet at the call of the county superintendent; and the presence of a majority of the members of the board shall be necessary to the transaction of business. [Id. sec. 105.]

Art. 2787. Applicant for certificate.—Any person desiring to be examined for a county certificate shall make application to the county superintendent, stating the class of certificate desired, and shall present him a certificate of three good and well known citizens, or such proof as he may require, of all the qualifications, except the examination grades, required for the class of certificate desired. After investigation the county superintendent shall give the applicant a written recommendation to the board of examiners, requiring them to examine the applicant for a certificate of such class, if any, as they may find the applicant entitled to upon making the necessary examination grades. But no person shall receive such recommendation without first depositing with the county superintendent the sum of two dollars as a county examination fee; and the recommendation given by the superintendent shall show the receipt of the examination fee. The board of examiners shall in no case permit any person to enter upon the examination without first presenting the written recommendation of the county superintendent. [Id. sec. 114.]

Art. 2788. Applicant must know English.—No person shall receive a certificate of any class without first showing to the satisfaction of the county superintendent that he is a person of good moral character, and his ability to speak and understand the English language sufficiently to use it easily and readily in conversation, and in giving instruction in all branches prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the fact personally, shall require satisfactory proof of the applicant that he has ability to use the English language as above provided, before issuing his recommendation to the board of examiners, and the examiners shall also consider it as an element in determining his grade upon the branches upon which he is examined. [Id. sec. 115.]

Art. 2789. Examinations must be conducted in English.—All examinations authorized under this chapter shall be conducted in the English language and in writing; and no applicant shall receive a certificate, unless the board of examiners be satisfied that he is competent to teach the

branches prescribed for the grade of certificate applied for, in the English language. All examinations for white and colored teachers shall be conducted in separate rooms or buildings. [Id. sec. 110.]

Art. 2790. **Examiners shall grade papers.**—The board of examiners shall grade the papers of the applicants on the basis of one hundred credits for a perfect paper, and endorse on each paper in ink the number of credits allowed on each answer, and the total on the paper, and shall make to the county superintendent a separate report, under oath, on the examination of each applicant, which shall show the names of the members of the board conducting the examination, and the number of credits allowed on each subject, and shall, if they believe that the applicant has fairly observed the rules prescribed for the examination, and if the applicant has made the grades and averages required, recommend that he receive a certificate of such class, if any, as he may be entitled to, and shall deposit his papers with the county superintendent. [Id. sec. 106.]

Art. 2791. **Applicant may receive lower grade certificate.**—An applicant who takes the examination for a certificate of any class and fails to pass may receive a certificate of any lower rank to which the examination grades on the subjects prescribed for such certificate of lower rank may entitle him. [Id. sec. 107.]

Art. 2792. **Duties of county superintendent.**—The county superintendent shall not act as a member of the county board of examiners. He shall collect the examination fees, and, after paying out of the funds so received the expense of the examination and making the necessary remittances, if any, to the state superintendent for the state board of examiners, shall distribute the remainder among the members of the county board of examiners conducting the examination. [Id. sec. 108.]

Art. 2793. **Dates of examinations.**—The county board of examiners of each county shall, if necessary, hold an examination on the first Friday and the Saturday following of the months of May, July, August, September and December of each year. Said board of examiners shall use the questions prescribed by the state superintendent of public instruction, and shall conduct the examination in accordance with the rules and regulations prescribed by the county superintendent and the state superintendent of public instruction. [Id. sec. 109.]

Art. 2794. **State board of examiners.**—The state superintendent of public instruction shall be authorized to appoint a state board of examiners, consisting of not less than three competent teachers, living in the state, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary. [Id. sec. 111.]

Art. 2795. **When papers shall be forwarded.**—The county superintendent shall, upon the request of any applicant for a second grade, first grade or permanent certificate, made in writing before the adjournment of the board of examiners, forward to the state superintendent, to be submitted to the state board of examiners herein provided, such applicant's papers, and the report of the county board of examiners thereon, together with a fee of one dollar paid him by the applicant; provided, that this shall not in any manner interfere with the issuance of the proper county certificate to said applicant. [Id. sec. 112.]

Art. 2796. **Examination of papers.**—The state board of examiners shall, at their next meeting after the receipt of said papers and report, together with said fee of one dollar, examine said papers, and report thereon; and, if they believe that the papers are fairly and accurately graded, they shall make a report to the state superintendent, and shall recommend that the county certificate issued upon said examination be made valid in all the counties of the

state, and they shall notify said applicant of their action, who may forward his county certificate to the state superintendent of public instruction, who may issue in lieu thereof another certificate of equal rank, valid in all the counties of the state; and the state superintendent shall preserve a record of certificates thus issued by him. [Id. sec. 113.]

Art. 2797. Kinds of certificates.—Teachers' certificates authorizing the holders thereof to contract and teach in the public free schools of this state shall be of three kinds, as follows:

1. County, to be valid only in the county in which it is issued.
2. City, to be valid only in the city in which it is issued.
3. State, to be valid in all the counties and independent districts of the state. All valid teachers' certificates now in force shall be good for the time for which they were issued. [Id. sec. 116.]

Art. 2798. Classes of certificates; record.—County certificates shall be of four classes, as follows:

1. Third grade.
2. Second grade.
3. First grade.
4. Permanent.

County certificates shall be issued by the county superintendent of public instruction, upon the recommendation of the county board of examiners hereinbefore provided; and the county superintendent shall keep a record of all certificates issued by himself, and of other certificates held by persons teaching in the public free schools of his county, who shall present such certificates for record before their contracts shall be approved, which record shall show the name, age, sex and color of the holder of each certificate, and the kind and class of the certificate, the length of time for which it is valid, and by whom issued. [Id. sec. 117.]

Art. 2799. Requirements for third grade certificates.—An applicant for a third grade certificate shall be examined in spelling, reading, writing, arithmetic, English grammar, geography, Texas history, elementary physiology and hygiene and the laws of health, with special reference to narcotics, and school management, and the methods of teaching, and school laws of Texas. A third grade certificate shall be valid for one year from the date of its issue; and, to receive such certificate, the applicant shall, on examination, make on the prescribed subjects an average grade of not less than seventy, and on each prescribed subject a grade of not less than fifty; provided, that a third grade certificate shall not, in any case, be valid except in the county where issued. [Id. sec. 118.]

Art. 2800. Requirements for second grade certificates.—An applicant for a second grade certificate shall be examined in the subjects prescribed for a third grade certificate, and, in addition thereto, in United States history, elementary principles of civil government, English composition and physical geography. A second grade certificate shall be valid for three years from the date of its issue, and, to receive such certificate the applicant shall, upon examination, make on the prescribed subjects an average grade of not less than seventy-five, and on each subject a grade of not less than fifty; provided, that if the applicant makes a general average on the prescribed subjects of not less than eighty-five, and on each subject of not less than fifty, the certificate shall be good for five years. [Id.]

Art. 2801. Requirements for first grade certificates.—An applicant for a first grade certificate shall be examined in the subjects prescribed for third and second grade certificates, and in addition thereto, in physics, algebra, elements of geometry and general history. A first grade certificate shall be valid for four years; and, to receive such certificate, the applicant shall make upon the prescribed subjects an average grade of not less than seventy-five, and

on each subject a grade of not less than fifty; provided that if the applicant makes a general average on the prescribed subjects of eighty-five, and on each subject a grade of not less than fifty, the certificate shall be valid for six years. [Id.]

Art. 2802. Permanent certificate.—An applicant for a permanent certificate shall be examined upon the branches prescribed for third, second and first grade certificates, and, in addition thereto, in the history of education, general history, psychology, English and American literature, chemistry, solid geometry, plane trigonometry and elementary double entry bookkeeping. A permanent certificate shall be valid during the good behavior of the holder; provided, that, if any person holding a permanent certificate withdraw from the school work for a period of three years, or longer, such certificate shall become void; and it shall be the duty of the county superintendent, or the state superintendent, if the certificate be a state certificate, to cancel the same upon the records of his office. To receive a permanent certificate, the applicant shall be a teacher of not less than three years successful experience in the schools of Texas, and, upon examination, shall make upon prescribed subjects an average grade of not less than eighty-five, and on each prescribed subject a grade of not less than fifty; provided, further, that all certificates that have heretofore been issued by county superintendents or county judges, without the favorable recommendations of the county board of examiners after examining the applicants on the subjects prescribed by law, are hereby declared null and void, and the same are hereby canceled and declared of no force. [Id. sec. 119.]

Art. 2803. Grade, etc., for permanent certificate.—If, under the conditions named, the holder of a second or a first grade state certificate, issued on an average of eighty-five by the state board of examiners, shall pass a satisfactory examination upon the additional subjects of the history of education, elementary psychology applied to teaching, and English and American literature, with a general average of eighty-five on the subjects named, and not less than fifty on any subject, said grade to be determined by the state board of examiners, the said holder shall be entitled to a permanent certificate to be known as a permanent primary certificate; and said certificate shall be valid in any county of the state in any primary school, except when canceled by authority for reasons applicable to any other class of permanent certificates. [Id. sec. 118.]

Art. 2804. Building to higher grade certificates.—Any person holding a second grade or first grade certificate may, at any time during the validity of said certificate, receive in lieu thereof a certificate of the next higher class, by taking the examination on the additional subjects prescribed for such higher class certificate; provided, that such applicant's average grade on all subjects prescribed for such higher class certificate, as shown by both examinations, shall not be less than hereinbefore fixed, and the minimum grade on any subject shall not be less than hereinbefore fixed, and the minimum grade on any subject shall not be less than hereinbefore provided; and provided, further, that said applicant shall possess all the other qualifications required by law for persons receiving such certificates of such higher grade. [Id. sec. 120.]

Art. 2805. Normal school and summer normal certificates.—A teacher holding a diploma from a Texas state normal school, or from the Peabody normal school at Nashville, Tennessee, may teach in public schools of this state during good behavior; and such diploma shall rank as a permanent state certificate; and such teacher shall not be subject to examination by any board of examiners. A teacher holding a first grade teacher's certificate from a Texas state normal school may teach in the public schools in this state for six years after issuance, and a teacher holding a second grade certificate

from such an institution may teach in the public schools of the state for three years, and shall not be subject to examination by any board of examiners. A teacher holding a Texas summer normal certificate may teach anywhere in the state for four years, and shall not be subject to examination by any board of examiners; provided, that anyone holding a summer normal certificate, whose general average grade made on examination is not less than eighty-five per cent may teach anywhere in the state for six years. The state superintendent shall prescribe regulations for the holding of summer normal institutes and prescribe the rules for granting summer normal and permanent certificates, which shall be state certificates. [Id. sec. 121.]

Art. 2806. University of Texas; certificates and diplomas.—Teachers' diplomas conferred by the university of Texas upon students who have satisfactorily completed at least four full courses in the department of education in said university, and who have satisfied the requirements for the degree of bachelor of arts, shall have the force and effect of the permanent state certificates. Teachers' certificates granted by the university of Texas to students who have satisfactorily completed four full courses in the college of arts and one full course in the department of education in said university shall have the force and effect of first grade state certificates, and said certificates shall each be valid for a period of two years. [Id. sec. 122. Amended 1909, p. 394.]

Art. 2807. Diploma from college of industrial arts.—A diploma bearing the force of a first grade state teacher's certificate may be conferred by the board of regents of the Texas industrial institute and college for the education of white girls of the state of Texas in the arts and sciences, on the recommendation of the faculty of said college, upon students of the institution who, in addition to completing a regular course leading to graduation, shall also have pursued the study of pedagogy, which shall be prescribed by said institution, and approved by the state board of education. Said diploma shall have the force of a first grade certificate for six years following the date of its issue. At any time during the last three years of the term of validity of said diploma as a first grade certificate, the state superintendent of public instruction may endorse said diploma validating it as a permanent state certificate; provided, that the holder of said diploma shall have taught successfully for three years in Texas following her graduation from said institution. School trustees are hereby authorized to employ the holders of said diplomas from the Texas industrial institute and college for the education of white girls of the state of Texas in the arts and sciences, and to pay their salaries from state, county and local funds as salaries of other teachers are paid. [Act 1907, p. 144.]

Art. 2808. Certificates based on college degrees.—Any person who holds a diploma conferring on him the degree of bachelor of arts, or any equivalent bachelor's degree, or any higher academic degree, from any college or university of the first class, and who has completed four full courses in education and pedagogy, may receive from the state superintendent of public instruction a permanent state certificate, which shall be valid anywhere in this state during good behavior; provided, that any person who holds a diploma conferring on him the degree of bachelor of arts, or any equivalent bachelor's degree, or any higher academic degree, from any college or university of the first class, who has not had four full courses in education, but who has taught three years in the state, may receive from the state superintendent of public instruction a permanent state certificate, which shall be valid anywhere in this state during good behavior. The institutions to be recognized as colleges or universities of the first class shall be determined by the state superintendent of public instruction upon the recommendation of the state board of examiners. [Acts 1905, p. 263, sec. 123. Amended Acts 1909, p. 394.]

Art. 2809. Course of study for first grade certificates in certain institutions.—The state superintendent of public instruction may grant first grade state certificates to students who have satisfactorily completed four full academic courses and one full course in education and pedagogy in any institution ranked as first class by the state superintendent of public instruction, upon the recommendation of the state board of examiners, and each certificate so issued shall be valid for a period of two years. [Id. sec. 122. Amended 1909, p. 394.]

Art. 2810. City certificates.—A city or town which has a scholastic population of five hundred or more, and has become an independent school district, and which levies a local tax for educational purposes, or maintains a system of free schools for nine months in each year, and which has employed a superintendent of city schools, may have a city board of examiners. Said board of examiners shall, in all cases, consist of a city superintendent of the city schools, together with two other persons who shall be appointed by him, and who shall be teachers, and the superintendent shall not be subject to examination. The city board of examiners are hereby authorized to issue certificates valid only in the city in which they are issued. Such certificates shall be of two kinds as follows: Temporary certificates; permanent certificates. Temporary and permanent certificates shall be of three classes for each kind as follows: Temporary certificates shall be second grade, first grade and high school; permanent certificates shall be primary, first grade and high school. A temporary city certificate shall be good for any period not exceeding four years, to be determined by the board of trustees of such city or town. A permanent city certificate shall be good during good behavior, and shall not be issued to any person who has not been engaged successfully in teaching in the schools of Texas for a period of at least three years. The further regulation of the issuance of such certificate shall be provided for by the board of trustees of such cities or towns; provided, that no city or town shall make the requirements for its temporary certificates inferior to the requirements prescribed by law for county or state certificates of the corresponding grades, or the requirements for its permanent certificates less than those prescribed by law for permanent county or state certificates of corresponding grades. Nothing in this chapter shall interfere with the validity of outstanding certificates in such cities or towns, or prevent the extension of such certificates upon such conditions as may be prescribed by the board of trustees regarding professional reading, attendance upon city institutes, and other means of professional growth. A city or town authorized by the provisions of this chapter to have a city board of examiners, may, at the discretion of the superintendent of the city schools, employ a teacher of any special branch not included in the requirements for a state certificate, without requiring an examination or a teacher's certificate; and nothing in this chapter shall prevent the board of trustees of any city or town from recognizing the certificates issued in any other such city or town in this state, and validating the same in the city or town so recognizing them; provided, nothing in this chapter shall be held to repeal or interfere with any law now in force in this state regulating the granting and extension of teachers' certificates issued, or to be issued, by county boards of examiners or the state board of examiners on certifications and examination papers sent up to said state board of examiners by such county board of examiners. [Id. sec. 124. Amended Acts 1909, p. 394.]

Art. 2811. Kindergarten.—The trustees of any school district in the state of Texas may establish and maintain free kindergartens in connection with the public schools of said district, for the training of children between four and seven years of age residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations gov-

erning such kindergartens as said trustees may deem best. Provided, that nothing in this article shall be construed to change the law relating to the taking of the scholastic census, or the apportionment of state and county school funds among the several counties and districts in this state. Provided, further, that the cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. Said kindergartens shall be a part of the public school system, and shall be governed, as far as practicable, in the same manner and by the same officers as is now, or hereafter may be, provided by law for the government of the other public schools of the state. [Acts 1907, p. 289.]

Art. 2812. **Kindergarten certificates.**—Trustees shall be empowered to employ to teach in free kindergartens only those who hold diplomas or certificates as follows:

(a) A diploma of graduation from a state educational institution of Texas, which maintains, or may hereafter establish and maintain, a department for training kindergarten teachers; such diploma to certify that the holder thereof has, in addition to a regular course, completed the kindergarten course, said course to consist of not less than two years training with daily practice in kindergarten.

(b) A diploma or certificate of graduation from a well established kindergarten training school or department, provided that the name of such school or department is on the state superintendent's list of approved kindergarten training schools. A list of approved kindergarten training schools and departments shall be kept and revised from time to time by the state superintendent of public instruction; it shall be his duty to make thorough investigation of the merits of all schools and departments applying for recognition, and to decline to recognize those in which the standard of training is lower than that indicated in (a) of this article. Certificates or diplomas of approved schools or departments shall be valid for a term of four years; provided, that the state superintendent, on the receipt of satisfactory evidence of successful practice of the holder of such certificate as a kindergarten teacher, may extend the term of validity of such certificate for four years; and, provided, further, that at any time during the validity of said certificate or diploma, as provided herein, and following three years successful practice of the holder thereof as a kindergarten teacher, the state superintendent may issue to the holder of such certificate or diploma a permanent state kindergarten certificate on presentation of letters from city or county superintendents, or other school authorities under whose supervision the said holder has taught, giving satisfactory evidence of her success as a teacher.

(c) A kindergarten certificate, which shall be issued by the state superintendent of public instruction to any candidate who passes satisfactorily an examination which said state superintendent shall offer to those who apply. Said examination shall be equivalent to the examination for a first grade certificate in the state of Texas, and shall also include examination in the theory and practice of occupations, theory and practice of gifts, mother play, program and psychology; said certificate to be valid for a term of four years from date; provided, that the state superintendent is authorized to renew said certificate for a term of two years on receiving satisfactory evidence that the holder thereof is in every way qualified and deserving of such renewal. [Acts 1907, p. 289, sec. 2.]

Art. 2813. **Extension of term of validity of certificates.**—A teacher holding a valid certificate to teach in the schools of this state under the laws thereof, who, during the validity of such certificate, shall attend as a bona fide participant therein the five days session of the county teachers' institute, called by the county superintendent of public instruction, or the county judge when

he acts as such, each year, and shall also attend, either as a pupil or teacher, a summer normal institute each alternate summer during the validity of the certificate, shall not be required to be re-examined; and the certificate held by the teacher thus attending shall be renewed for a time equal to the original term of validity of said certificate when the fact of such attendance shall have been duly and properly certified to the authority issuing said certificate; provided, that a teacher whose certificate is to be extended and held valid under the provisions of this article shall in no case have his certificate extended and continued valid, unless said teacher shall have faithfully attended the county teachers' institute each year, and also a summer normal institute in some county in Texas, during the validity of his certificate for not less than twenty full days each alternate summer; provided, further, that in no instance shall a teacher have his certificate extended and held valid under the provisions of this chapter who has not made a general average of at least seventy-five per cent at the last examination for teacher's certificate at which he was examined; provided, further, that in no instance shall a certificate be extended and continued valid under the provisions of this chapter where the teacher holding said certificate has failed to teach in the schools of this state each year during the validity of his or her certificate. [Act 1905, p. 263, sec. 125.]

Art. 2814. **Cancellation of certificate.**—Any certificate may be canceled for cause by the authority issuing it; and the state superintendent of public instruction shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the state, or is a person unworthy to instruct the youth of this State; provided, if any teacher holding a certificate to teach in the public schools of this state, shall enter into a written contract with any board of trustees to teach in any public school in this State, and shall, after making such contract and without the consent of the trustees, abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be canceled upon the complaint of said trustees, or either of them; provided, that, before any certificate shall be canceled, the holder thereof shall be notified, and shall have an opportunity to be heard, and he shall have the right of appeal from such decision to the state superintendent, and the state board of education; provided, that, when the state superintendent shall have canceled the certificate, the appeal shall be to the state board of education. [Id. sec. 127.]

CHAPTER FIFTEEN.

COMMON SCHOOL DISTRICTS.

Article.	Article.		
Establishment of districts.....	2815	Challenge of voter.....	2832
Commissioners' court may change dis-	2816	Election to abrogate, increase or diminish	2833
trict lines.....	2816	tax.....	2834
Court shall give metes and bounds of	2817	Form of ballot.....	2835
district.....	2817	Form of ballot for increase.....	2836
Election and qualification of trustees.....	2818	Levy of tax.....	2837
Election officers, how appointed, returns.....	2819	Election for issuance of bonds.....	2838
Returns of election.....	2820	Ballots.....	2839
Suit for removal of trustee.....	2821	Issuance and sale of bonds.....	2840
District trustees a body corporate.....	2822	Form of bond.....	2841
Shall have management and control of	2823	Levy of bond tax.....	2842
schools.....	2823	Tax must be levied until bonds are paid.....	2843
Make contracts for the district.....	2824	Expenditure of receipts from sale of	2844
Contracts with teachers.....	2825	bonds.....	2845
Check for payment of teacher.....	2826	Trustees to contract for building.....	2846
Special tax authorized.....	2827	Lien may not be acquired.....	2847
Petition for tax election.....	2828	Sale of school property.....	2848
Presiding officer; ballots.....	2829	Control of school property.....	2849
Hours of election.....	2830	Protection of houses of respective races.....	2850
Who entitled to vote.....	2831	Title to property.....	2851

Article 2815. **Establishment of districts.**—It shall be the duty of the county commissioners' courts of all organized counties, not already subdivided, to subdivide their respective counties into convenient school districts; and any county hereafter organized shall be so subdivided before the beginning of the next ensuing school year after its organization; provided, the county commissioners' court may reduce the area of any common school district and create such additional school districts as may be necessary for the best interests of the school children; provided, that no school district shall be reduced to contain less than nine square miles of territory; and no new district shall hereafter be created, having a less area than nine square miles; and provided, further, that the area of a school district having an outstanding bonded indebtedness shall never be reduced until after such bonded indebtedness shall have been fully discharged. The commissioners' court shall designate said school districts by numbers; provided, that all school districts in this state heretofore laid out and attempted to be established by the proper officers of any county, and heretofore recognized by said county authorities as school districts of said county, are hereby validated in all respects, as though they had been duly and legally established in the first instance. [Act 1905, p. 263, sec. 50. Amended Act 1909, p. 17.]

Art. 2816. **Commissioners' court may change district lines.**—It shall be the duty of the commissioners' court, at any time they deem necessary, to redistrict a part or all of said county; and they may at any time consolidate two or more adjacent school districts, or may subdivide any school district or districts. The commissioners' court of any organized county, to which any unorganized county is attached for judicial purposes, may, and, upon the written petition of not less than ten resident citizens of such unorganized county, shall create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court. [Id. sec. 51.]

Art. 2817. **Court shall give metes and bounds of each district.**—School districts shall be so made as to be as convenient as possible to the scholastic population; and said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number, which number shall be painted in

large letters or figures over the doors of the schoolhouses, said signs to be provided by the district trustees of each district. [Id. sec. 53.]

TRUSTEES.

Art. 2818. Election and qualification.—On the first Saturday in April of each year, the qualified voters of each school district, at a school district meeting for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first of May next following. They shall immediately thereafter organize by electing one of their number president and one secretary of the board of trustees. The term of office of said trustees shall be divided into two classes, and they shall draw for the different classes; the one drawing number one shall serve for one year, and those drawing numbers two and three shall serve for two years, and until their successors shall have been elected or appointed, and shall have qualified. On the first Saturday in April of each year thereafter, there shall be an election in each school district for the election of a trustee or trustees, as the case may be, and the trustee or trustees so elected shall serve for two years and until his or their successor or successors shall have been elected or appointed and shall have been qualified. The trustees so elected or appointed shall, before entering upon the discharge of their duties, qualify by taking the oath as provided by the constitution, and shall, as soon as practicable, file said oath with the county superintendent or county judge; provided, that nothing herein shall interfere with the term of office of trustees already chosen in accordance with the provisions of the law. [Id. sec. 67.]

Art. 2819. Election officers; how appointed; returns, etc.—The commissioners' court shall appoint three persons, qualified voters of the district, to hold such election, who shall make returns thereof to the county clerk within five days after such election shall have been held. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. No person shall be eligible to serve as a school trustee who can not read and write, and has not been a resident of the school district for six months prior to election held for trustees. [Id. sec. 68.]

Art. 2820. Returns of election.—The returns of the election of the trustees to be elected, as hereinbefore provided for the control and management of the schools of the district, shall be made to the county clerk of the county where such election is held, who shall deliver the same to the commissioners' court, to be canvassed and the result declared as in cases of other elections, which commissioners' court shall issue to the persons so elected their commissions as such trustees. [Id. sec. 93. Amended Acts 1907, p. 204.]

Art. 2821. Suit for removal of trustee.—The trustees elected must be able to read and write intelligently the English language, and read, comprehend and interpret the laws of the state of Texas relating to the public school system; and, in the event a trustee elected, in the opinion of the county superintendent or the county judge, who is ex officio county superintendent, is not qualified to serve under the provisions of this article, it shall be the duty of the county superintendent, or such county judge who is ex officio county superintendent, to refuse to recognize such person who has been so elected as such school trustee, and to make written request, within twenty days after such election, of the county attorney, or district attorney in case there be no county attorney, to institute and prosecute with dispatch such suit, in the name of the state of Texas, for the removal of such trustee, in the district court of the county where such trustee resides, at the option of the

county attorney, or district attorney in case there be no county attorney; provided, it shall be lawful under the provisions of this article, upon good cause shown within the discretion of the court where such suit is pending, to enjoin and restrain such person from acting as such trustee during the pendency of such suit for his removal. It shall be lawful under the provisions of this article to summon such trustee so elected before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such trustee as defined by this article, and, in case such trustee, after having been duly cited to answer in said cause and summoned as herein above provided to appear for examination, shall fail, neglect or refuse to obey said summons and fail to appear for the purpose of examination, and fail or refuse to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification under the terms of this article, and because thereof the court trying such cause shall be authorized to render thereupon judgment by default against such trustee so defaulting removing him from his said office of school trustee, and declaring the same vacant. It shall be the duty of the commissioners' court of the county where such trustee has been elected to appoint some suitable person, who is qualified as herein defined, to act as such trustee during the pendency of such suit to remove such trustee so elected, if he shall be enjoined from so acting, and, in case such trustee so elected shall be so removed by such suit brought by the county attorney, or district attorney in case there be no county attorney, then such trustee, so appointed by the commissioners' court of said county, shall continue to serve until the next regular election of school trustees for such district; provided, however, that such trustee so appointed may be removed for the causes and in the manner provided by this article. In case of vacancy in said office of trustee, by resignation or otherwise, the commissioners' court of the county shall appoint a suitable person qualified under the provisions of this article to so act as such trustee until the next regular election of school trustees for such district; and, in case such commissioners' court, under the provisions hereof, should appoint some person not qualified, suit for his removal shall be brought by the county attorney, or district attorney in case there be no county attorney, of the state, in the name of the state of Texas, in the manner and upon the same terms and conditions as has been herein provided for in case of the election of persons who are not qualified to act as such trustees. [Id. sec. 93. Amended Acts 1907, p. 204.]

Art. 2822. District trustees a body corporate.—The trustees of school districts provided for in the preceding articles of this chapter, and their successors in office, shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of district number —, and county of —, state of Texas; and as such may contract and be contracted with, sue and be sued, plead or be impleaded, in any court of this state of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county. [Id. sec. 69.]

Art. 2823. Shall have management and control of schools.—The trustees of school districts shall have the management and control of the public schools and public school grounds. It shall be unlawful for any person or persons to loiter or loaf upon any public school grounds in this state during the session of such school, after being warned by the person in charge of such school to leave such grounds; and such person or persons so found shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than five and not

to exceed twenty-five dollars. They shall have the power to employ and dismiss teachers, but in case of dismissal, teachers shall have the right of appeal to the county and state superintendents. [Id. sec. 70.]

Art. 2824. Make contracts for the district.—School trustees shall determine how many schools shall be maintained in their school district, and at what points they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; they shall determine when the schools shall be opened and when closed; they shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and state superintendents; they shall approve all teachers vouchers, and all other claims against the school fund of their district; provided, that trustees, in making contracts with teachers, shall not create a deficiency debt against the district. [Id. sec. 71.]

Art. 2825. Contracts with teachers.—Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under written contract with the trustees, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract; and the board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess and fractional part thereof exceeding fifteen pupils; and all children within the scholastic age residing in such district, though they may have settled in such district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district; and in a district that levies a special school tax, the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months, if it is deemed advisable. [Id. sec. 72.]

Art. 2826. Check for payment of teacher.—The amount contracted by trustees to be paid a teacher shall be paid on a check, drawn by a majority of the trustees, on the county treasurer, and approved by the county superintendent. The check shall in all instances be accompanied by the affidavit of the teacher that he is entitled to the amount specified in the check, as compensation under his contract as a teacher. [Id. sec. 74.]

LOCAL TAX.

Art. 2827. Special tax authorized.—The commissioners' court of any county in this state shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of a schoolhouse or schoolhouses; provided, a majority of the qualified property taxpaying voters of the district, voting at an election to be held for the purpose, shall vote such tax, not to exceed in any year fifty cents on the one hundred dollars valuation of the property subject to taxation in such district; provided, that all property assessed for school purposes shall be assessed at the rate of value of property as said property is assessed for state and county purpose. [Id. sec. 57. Amended Acts 1909, p. 17.]

Art. 2828. Petition for tax election.—Whenever twenty or more, or a majority of the property taxpaying voters of a district, wish to tax themselves for the purpose of supplementing the state school fund appropriated to said district, they shall make application to the county judge, who shall issue an order for an election to be held in said district, to determine whether such tax shall be levied. Said application shall designate either the specific rate of tax

to be levied, or a rate of tax not exceeding fifty cents on the one hundred dollars valuation of property, and the order of said judge shall state:

1. When said election shall be held.
2. At what point or points the polls shall be opened.
3. The rate of tax to be voted on; provided, that no election shall be held to determine the levy of a tax exceeding fifty cents on the one hundred dollars valuation of property, but the proposition may be for a specific tax rate within this limit or for a school tax not exceeding fifty cents on the one hundred dollars valuation of taxable property in the district.

The county judge shall order the sheriff to give notice of such election, by posting three notices in the district for three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year. [Id. sec. 38. Amended Acts 1909, p. 17.]

Art. 2829. Presiding officer; ballots.—The county judge shall appoint a presiding officer for each voting place to hold said election, who shall make due return thereof as is required by law for holding a general election; and each person, who favors taxation for school purposes, shall have written or printed on his ticket, "For School Tax," and each person opposed to such taxation shall have written or printed on his ticket, "Against School Tax." The ballots shall be prepared by the county judge, and the county shall bear the expense of having them printed. [Id. sec. 59. Amended Acts 1909, p. 17.]

Art. 2830. Hours of election.—All polls for school district elections shall be opened at eight o'clock a. m., and shall be closed at six o'clock p. m., and none of the officers holding such election shall be entitled to compensation therefor. [Id. sec. 60. Amended Act 1909, p. 17.]

Art. 2831. Who entitled to vote.—All persons who are legally qualified voters of this state, and of the county of their residence, and who are resident property taxpayers in said district, shall be entitled to vote in such school district election; and, if at such election a majority shall vote for the tax, it shall be declared by the commissioners' court to have carried in said district, and entered upon the records of said court to have been carried; and in all cases the returning officer shall make a full and complete return, as in other elections, to said court, within five days after said election is held, and said return shall be opened and counted at the first meeting of said court and the result declared. [Id. sec. 61. Amended 1909, p. 17.]

Art. 2832. Challenge of voters.—Any one person may challenge a voter; but if the challenged party takes an oath that he is a qualified voter of the state and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote. [Id. sec. 62.]

Art. 2833. Election to abrogate, increase or diminish tax.—At any time after the expiration of two years after any district has levied a school tax on itself, twenty property taxpaying qualified voters, or a majority of such voters of the district, may have an election held, upon the proper petition to the county judge, to determine whether such tax shall be abrogated, increased or diminished. Such election shall be held and conducted as elections provided for in article 2829, and persons entitled to vote at such elections shall possess the qualifications prescribed in article 2831. [Id. sec. 63.]

Art. 2834. Form of ballot.—If the election be to abrogate or diminish the school tax, each voter favoring the abrogation or diminution shall have written or printed upon his ticket, "For abrogating school tax," or, "For diminishing school tax to — cents," as the case may be; and each voter opposing the abrogation or diminution shall have written or printed on his ballot, "Against abrogating school tax," or, "Against diminishing school tax to — cents," as the case may be; and a majority vote shall be necessary to abrogate or diminish the school tax. [Id. sec. 64.]

Art. 2835. **Form of ballot for increase.**—If the election be to determine whether the tax shall be increased, each voter favoring the increase of the school tax shall have written or printed on his ballot, "For increase of school tax;" and each voter opposing such increase shall have written or printed on his ballot, "Against increase of school tax;" and, if a majority of the votes cast be in favor of increasing the tax, it shall be increased. [Id. sec. 65. Amended Acts 1909, p. 17.]

Art. 2836. **Levy of tax.**—The county commissioners' court shall, at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself, or, if the proposition shall have been, "for a school tax not exceeding fifty cents on the one hundred dollars valuation of taxable property in the district," the commissioners' court shall levy such a rate within that limit as shall have been determined by the board of trustees of said district and the county superintendent, and certified to said court by the county superintendent. It shall be the duty of the tax assessor to assess said tax as other taxes are assessed, and to make an abstract showing the amount of special taxes assessed against each school district in his county, and to furnish the same to the county superintendent, on or before the first day of September of the year for which such taxes are assessed; and the taxes levied upon the real property in said districts shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for state and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the commissioners' court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess, and the tax collector shall collect, said district taxes as other taxes are assessed and collected. The tax assessor shall receive a commission of one-half of one per cent for assessing such tax, and the tax collector a commission of one-half of one per cent for collecting the same. The tax collector shall pay all such taxes to the county treasurer; and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with the law. [Id. sec. 66. Amended Act 1909, p. 17.]

SCHOOLHOUSE BONDS.

Art. 2837. **Election for issuance of bonds.**—When twenty or more, or a majority, of the qualified taxpaying voters of a school district shall petition the county judge, he shall order an election in the school district from which the petition came, to determine whether or not a majority of the legally qualified property taxpaying voters of that district desire the issuance of bonds as indicated in the petition, and the annual levy of a tax sufficient to pay the current interest on said bonds and provide a sinking fund sufficient to pay the principal at maturity. Said election shall be ordered, held, and the returns counted and published as in other school elections in accordance with the laws of this state, and it shall not be necessary to vote upon a specific rate of tax, but the rate shall be determined as provided in article [2841]. [Id. sec. 76. Amended acts 1909, p. 17.]

Art. 2838. **Ballots.**—Whenever the county judge in any county in the state of Texas shall have found it lawful and necessary to order an election for schoolhouse bonds, as provided herein, said county judge shall prepare proper ballots for use in said school district election, and the county shall bear the expense of having such ballots printed; and each person who favors the issuance of bonds and the levy of a tax therefor, shall have written or printed on his ballot, "For the Bonds," and each person opposed to such taxation shall have written or printed on his ballot, "Against the Bonds." [Id. sec. 80. Amended acts 1909, p. 17.]

Art. 2839. Issuance and sale of bonds.—If, after the results of said election are known, it shall appear that a majority of the votes therein have been cast in favor of the issuing of schoolhouse bonds, the commissioners' court of the county in which said school district is located shall issue said bonds on the faith and credit of said school district, which bonds shall bear not more than five per cent interest per annum, and shall run not more than forty years; provided, that when the houses are to be built of wood the time of the bonds herein provided for shall not be more than twenty years. The said bonds shall be examined by the attorney general of the state of Texas, and registered by the comptroller of public accounts of the state of Texas. They shall be sold to the highest bidder, and the purchase money shall be placed in the county treasury to the credit of said school district, and the money shall be disbursed upon warrants issued by the trustees of said district, approved by the county superintendent, in payment of accounts legally contracted in buying, building, equipping or repairing the schoolhouse or schoolhouses for such district, or in the purchase of sites therefor; provided, that the commissioners' court may invest the county permanent school fund in such school district schoolhouse bonds, and the state board of education shall have the right to purchase such bonds on the same conditions as it may purchase other bonds. [Id. sec. 77. Amended Acts 1909, p. 17.]

Art. 2840. Form of bond.—The said school district schoolhouse bonds shall express on their face: The state of Texas, the name of the county, and the number or corporation name of the district issuing said bonds; provided, the bonds shall not run more than forty years, and shall bear not more than five per cent interest per annum, and shall never be sold below par. [Id. sec. 81. Amended acts 1909, p. 17.]

Art. 2841. Levy of bond tax.—When the commissioners' court shall provide for the issuance of such bonds, and each year thereafter so long as the bonds or any of them are outstanding, said court shall levy a tax not to exceed twenty-five cents on the one hundred dollars valuation of taxable property of said school district, sufficient to pay the interest on the bonds and to produce a sinking fund, which, together with the interest thereon when placed at interest, shall be sufficient to pay the principal of said bonds at maturity. The rate of such tax shall be determined by the trustees of the district and the county superintendent, and certified by the county superintendent to the commissioners' court; provided, that the rate of the bond tax, together with the rate of special local tax of the district for the maintenance of schools therein, shall never exceed fifty cents on the one hundred dollars valuation of taxable property of said school district; but, if the rate of bond tax certified by the county superintendent to the commissioners' court, together with the rate of maintenance tax previously voted in the district, shall at any time exceed fifty cents on the one hundred dollars, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and fifty cents. Said school district bond tax shall be assessed and collected in the manner provided by law for the assessment and collection of the special local tax for the maintenance of public free schools; provided, that the rate of school tax certified to the commissioners' court by the county superintendent shall be the rate to be levied by the commissioners' court in the school district, until a change in such rate shall be recommended by the county superintendent and board of trustees of the district within the limits prescribed by law. [Id. sec. 78. Amended acts 1909, p. 17.]

Art. 2842. Tax must be levied until bonds are paid.—After said bonds shall have been issued and sold, and said tax shall have been levied sufficient to pay said bonds and the interest thereon as provided above, it shall not be lawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon,

shall have been fully paid; nor shall the limits and boundaries of said common school district ever be decreased until after said bonds and the accrued interest thereon shall have been fully paid. [Acts 1905, p. 263, sec. 79.]

Art. 2843. **Expenditure of proceeds of bonds.**—The funds arising from the sale of said common school district bonds of any district, and placed to the credit of said district in the treasury of said county, shall be apportioned to the use of the public free schools of said district for the purpose of building and equipping schoolhouses, in accordance with the method and manner provided by law for the division of the funds for the maintenance of public free schools therein. [Id., p. 263, sec. 82.]

SCHOOL PROPERTY.

Art. 2844. **Trustees to contract for building.**—The trustees of a school district shall contract for the erection of the buildings and superintend the construction of the same; and the county superintendent shall draw his warrant or warrants upon the school fund so appropriated only upon the accounts first approved by them. [Id. sec. 84.]

Art. 2845. **Lien may not be acquired.**—No mechanic, contractor, material man, or other person, can contract for, or in any other manner have or acquire, any lien upon the house so erected or the land upon which the same is situated; and all contracts with such parties shall expressly stipulate for a waiver of such lien. [Id. sec. 85.]

Art. 2846. **Sale of school property.**—The trustees of any school district, upon the order of the commissioners' court, prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district. [Id. sec. 86.]

Art. 2847. **Control of school property.**—All schoolhouses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district. [Id. sec. 87.]

Art. 2848. **Protection of houses of respective races.**—A schoolhouse constructed in part by voluntary subscription by colored parents or guardians, and for a school for colored children, shall not be used for white children without the consent of the trustees of the district, and a like rule shall protect the use of schoolhouses erected in part by voluntary subscription of white parents or guardians for the benefit of white children. [Id. sec. 88.]

Art. 2849. **Title to property.**—All conveyances, devises and bequests of property for the benefit of the public schools made by any one for any county, city or town, or district, shall, when not otherwise directed by the grantor or deviser, vest said property in the county judge of the county, or the board of school trustees of the city or town, or the trustees of the school district, or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed, shall be administered by said officers under such rules as may be established by the state superintendent. [Id. sec. 132.]

CHAPTER SIXTEEN.

INDEPENDENT DISTRICTS.

Article.	Article.
Application to county judge for elec- tions	Who may vote; ballots.....
2850	2860
Incorporation	Collection of taxes.....
2851	2861
Board of trustees.....	Assessment and collection of taxes by county officer
2852	2862
Powers of the board.....	Trustees authorized to invest sinking funds
2853	2863
Exclusive control	Refunding bonds
2854	2864
Districts validated	Extension of boundaries.....
2855	2865
General laws apply to all districts.....	Change in boundaries by commissioners' court
2856	2866
Local taxes. Bonds.....	
2857	
Election to be ordered by trustees.....	
2858	
Notice of election	
2859	

Article 2850. **Application to county judge for elections.**—At any time hereafter, it shall be lawful for any town or village which may desire to incorporate for school purposes only, to make application to the county judge for the organization of an independent school district, as provided for by the general statutes governing such cases, and for the election of a board of trustees, as provided in this title, and on receipt of such application it shall be the duty of the county judge to proceed as required in articles and of this chapter. [Acts 1905, p. 263, sec. 172.]

Art. 2851. **Incorporation.**—A town or village authorized to incorporate under this chapter, or having two hundred inhabitants or over, may form an incorporation for free school purposes only, which may include within its bounds a town or village incorporated for municipal purposes, the same not having assumed control of the public schools within its limits; provided, that the territory so incorporated for free school purposes shall not exceed an area of twenty-five square miles; provided, that said corporation shall be laid out in a square as near as is practicable with reference to the location of the school building; and, when so desiring an election may be held under the provisions of this title and chapter; and if, at such election, a majority of the votes cast be in favor of the incorporation, it shall be the duty of the county judge to make return thereof, and cause a record of the result of such election to be made, the same as provided for by articles 1040 and 1041, Revised Statutes of Texas, upon which entry being made, such town or village shall be regarded as duly incorporated for the purpose of establishing and maintaining free schools therein, and shall, upon notice to the state board of education by the board of trustees hereinafter provided for, receive such pro rata share of the available school fund as its scholastic population may entitle it to. And provided also that all school incorporations hereafter formed under the provisions of this chapter shall have the right to levy and collect taxes and issue bonds for school purposes, the same as school incorporations heretofore formed. When a town or village is included in a corporation for free school purposes, and such town or village shall afterwards be incorporated for municipal purposes, it shall not thereby acquire a right to take the control of the schools within its limits out of the hands of the school corporation. [Id. sec. 149.]

Art. 2852. **Board of trustees.**—It shall be the duty of the county judge to order an election of seven school trustees for such town or village so incorporated for school purposes, who shall be elected in the same manner and at the same time, and whose term of office shall be the same as that of trustees of districts. [Id. sec. 160.]

Art. 2853. **Powers of the board.**—The trustees elected in accordance with the preceding article shall be vested with the full management and control of the free schools of such incorporated town or village, and shall in general be vested with all the powers, rights and duties in regard to the establishment

and maintaining of free schools, including the powers and manner of taxation for free school purposes that are conferred by the laws of this state upon the council or board of aldermen of incorporated cities and towns. [Id. sec. 161.]

Art. 2854. **Exclusive control.**—All such towns and villages shall have exclusive control of the public free schools within their limits. [Id. sec. 152.]

Art. 2855. **Districts validated.**—Independent school districts heretofore organized which have not the required population in the town proper, but have such population in the whole independent district, shall be validated by this chapter. [Id. sec. 150.]

Art. 2856. **General laws apply to all districts.**—All school districts, heretofore provided for by special act of the legislature, are placed under the general laws relating to incorporated school districts, and all provisions of any and all such special acts in conflict with the general laws are hereby specifically repealed, except in so far as those acts relate to the boundaries established by the acts incorporating such districts. All incorporated districts, having each fewer than one hundred and fifty scholastics according to the latest census, shall be governed in the general administration of their schools by the laws which apply to common school districts; and all funds of such districts shall be kept in the county depositories and paid out on order of the trustees approved by the county superintendent. [Id. sec. 154a. Added acts 1909, p. 17.]

TAXES AND BONDS.

Art. 2857. **Local taxes; bonds.**—Trustees of a district that has been, or may hereafter be, incorporated under general or special laws, for school purposes only, shall have power to levy and collect an annual ad valorem tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district, for the maintenance of schools therein, and a tax not to exceed twenty-five cents on the one hundred dollars for the purchase of sites and the purchasing, construction, repairing or equipping public free school buildings within the limits of such incorporated districts; provided that the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed fifty cents on the one hundred dollars valuation of taxable property. Said trustees shall have power to issue coupon bonds of the district for building purposes, to be made payable not exceeding forty years from date, in such sums as they shall deem expedient, to bear interest not to exceed five per cent per annum; provided, that when such buildings are to be wooden the bonds herein provided for shall not run for a longer period than twenty years; provided, that the aggregate amount of bonds issued for the above named purpose shall never reach such an amount that the tax of twenty-five cents on the hundred dollars valuation of property in the district will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, further, that no such tax shall be levied and no such bonds issued until after an election shall have been held, wherein a majority of the taxpaying voters voting at said election shall have voted in favor of the levying of said tax, of the issuance of said bonds, or both, as the case may be; provided, that the specific rate of tax need not be determined in the election. [Id. sec. 154. Amended acts, 1909, p. 17.]

Art. 2858. **Election to be ordered by trustees.**—The election provided for in the preceding article may be ordered by the trustees on the written petition of at least twenty taxpaying voters of said town or village, at any time not less than thirty days from the date of the order; which order shall state the date and place when said election shall be held, the amount of tax to be levied, or the amount of bonds to be issued, as the case may be; and the trustees shall also name and appoint therein the manager or managers of said election, which shall be held as nearly as may be possible in conformity with the gen-

eral election law of the state; provided, that, when a proposition to levy such a tax shall be defeated, no election for that purpose shall be ordered until after the expiration of one year. [Id. sec. 157.]

Art. 2859. **Notice of election.**—Public notice of said election shall be given by the said trustees, by placing notices of the same in three different portions of such incorporated district at least twenty days before said election; which notice shall state the time and place of the election, and the amount of the tax to be levied, or the amount of bonds to be issued, or both, as the case may be. [Id. sec. 158.]

Art. 2860. **Who may vote; ballots.**—No person shall vote at said election unless he be a qualified voter under the constitution and laws of this state, and a taxpayer in such incorporated district; and those in favor of the levying of such tax, or the issuance of such bonds, shall write or print upon their ballots, "For the Tax," and those against the levying of such tax, or the issuance of such bonds, shall write or print on their ballot, "Against the Tax;" and due returns thereof shall be made to said trustees within ten days, and the result thereof shall be recorded by said trustees in a well bound book to be kept for that purpose. [Id. sec. 159.]

Art. 2861. **Collection of taxes.**—The assessor and collector of taxes of the district shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of an incorporated town or village, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns otherwise provided for, not to exceed four per cent of the whole amount of taxes received by him; and he shall give bond in double the estimated amount of taxes coming annually into his hands, payable to the president of the board or his successors in office, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all the funds coming into his hands by virtue of his office as such assessor and collector; provided, that, in the enforced collection of taxes, the board of trustees shall perform the duties which now devolve in such a case upon the city council of an incorporated city or town; the president of the board of trustees shall perform the duties which devolve in such a case upon the mayor of an incorporated city or town; and the county attorney of the county in which the independent school district is located shall perform the duties which in such a case devolve upon the city attorney of an incorporated city or town under the provisions of chapter 103, general laws, regular session, twenty-fifth legislature. [Id. sec. 166.]

Art. 2862. **Assessment and collection of taxes by county officers.**—When a majority of the board of trustees of an independent school district prefer to have the taxes of their district assessed and collected by the county assessor and collector, same shall be assessed and collected by said county officers, and turned over to the treasurer of the independent school district for which such taxes have been collected; provided, that the property of such districts having their taxes assessed and collected by the county assessor and collector, shall not be assessed at a greater value than that assessed for county and state purposes: provided, further, that when the county assessor and county collector are required to assess and collect the taxes of independent school districts, they shall, respectively, receive one per cent for assessing and collecting same. [Id. sec. 165.]

Art. 2863. **Trustees authorized to invest sinking funds.**—Trustees of towns and villages that have been, or may hereafter be, incorporated for school purposes only, that have issued, or may hereafter issue, bonds under the provisions of this chapter, may, as it accumulates, invest the sinking funds in bonds of the United States, of the state of Texas, of counties of this state, or in bonds

of cities and towns and independent school districts of this state, that have been approved by the attorney general. [Id. sec. 155.]

Art. 2864. Refunding bonds.—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, new bonds, bearing the same or a less rate of interest, may be issued in conformity with this chapter in lieu thereof; provided, no election shall be necessary to authorize the issuance of such new bonds; and provided, further, that the state treasurer shall, upon order of the state board of education, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this chapter, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. [Acts 1905, p. 263, sec. 156.]

CHANGE OF BOUNDARIES.

Art. 2865. Extension of boundaries.—Whenever the territory heretofore incorporated, or which may hereafter be incorporated, for free school purposes, shall contain less than twenty-five square miles, and thereafter the majority of the inhabitants, qualified to vote for members of the legislature, of any territory adjoining the limits of the town or village so incorporated, shall desire such territory to be added to and become a part of such incorporated town or village for free school purposes only, and a majority of such qualified voters sign a petition to that effect, any three of such qualified voters may file with the board of trustees of such incorporated town or village the said petition, making affidavit of the facts set forth in said petition, fully describing by metes and bounds the territory proposed to be annexed and showing its location with reference to the existing territory of the town or village already incorporated; provided, that said territory proposed to be added must be contiguous to one line of said corporation, and upon filing of said petition, affidavits and descriptions, with the president of the board of trustees, it shall be his duty to submit the same to the board, and, if upon investigation by the board it is found that the proposed addition will not increase the corporate limits so that the whole, when so increased, will exceed twenty-five square miles, then the said board of trustees, by resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and become a part of, the corporate limits of such town or village; a copy of which resolution, containing a description of the added territory, shall be filed for record in the county clerk's office of the county in which said town or village is situated, after which the territory so received shall be a part of said incorporated town or village; and the inhabitants thereof shall thenceforth be entitled to all the rights and privileges, and subject to the same liabilities of taxation as other citizens, and all property within said limits shall thenceforth be subject to such taxation as may have been, or may hereafter be, provided by said incorporation for free school purposes only. [Id. sec. 153.]

Art. 2866. Change in boundaries by commissioners' court.—The commissioners' court of any county shall have the authority to change the boundaries of any independent district situated in said county, when in the judgment of said court the public good demands such change; provided, that, before any change is made in the boundary lines of any independent district, the president of the board of trustees of the independent district to be affected by the proposed change shall be notified, and said board of trustees shall have the right to be heard in case there is opposition to the change; provided, further, that this provision shall apply only to school districts incorporated for school purposes only; and, provided, further, that no change shall be made that would reduce the total value of taxable property in any independent district against which there are outstanding bonds legally issued. [Id. sec. 52.]

CHAPTER SEVENTEEN.

EXCLUSIVE CONTROL BY CITIES AND TOWNS—INDEPENDENT DISTRICTS.

Article.	Article.
City or town may assume control of schools	Two-thirds majority necessary
Same	Election for local tax
Election to determine question	Levy of tax
Same	Same
Shall receive pro rata of school funds	Trustees determine annual rate
General laws shall govern	Assessment and collection
Property vested in trustees	Funds to be turned over to school treasurer
Sale of property	Extension of city limits for school purposes
Schoolhouse bonds to be issued by city council	
Local maintenance tax	

Article 2867. **City or town may assume control of schools.**—Any city or town in this state may acquire the exclusive control of the public free schools within its limits. [Acts 1905, p. 263, sec. 134.]

Art. 2868. **Same.**—Any city or town which has heretofore, under the act of March 15, 1875, or any subsequent law, assumed control of the public free schools within its limits, and has continued to exercise the same until the present time, or may hereafter determine so to do by a majority vote of the property taxpayers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within its limits. [Id. sec. 133.]

Art. 2869. **Election to determine question.**—The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors of such city or town, order, within twenty days of such application, an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide, by a majority of the votes cast by the qualified electors of such city or town at such election, whether such city or town shall acquire the exclusive control of the public free schools and institutions of learning within its limits; provided, that one election, and no more, shall be held hereafter in any one calendar year to determine whether such city shall acquire the exclusive control of the public free schools within its limits. [Id. sec. 135.]

Art. 2870. **Shall receive pro rata of school funds.**—Such city or town, after notice to the state board of education that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to. [Id. sec. 139.]

Art. 2871. **General laws shall govern.**—Schools thus organized and provided for by incorporated cities and towns shall be subject to the general laws, so far as the same are applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may provide for the organization of schools and the appropriation of its school funds in such manner as may be best suited to its population and condition [Id. sec. 144.]

Art. 2872. **Property vested in trustees.**—In every city or town in this state which has assumed, or may hereafter assume, the exclusive control and management of public free schools within its limits, and which has determined, or may hereafter determine, that such exclusive control and management of the public free schools within its limits shall be in a board of trustees, and organized under an act of the sixteenth legislature, approved April 3, 1879, and acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore ac-

quired, as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public free schools in such city or town; and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purposes aforesaid; provided, that where trustees are named other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere, in any manner, with the title or authority of such trustees to or over such money or other property. And such board of trustees shall constitute a body corporate, and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property; provided, that the provisions of this article shall not apply to lands belonging to the state upon which houses for school purposes have been built without authority from the state. [Id. sec. 136.]

Art. 2873. Sale of school property.—Any houses or lands held in trust by any city or town for public free school purposes may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the state board of education, by the board of trustees of such city or town; and, in such case, the president of the school board shall execute his deed to the purchaser for the same, reciting the resolution of the state board of education giving consent thereto and the resolution of the board of trustees authorizing such sale. [Id. sec. 146.]

Art. 2874. Schoolhouse bonds to be issued by city council.—Towns or cities which have assumed, or may hereafter assume control and management of the public free schools within their limits may also provide for building sites and buildings for such public free schools and institutions of learning, in the manner, and under the restrictions and limitations provided in article [925] Revised Statutes, relating to cities and towns. [Id. sec. 147.]

CITY SCHOOL TAXES.

Article 2875. Local maintenance tax.—After a city or town has assumed control of the public free schools within its limits, the council or board of aldermen shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. [Id. sec. 140.]

Art. 2876. Two-thirds majority necessary.—If, at an election held for that purpose at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, two-thirds of those voting shall vote in favor thereof, such an amount shall be raised by taxation not to exceed one-half of one per cent, in addition to the pro rata of the available school fund received from the state, as may be necessary to conduct the schools for ten months in the year. [Id. sec. 141.]

Art. 2877. Election for local tax.—The city or town council, or board of aldermen of any city, town or village, whether incorporated under any act of the congress of the republic, or the legislature of the state of Texas, or under any act of incorporation whatever, shall have power by ordinance to annually levy and collect not exceeding one-half of one per cent ad valorem taxes for the support and maintenance of public free schools in the city or town where such city or town is a separate and independent school district; provided, that no such tax shall be levied until an election shall have been

held at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, and two-thirds of those voting shall vote in favor thereof. The proposition submitted may be for a tax not exceeding one-half of one per cent, or may be for a specific per cent. One election, and no more, shall be held hereafter in any one calendar year to ascertain whether a school tax shall be levied. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued, at the request of fifty property taxpayers of such city or town. When the tax is continued, no election to discontinue it shall be held for two years; when the tax is discontinued, no election to levy a tax shall be held during the same year. [Id. sec. 142.]

Art. 2878. **Levy of tax.**—If the vote of the taxpayers is in favor of said tax, then it shall be the duty of the council or board of aldermen, annually thereafter, to levy upon the taxable property in the limits of such city or town, in accordance with the usual assessment of taxes for municipal purposes, such additional tax as may be necessary for the support of the schools for ten months in the year, not to exceed one-half of one per cent. [Id. sec. 143.]

Art. 2879. **Same.**—In a city or town that has assumed the exclusive control of the public free schools within its limits and has decided, under the laws providing therefor, that a special tax shall be levied for the support of such public free schools, the mayor and council or board of aldermen of such city or town shall annually assess and levy such tax by ordinance duly passed and approved in the same manner as is required in the assessment and levy of taxes for general purposes in such city or town. In a city or town which has voted upon, and directed, the levy of a special tax not exceeding one-half of one per cent, the mayor or council or board of aldermen of such city or town shall annually levy such rate of tax for public school purposes, not exceeding one-half of one per cent, as shall be sufficient for the support of the public free schools for the term as required by law; but in a city or town that has voted upon, and decided, at an election held for that purpose, that a specified rate of tax shall be assessed and levied in such city or town for the support of its public free schools, the mayor and council or board of aldermen of such city or town shall have no discretion in fixing the rate at which such tax shall be levied, but shall assess and levy the same at the rate fixed in the proposition as submitted and adopted by the qualified voters of such city or town at the election held for that purpose. [Id. sec. 138.]

Art. 2880. **Trustees determine annual rate.**—In a city or town that may now or hereafter constitute independent school districts, and where a special tax for school purposes has been voted by the people, or provided by special charter, not exceeding one-half of one per cent, it shall be the duty of said board of trustees to determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance of the schools for each current year; and it shall become the duty of the city council, upon the requisition of the said board of trustees, to annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount collected for the support of the schools of such district, to be used for the maintenance and support of the public free schools of such independent district. [Id. sec. 168.]

Art. 2881. **Assessment and collection.**—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector

of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. It is further provided, that, in such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [Id. sec. 165.]

Art. 2882. **Funds to be turned over to school treasurer.**—The pro rata of the available school fund of the state appropriated and set apart to such city or town shall be, by the proper officer or department of the state, paid over directly to such treasurer of the board of trustees, who shall execute the proper receipts therefor; and all moneys and funds arising from the assessment and collection of any special tax in such city or town for public free school purposes shall be by the assessor and collector, or other proper officer of such city or town whose duty it is to collect the taxes, turned over directly to the treasurer of the board of trustees of such city or town, who shall execute and deliver his receipt to such collector; and the mayor and council or board of aldermen of such city or town shall have no power or control of such funds. [Id. sec. 137.]

Art. 2883. **Extension of city limits for school purposes.**—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such city or town. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. [Id. sec. 148.]

CHAPTER EIGHTEEN.

INDEPENDENT DISTRICT SCHOOL TRUSTEES.

	Article.		Article.
Acts of certain boards validated.....	2884	Oath of office.....	2890
Change from appointment to election in		Organization of board.....	2891
cities.....	2885	Board shall adopt rules and regulations.....	2892
Board of seven trustees.....	2886	Vacancies.....	2893
Board of school trustees shall order elec-		May extend scholastic age.....	2894
tions.....	2287	May elect superintendent or principal for	
Who shall be declared elected.....	2888	two years.....	2895
Terms of office.....	2889		

Article 2884. **Acts of certain boards validated.**—The official acts and proceedings of, and contracts, bonds issued and authorized to be issued by boards of trustees in independent school districts heretofore elected and appointed and operating under former acts of the legislature of this state, and particularly under an act approved March 30, 1899, entitled “An act to provide a uniform method of electing school trustees in independent districts,” are hereby validated, ratified and confirmed. The provisions of this title concerning trustees shall not apply to the city of Fort Worth, nor to the city of Dallas. [Act 1905, p. 263, sec. 173.]

Art. 2885. **Change from appointment to election in cities.**—Towns and cities which have heretofore chosen their trustees by appointment of the city council or board of aldermen, under the provisions of article 4018, Revised Statutes, [1895,] shall be authorized to continue to choose their trustees in this manner: that is, by the appointment of the board of aldermen of said city or town; provided, that seven trustees shall be appointed at first, four of whom shall serve for one year, and three for two years; and, at regular intervals of one year thereafter, four trustees and three trustees, alternately, shall be appointed each year for a term of two years; and, further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the last regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of an affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in article [2886]. [Id. sec. 171.]

Art. 2886. **Board of seven trustees.**—In each independent district that shall be hereafter organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such independent district, and all of whom shall serve without compensation. [Id. sec. 162.]

Art. 2887. **Board of school trustees shall order elections.**—All elections shall be ordered by the board of trustees of each independent school district; and such order shall be made at least ten days before the date of election; and a notice of the order shall be posted at three different places in the district. The board of school trustees, at the time of ordering such election, shall appoint persons to hold the election, and shall designate the places where the polls shall be open.

All such elections shall be held in accordance with the state law governing elections; and returns of such elections shall be made to the board of school trustees in the same manner as election returns are made under such state law.

The board of school trustees shall canvass such returns, declare the result of such election, and issue certificates of election to the persons shown by such returns to be elected. [Id. sec. 164.]

Art. 2888. **Who shall be declared elected.**—All the qualified voters of each independent district shall be entitled to vote at a trustees' election; and the seven candidates receiving the largest number of votes at the first election held hereunder shall be entitled to serve as trustees as hereinbefore provided; and, at all subsequent trustees' elections, the three or four candidates, as the case may be, receiving the largest number of votes shall be entitled to serve as trustees for the full term for which they are elected. [Id. sec. 169.]

Art. 2889. **Terms of office.**—The terms of office of the seven trustees chosen at the first election shall be divided into two classes, and the members shall draw for the different classes, the four members drawing the numbers one, two, three, and four shall serve for one year or part thereof; that is, until the first May thereafter, and until their successors are elected and qualified; and the three members drawing the numbers five, six, and seven shall serve for two years; that is, until the second May thereafter, and until their successors are elected and qualified; and regularly thereafter, on the first Saturday in May of each year, four trustees and three trustees, alternately, shall be elected for a term of two years, to succeed the trustees whose term shall at that time expire. [Id. sec. 163.]

Art. 2890. **Oath of office.**—Before any trustee enters upon the discharge of the duties of his office, he shall swear that he will faithfully and impartially discharge the duties of such office; and his affidavit to that effect shall be filed after the first election with the county judge, and after all subsequent elections with the president or chairman of the school board. [Id. sec. 167.]

Art. 2891. **Organization of board.**—The trustees chosen under this chapter shall meet within twenty days after the election, or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business; and they shall choose from their number a president; and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. [Id. sec. 165.]

Art. 2892. **Board shall adopt rules and regulations.**—Said board of trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils or school trustees by articles [3995, 4013 and 4032,] Revised Statutes, [1895,] or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit now pending, or which may hereafter arise, to which said board are parties. [Id. sec. 168.]

Art. 2893. **Vacancies.**—When a vacancy occurs in the board of school trustees in any independent school district, the remaining members of such board shall fill the vacancy by electing a person to fill the office for the unexpired portion of the term of the prior incumbent thereof. [Id. sec. 170.]

Art. 2894. **May extend scholastic age.**—Any city or town having voted a tax, in addition to the pro rata of the available school fund from the state, may extend the scholastic age and prescribe such other studies as the board of school trustees may deem proper. [Id. sec. 145.]

Art. 2895. **May elect superintendent or principal for two years.**—The board of trustees of any city or town or of any independent district provided for in this chapter, may elect a superintendent or principal of schools of such city or town, or of such independent district, for a term not to exceed two years. [Id. sec. 174.]

CHAPTER NINETEEN.

GENERAL PROVISIONS.

Article.	Article.
School shall not be sectarian.....2896	Admission of overs and unders; suspen-
Provisions to be made for both races....2897	sion of pupils.....2902
Who are "colored".....2898	When schools shall be open.....2903
Where children may attend school.....2899	Trustees and teachers shall not handle
Scholastic age.....2900	books.....2904
Scholastic year.....2901	

Article 2896. **School shall not be sectarian.**—No part of the public school fund shall be appropriated to or used for the support of any sectarian school. [Acts 1905, p. 263, sec. 130.]

Art. 2897. **Provisions to be made for both races.**—All available public school funds of this state shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. [Id. sec. 95.]

Art. 2898. **Who are "colored."**—The terms "colored race" and "colored children," as used in the preceding articles, and elsewhere in this title, include all persons of mixed blood descended from negro ancestry. [Id. sec. 96.]

Art. 2899. **Where children may attend school.**—Every child in this state of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year; provided, that white children shall not attend the schools supported for colored children, nor shall colored children attend the schools supported for white children. [Id. sec. 128.]

Art. 2900. **Scholastic age.**—All children, without regard to color, over seven years of age and under seventeen years of age at the beginning of any scholastic year, shall be entitled to the benefit of the public school fund for that year. [Id. sec. 129.]

Art. 2901. **Scholastic year.**—The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter. [Id. sec. 97.]

Art. 2902. **Admission of overs and unders; suspension of pupils.**—The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age; and they may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school. [Id. sec. 75.]

Art. 2903. **When schools shall be opened.**—Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A school month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses. [Id. sec. 98.]

Art. 2904. **Trustees and teachers shall not handle books.**—No member of the board of trustees of any public school, nor teacher in any of the public schools of this state, nor county or city superintendent of public schools shall, during the term of his office as trustee or superintendent, or during the time of his employment as teacher, act as agent or attorney for any text-book publishing company selling text-books in this state. Nor shall any person interested in the publication of text-books, or of selling the same to be used in the public schools of this state, be eligible to serve as school trustee, county or city superintendent of schools, or as teacher in any of the public schools of

this state. If, after election as trustee, county or city superintendent or employment as teacher, any person filing such position accepts the agency or attorneyship of any text-book publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or place in the public schools held at the time of the acceptance of such agency or attorneyship. [Id. sec. 175.]

CHAPTER TWENTY.

STATE TEXT-BOOK BOARD.

[Note.—This is a temporary act, but is incorporated in the Revised Civil Statutes for the reason that it is the law under which text-books are at present furnished to the schools.]

	Article.		Article.
Subjects covered in adoption.....	2905	State assumes no liability to contractors.	2903
Contractors shall establish depositories..	2906	Process to be served on secretary of	
Period of use of present adopted books..	2907	state	2909

Article 2905. **Subjects covered in adoption.**—The governor of this state shall, at such time after this act takes effect as will, in his opinion, best insure the proper accomplishment of its purpose, and not later than January 1, 1908, appoint five teachers holding first grade or permanent certificates who have been actively engaged in teaching in the public schools of the state for the past three years, one of whom shall be a primary teacher of recognized ability, who, together with the governor and the state superintendent of public instruction, shall constitute the said text-book board, of which the governor shall be the chairman, and said board shall, when called together by the governor for that purpose, select and adopt text-books for use in the public schools in this state for a period of five years, beginning September 1, 1908; said board is hereby authorized and required to select and adopt a uniform system of text-books to be used in the public free schools of Texas; and the series so selected shall include and be limited to text-books on the following subjects: Spelling, a graded series of reading books, a course of language lessons, grammar, elementary English, composition, geography, arithmetic, mental arithmetic, elementary physiology and hygiene, civil government, elementary algebra, physical geography, history of the United States in which the construction placed on the federal constitution by the fathers of the Confederacy shall be fairly presented, history of Texas, elementary agriculture, and a graded system of writing books; provided, that none of the said text-books shall contain anything of a partisan or sectarian character, and that nothing in this act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools as a branch of study; but the teaching of one or more of these languages shall not interfere with the use of the text-books herein prescribed; and the study of a language known as a dead language, such as Latin and Greek, shall never be made compulsory as a requirement for the completion of any regular course of study in any public school in this state, without providing an equivalent course for graduation, equal in all other respects to such course, containing such dead language or languages, which shall not include the same; provided, however, that nothing herein shall be construed to prevent the use of supplementary books. The text-book board shall adopt a series of supplementary reading books for the

first, second and third grades and each bidder presenting books for adoption shall state at what price the readers are offered as basic readers and as supplementary readers. Such supplementary books shall not be used, unless approved by the trustees of such school as to price, binding, printing and general arrangement; and they shall not then be used to the exclusion of the books prescribed under the provisions of this chapter. But full use must be made in good faith of the books adopted under this chapter; provided, that when supplementary books are used, they shall be furnished at prices to be fixed by the trustees of the school in which they are used; and if any teacher or trustee shall knowingly and, directly or indirectly, receive from any pupil a greater price therefor, he shall be punished as provided in the Penal Code; provided, that no trustee or teacher shall ever receive any commission or rebate on any book used in the schools with which he is connected as such trustee or teacher; and, if any such trustee or teacher shall receive or accept any such commission or rebate, he shall be subject to the penalty above provided; provided, the state board of education shall be empowered, at its discretion, to authorize the school authorities of any city acting under a special charter to retain in use any book or books now in use in the public schools of said city, upon application therefor to said board by said authorities, supported by proof satisfactory to the board that a change therein would now [not], considering the general result, save expense to the patrons of the schools of said city; and, in the event said board should grant such authority or shall specify the books which are thus permitted to be retained in use and the prices to be paid therefor, and in the event any change shall be made therein, either in such books or the prices thus fixed, such authority shall thereby be revoked. No such authority shall be given, however, unless the publishers of the books in use, or about to be used, in any such city, shall agree in writing to receive, during the term of the contract entered into under the provisions of this chapter, in exchange for such books any of the books adopted by the text-book board herein provided for, under regulations and at prices to be fixed by the state board of education; provided, that any book or books retained in use in the public schools of cities under special charters shall be furnished to the pupils at a price as low as the price of books contracted for by said board. [Acts 1907, 1 S. S., p. 448, sec. 1.]

Art. 2906. Contractors shall establish depositories.—The party with whom the contract has been made shall establish and maintain in some city in this state a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate state agencies or depositories shall maintain a joint state agency or depository, to be located at some convenient and suitable distributing point, at which general depository each contractor joining in said joint agency shall keep on hand a sufficient stock of books to supply sub-depositories; and every contractor shall establish and maintain in every county in the state having an enrollment of five hundred pupils or more in the public schools, as shown in the last preceding report to the county superintendent on file in the office of the state superintendent of public instruction, one or more agencies, one of which shall be at the county seat. At each county seat as above provided, and in every city in this state containing one thousand inhabitants or over, shall be maintained an agency carrying a sufficient stock of all books contracted for to supply all immediate demands. Provided, that in the counties not entitled to a depository under the conditions as provided for in this chapter, contractors shall supply such adopted books under such rules and regulations as may be prescribed by the state board of education. Any person, dealer, or school board in any county in the state may order from the central agency; and the books so ordered shall be furnished at the same rates and discount as are granted to agents at the county seat; provided, that the price of books

so ordered be paid in advance. Upon failure of any contractor, under the provisions of this chapter, to furnish the books as provided in the contract and in this chapter, the county judge in the county wherein such books have not been so furnished shall report the fact to the attorney general, and he shall bring suit on account of such failure in the name of the state of Texas in the district court of Travis county, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and, in addition thereto, the sum of one hundred dollars; and the amounts so recovered shall be placed to the credit of the available school fund of the state. Unorganized counties shall be furnished from the same agency as the county to which said unorganized county is attached for judicial purposes, in the same manner as such organized county. [Id. sec. 8.]

Art. 2907. Period of use of present adopted books.—The books adopted by the board under the provisions of this chapter shall be introduced and used as text-books to the exclusion of all others in the public free schools of this state for a period covering five scholastic years, beginning September 1, 1908; provided, nothing in this chapter shall be construed to prevent or prohibit the patrons of the public schools throughout the state from procuring books in the usual way, in the event that no contracts are made, or in the event that the contractor fails or refuses to furnish the books provided for in this chapter at the time that said books are required for use in the schools. [Id. sec. 10.]

Art. 2908. State assumes no liability to contractors.—It shall be part of the terms and conditions of every contract made in pursuance of this chapter, that the state of Texas shall not be liable to any contractor thereunder for any sum whatever; but all such contractors shall receive compensation solely and exclusively from the proceeds of the sale of school books as provided in this chapter; and it is hereby provided that the state shall have the right to terminate said contract whenever the law is repealed or amended, altered or qualified as to make necessary or expedient that such contract should be revoked; and all contracts shall contain a stipulation to that effect. The state may at its election cancel any contract entered into by virtue of the provisions of this chapter, for fraud or collusion upon the part of either party to the contract, or any member of the board, or any person, firm, corporation, or their agents making said bond or contract; and, for the cancellation of any such contract, the attorney general is hereby authorized to bring suit in the proper court of Travis county; and, in case of the cancellation of any contract as provided for, the damages are fixed at not less than the amount of said bond, to be recovered as liquidated damages in the same suit cancelling said contract; and on account of the difficulty of determining the damage that might accrue by reason of such fraud and cancellation of such contract, the full amount of the bond given by any contractor shall be considered as liquidated damages to be recovered out of said bond by the state at the suit of the attorney general; and every contract shall contain a clause to this effect. [Id. sec. 6.]

Art. 2909. Process to be served on secretary of state.—Any person, firm or corporation with whom a contract has been entered into under the provisions of this chapter shall designate the secretary of state of Texas as its or their agent upon whom citation and all other writs and process may be served, in the event any suit shall be brought against such person, firm or corporation. [Id. sec. 13.]

TITLE 49.

ELECTIONS.

Chapter.

1. Time and Place of Holding Elections.
2. Officers of Election.
3. Ordering Elections.
4. Suffrage.
5. Official Ballot.
6. Supplies, Arrangements and Expenses of Election.

Chapter.

7. Manner of Conducting Elections, and Making Returns Thereof.
8. Contesting Elections.
9. Miscellaneous Provisions.
10. Nominations—By Primary Elections and Otherwise.
11. National Conventions—State Conventions to Select Delegates To.

CHAPTER ONE.

TIME AND PLACE OF HOLDING ELECTIONS.

Article.	Article.
Elections, general, time for holding..... 2910	Voters shall vote in precinct where they reside..... 2916
Elections, special, time for holding..... 2911	Collector; order fixing precincts to be served on..... 2917
Polls, hours of opening and closing..... 2912	Polling-places and poll tax lists in towns, etc., under general law..... 2918
Precinct election, formed how and when; publication..... 2913	But one election poll in certain cities and towns..... 2919
Precincts in cities and towns; how formed..... 2914	
Unorganized counties, precincts, and voting in..... 2915	

Article 2910. **Elections, general, time for holding.**—A general election shall be held on the first Tuesday after the first Monday in November, A. D. 1912, and every two years thereafter, at such places as may be prescribed by law, after notice given as prescribed by law. [Acts 1905, 1st S. S. p. 535.]

Art. 2911. **Elections, special, time for holding.**—Special elections shall be held at such times and places as may be fixed by law providing therefor. [Id. sec. 62.]

Art. 2912. **Polls, hours of opening and closing.**—In all elections, general, special or primary, the polls shall be open from eight o'clock in the morning until seven o'clock in the evening; and the election shall be held for one day only. [Id. sec. 64.]

Art. 2913. **Precincts, election, formed how and when, publication.**—The county commissioners' court of each county may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more justice precincts, nor out of the parts of two or more justice precincts. [Id. sec. 7.]

Art. 2914. **Precincts in cities and towns, how formed.**—The county commissioners' court, in establishing new election precincts, shall divide any city or town into as many election precincts as they see proper, none of which shall have resident therein more than three hundred and fifty voters, as ascertained by the vote of the last preceding general city or town election. Every ward in every incorporated city, town or village shall constitute an election precinct, unless there shall have been cast in the said ward, at the last general city or town election held therein, more than three hundred and fifty votes. Cities

and towns, and towns and villages incorporated under the general laws shall not necessarily constitute election precincts; and no precinct shall be made out of parts of two wards. Provided, that this section [article] shall not apply to cities, towns and villages of less than ten thousand inhabitants; and, in such cities, towns and villages, the justice precincts in which said cities, town and villages are situated may be divided into election precincts without regard to the wards of such cities, towns and villages, and without reference to the number of votes to be cast. [Id. sec. 8.]

Art. 2915. [1709] **Unorganized counties, precincts and voting in.**—Each unorganized county of the state of Texas which is attached, for judicial purposes, to an organized county shall be attached, for election purposes, to some one of the commissioners' precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners' precinct; provided, when more than one election precinct has been established by law in such unorganized county of the state, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners' precincts of such organized county; and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioners' precinct to which such election precinct has been attached. [Acts 1885, p. 89.]

Art. 2916. [1732] [1689] **Voters shall vote in precinct where they reside.**—All voters in any county shall vote in the election precinct in which they reside. [Act Aug. 23, 1876, p. 308, sec. 14. Acts of 1881, p. 97.]

Art. 2917. **Collector, order fixing precincts to be served on.**—The county commissioners' court shall cause to be made out and delivered to the county collector of taxes, before the first day of September, annually, a certified copy of the last order fixing the limits and designating the number or name of each precinct for the year following. [Acts 1905, 1 S. S., p. 535.]

Art. 2918. **Polling places and poll tax lists in towns, etc., under general law.**—In towns or cities incorporated under the general laws, the city council may provide for city or town elections that there shall be one or more polling places; and, in such case, the certified list of poll taxpaying voters for all election precincts in which voters reside who are to vote at any such polling place shall be used therefor. [Id. sec. 9.]

Art. 2919. **But one election poll in certain cities and towns.**—In all cities and towns in this state in which the number of electors at the last municipal election does not exceed four hundred in number, but one election poll shall be opened at any municipal election; and all officers of such towns and cities to be elected shall be voted for at such poll. [Acts 1897, p. 10.]

CHAPTER TWO.

OFFICERS OF ELECTION.

Judges and clerks of election; presiding judge; appointment; qualification and duties.....	Article. 2920	Supervisors of elections, appointment, etc., powers and duties.....	Article. 2923
Judges and clerks of election in precincts of over 100 poll tax receipts, appointment and duties.....	2921	Supervisors appointed, how, etc.; duties.....	2924
Disqualifications for being judges, etc., or members of executive committees.....	2922	Compensation of judges and clerks.....	2925
		Compensation of judges and clerks.....	2926
		Precincts, order defining to be served on precinct judges.....	2927
		Presiding officers in unorganized counties.....	2928

Article 2920. **Judges and clerks of election; presiding judges; appointment, qualification and duties.**—The county commissioners' court shall, at the February term, appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption two reputable men who are qualified voters as judges of the election. They shall be selected from different political parties, if practicable, and shall continue to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to fill such vacancy or vacancies. One of the judges, who shall, in all cases, belong to the party that, at the last general election, cast the largest vote for governor throughout the state shall be designated as the presiding judge at elections; he shall appoint two competent and reputable clerks of different political parties, if practicable, who are qualified voters, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one of the clerks shall keep the poll list and list of qualified voters, and, upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted; said officers shall perform such other duties as the presiding judge may direct. [Acts 1905, S. S., p. 533, sec. 57.]

Art. 2921. **Judges and clerks of election in precincts of over 100 poll tax receipts, appointment and duties.**—For every precinct in which there are one hundred male citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners' court shall appoint four judges of election, who shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the vote cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing, and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners' court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars to the presiding judge extra for making return of the election. [Id. sec. 58.]

[Note.—For appointment of judges and clerks by voters, see Art. 2994.]

Art. 2922. Disqualifications for being judges, etc., or members of executive committees.—No one who holds an office of profit or trust under the United States or this state, or in any city or town in this state, except a notary public, or who is a candidate for office, or who has not paid his poll tax, shall act as judge, clerk or supervisor of any election, nor as chairman nor as member of an executive committee, either for the state or any district or county. [Id. sec. 60.]

Art. 2923. Supervisors of elections, appointment, etc., powers and duties.—The chairman of the county executive committee, for each political party that has candidates on the official ballot, or if he fails to act, any three members of such committee, may, not less than five days before the general election, nominate one supervisor of election for each voting precinct, who has paid his poll tax, by presenting his name to the county judge, who shall indorse his approval on the certificate of his nomination if he is a reputable citizen, but not otherwise. And thereupon, on his presenting such nomination and its approval to the presiding judge of the precinct, he shall be permitted to sit conveniently near the judges, so that he can observe the conduct of the election, including the counting of the votes, the locking and sealing of the ballot boxes, their custody and safe return. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. Before he shall be permitted to act as supervisor, he shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in testing or counting the votes, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. [Id. sec. 59.]

Art. 2924. Supervisors, appointed, how, etc.; duties.—Any one-fifth of the candidates whose names appear on the official ballot may, on the day preceding the election or prior thereto, agree in writing signed by them upon two supervisors who, when selected, shall be sworn as election officers. Said supervisors shall be qualified voters of the county in which they may serve as such supervisors. Said supervisors, while the election is being held, shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking of the ballot of any voter, by the judge of said election, not able to make his own ballot, to see that said ballot is marked in accordance with the wishes of the voter; and it shall further be their duty to see that each and every ballot is correctly called. The said supervisors shall note any and all fraud or irregularity occurring, and report same to the next grand jury. [Acts 1905, 1 S. S., p. 552. Acts 1909, 2 S. S., p. 451, sec. 12.]

[Note.—For appointment of officers and supervisors of election in cities, towns, etc., see Arts 2934 and 785.]

Art. 2925. Compensation of judges and clerks.—Judges and clerks of general and special elections shall be paid two dollars a day each; and the judge who delivers the returns of election, immediately after the votes have been counted, shall be paid two dollars for that service; provided, the polling place of his precinct is at least two miles from the court house, and provided, also, he shall make returns of all election supplies not used when he makes return of the election. [Acts 1905, 1 S. S., p. 557, sec. 146.]

Art. 2926. [1752] Compensation of judges and clerks.—The compensation of judges and clerks of general and special elections shall be paid by the county treasurer of the county where such services are rendered, upon the order of the commissioners' court of such county; provided, twelve working hours shall be considered a day within the meaning of this article.

Art. 2927. **Precincts, order defining to be served on precinct judges.**—Precinct judges for all general elections shall be served with copies of the order of the county commissioners' court, properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the sheriff or a constable within ten days after the entry of such order, and return shall be made thereof on a copy showing when, where and how he executed the same. [Id. sec. 11.]

Art. 2928. [1708] [1665b] **Presiding officers in unorganized counties.**—It shall be the duty of the commissioners' court to which any unorganized county is attached for judicial purposes to appoint some suitable person in each of such unorganized counties to serve as a presiding officer of elections in said unorganized county; which appointment shall be made in the same manner as in the appointment of presiding officers in election precincts in organized counties. [Acts of 1881, p. 97.]

CHAPTER THREE.

ORDERING ELECTIONS, ETC.

Proclamation of election by governor.....	Article. 2929	In cities, towns, etc., ordering elections, notice, officers, supervisors.....	Article. 2934
Order for election, by county judge, etc.; writs of election, etc.....	2930	Vacancy, order for election to fill, etc.....	2935
Writs of election, how served.....	2931	In case of a tie another election shall be held.....	2936
Invalidated—election not.....	2932	Forms of blanks, furnished by secretary of state.....	2937
Notice of election by whom given; requirements as to.....	2933		

Article 2929. **Proclamation of election by governor.**—Notice shall be given to the people of all elections for state and district officers, electors for president and vice president of the United States, members of congress, members of the legislature and all officers who are elective every two years. Such notices shall be by proclamation by the governor ordering the election, not less than thirty days before the election, issued and mailed to the several county judges. [Acts 1905, 1 S. S. p. 528, sec. 30.]

Art. 2930. **Order for election by county judge, etc.; writs of election, etc.**—The county judge, or if his office is vacant, or if he fails to act, then two of the county commissioners shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge, or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the office or offices to be filled by the election or the question to be voted on, or both, as the case may be, and the day of election. [Id. sec. 31.]

Art. 2931. [1725] [1682] **Writs of election, how served, etc.**—The writs of election and copies of the form of returns shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there be no presiding officer in any such election precinct, the writ and form shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Art. 2932. **Invalidated—election not; how.**—A failure, from any cause, on the part of the governor or the county judge or commissioners' court, or

of both to order or give notice of any general election shall not invalidate the same if otherwise legal and regular. [Id.]

Art. 2933. Notice of election; by whom given; requirements as to.—The county judge, or if he fails to act, then two county commissioners, shall cause notice of a general election or any special election to be published by posting notice of election at each precinct thirty days before the election; which notice shall state the time of holding the election, the office to be filled, or the question to be voted on, as the case may be; provided, that in local option, stock law, and road tax elections, the notices of elections, or any other special election specially provided for by the laws of this state, shall be given in compliance with the requirements of laws heretofore or hereafter enacted governing said elections respectively; and provided, also, that if a vacancy occurs in the state senate or house of representatives during the session of the legislature, or within ten days before it convenes, then twenty days notice of a special election to fill such vacancy shall be sufficient. Posting of notice of an election shall be made by the sheriff or a constable, who shall make return on a copy of the writ, how and when he executed the same. [Id. sec. 33.]

Art. 2934. In cities, towns, etc., ordering elections, notice, officers, supervisors.—In all city, town and village elections, the mayor, or if he fails to, then the board of aldermen or the officials in whom authority is vested by law, shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and the judges and clerks shall each be selected from different political parties when practicable. [Id. sec. 34.]

Art. 2935. Vacancy, order for election to fill, etc.—In all cases of vacancy in a civil office in the state, caused by death or resignation or otherwise, the vacancy of which is to be filled by election, the officer or officers authorized by this title to order elections shall immediately make such order, fixing the day, not exceeding thirty days after the first public notice of such order to fill the unexpired term, and cause like notice to be given and issue writs as provided for in general elections. [Id. sec. 35.]

Art. 2936. [1805] [1754] In case of a tie another election shall be held.—Whenever, at any election, there shall be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office; and notice shall be given, and such other election shall be held in the same manner as is provided in other elections. [Act Aug. 23, 1876, p. 310, sec. 24. P. D. 3606.]

Art. 2937. Forms of blanks furnished by secretary of state.—The secretary of state shall, at least thirty days before the general election, prescribe to the county judge of each county forms of all blanks necessary under this title. [Acts 1905, S. S., p. 528, sec. 32.]

CHAPTER FOUR.

SUFFRAGE.

	Article.		Article.
Qualifications for voting—who not qualified	2938	Poll tax receipt, etc., in case of removal to another county or precinct, proviso	2952
Qualifications for voting—who qualified	2939	Exemption certificates, in cities over 10,000; requisites, etc., form	2953
Qualifications for voting in city elections	2940	Minor reaching majority between Feb. 1 and election day, certificate	2954
Residence defined	2941	Poll tax in unorganized counties	2955
Poll tax collected from whom; when paid; receipt	2942	Poll tax receipt, etc., books, furnished by commissioners to collectors, requisites	2956
Poll tax, who not required to pay	2943	Poll tax deputy to be appointed in certain counties	2957
Mode of paying poll tax	2944	Collector may administer oaths, etc.	2958
Same subject	2945	Residence, proof of, when; false statement reported to grand jury	2959
Tax receipt not to be delivered to agent	2945	False swearing to be reported to grand jury	2960
Candidate, etc., not to pay poll tax of another; provided	2946	Lists of poll taxpayers, etc., furnished by collector to board, and by board to judges; requisites, etc.	2961
No one to give money to another to pay poll tax	2947	Poll tax receipts duplicates to be securely kept, etc.	2962
No one to keep poll tax of another, except	2948	Poll tax receipts, statement of, by collector	2963
Poll tax receipt shall show what	2949		
Poll tax receipt, form of	2950		
Poll tax receipt, etc., in case of removal to another ward of city of over 10,000	2951		

Article 2938. **Qualifications for voting; who not qualified.**—The following classes of persons shall not be allowed to vote in this state:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.
5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. [Acts 1905, 1 S. S., p. 520, sec. 1.]

Art. 2939. [1731] **Qualifications for voting; who qualified.**—Every male person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who has, not less than six months before an election in which he offers to vote, declared his intention to become a citizen of the United States, in accordance with the federal naturalization laws, and shall have resided in this state one year next preceding such election and the last six months in the county in which he offers to vote, shall also be deemed a qualified voter; and all electors shall vote in the voting precinct of their residence; provided, that the electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; and provided, further, that any voter who is subject to pay his poll tax under the laws of the state of Texas or ordinances of any city or town in this state, shall have paid said tax before he offers to vote at any election in this state, and hold a receipt showing the payment of his poll tax before the first day of February next preceding such election; and, if he is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he must procure a certificate showing his exemption, as required by this title. Or, if such voter shall have lost or misplaced said tax receipt, he shall be entitled to vote, upon making affidavit before any officer authorized to administer oaths that such tax was actually paid by him before said first day of February next preceding such election at which he offers to vote, and that said receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. Provided, that in any election held only in a subdivision of a county for the

purpose of determining any local question or proposition affecting only such subdivision of the county, then, in addition to the foregoing qualifications, the voter must have resided in said subdivision of the county for six months next preceding such election. [Id. sec. 2.]

Art. 2940. Qualifications for voting in city elections.—All qualified electors of this state, as described in articles 2938 and 2939, who shall have resided for six months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but, in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who pay taxes on property in such city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the person debarred from voting in relation thereto. [Id. sec. 3.]

Art 2941. "Residence" defined.—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided, that the residence of one who is an inmate or officer of a public asylum or eleemosynary institute, or who is employed as a clerk in one of the departments of government at the capital of this state, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and, if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate home situate within the limits of the city of Austin shall, after obtaining their certificates of exemption, be entitled to vote for state, district, municipal and county officers. [Id. sec. 4.]

Art. 2942. Poll tax collected from whom; when paid; receipt.—The poll tax required by the constitution and laws in force shall be collected from every male person between the ages of twenty-one and sixty who resided in this state on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb and those who have lost a hand or foot, or permanently disabled, excepted; which tax shall be collected and accounted for by the tax collector each year and appropriated as required by law. It shall be paid at any time between the first day of October and the first day of February following; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [Id. sec. 12.]

Art. 2943. Poll tax, who not required to pay.—Every male person who is more than sixty years old or who is blind or deaf and dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county collector when the same is required by the provisions of this title. [Id. sec. 6.]

Art. 2944. Mode of paying poll tax.—If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him. [Id. sec. 16.]

Art. 2945. Same subject.—In all cases where the taxpayer resides in a city of ten thousand inhabitants or more, the tax must be paid in person by the

taxpayer entitled to the receipt, except as provided by this article. If a person residing in a city of ten thousand inhabitants who is subject to pay a poll tax, intends to leave the precinct of his residence before the first day of October, with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the precinct, the expected period of his absence, and every fact necessary to enable the tax collector to fill the blanks in his receipt. Such authority, in fact, must be sworn to by the citizen and certified to by some officer authorized to administer oaths. It shall be deposited with the tax collector and kept in his office. [Id. secs. 16 and 25.]

Tax receipt not to be delivered to agent, etc.—When, in cases permitted by this title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the tax collector. [Id. sec. 16.]

Art. 2946. Candidate, etc., not to pay poll tax of another; provided, etc.—In no event shall any candidate for office pay the poll tax for another. And no person shall for, or on behalf of, any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipts shall not state either the race, occupation or residence of the taxpayer. [Id. sec. 16.]

Art. 2947. No one to give money to another to pay poll tax.—No one shall knowingly give money to a citizen to pay his poll tax. [Id. sec. 27.]

Art. 2948. No one to keep poll tax of another, except.—No one shall keep the poll tax receipt of another person in his possession or under his control, except in cases specially authorized by law. [Id. sec. 27.]

Art. 2949. Poll tax receipt shall show what.—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, age, his race, the length of time he has resided in the state, the length of time he has resided in the county, the voting precinct in which he lives, except when he lives in an unorganized county, his occupation, his postoffice address, or, if he lives in an incorporated city, ward, street and number of his residence, if numbered, and the length of time he has resided in such city or town. [Id. sec. 16.]

Art. 2950. Poll tax receipt, form of.—The poll tax receipt shall be in the following form, and numbered consecutively in each book provided for in this title:

POLL TAX RECEIPT.

No.....

State of Texas, county of.....

Received of on the..... day of A. D. 19....., the sum of dollars, in payment of poll tax for the year A. D. 19.....

The said taxpayer being duly sworn by me, says that he is..... years old, that he resides in voting precinct No..... in..... county, that his race is....., that he has resided in Texas years, and in..... county..... years, that he is by occupation....., that his postoffice address is.....

(If in an incorporated city or town, a blank must be provided for the ward, street and number of residence in lieu of his postoffice address, and length of time he has resided in such city or town.)

All of which I certify.

(Seal)

(Signed).....

Tax Collector.....county, Texas.

[Id. sec. 18.]

Art. 2951. Poll tax receipt, etc., in case of removal to another ward of city over 10,000.—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and be forwarded with the election returns. But, in all such cases, if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the collector of taxes not less than five days before such election or primary election, and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event, unless his name appears on the certified list of voters. [Id. sec. 21.]

Art. 2952. Poll tax receipt in case of removal to another county or precinct; proviso.—If a citizen, after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or his certificate of exemption or his written affidavit of its loss to the precinct judges of election, and stating in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the state. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. [Id. sec. 22.]

Art. 2953. Exemption certificate in cities over 10,000; requisites, etc.; form.—Every person who is exempted by law from the payment of a poll tax and who is in other respects a qualified voter, who resides in a city of ten thousand inhabitants or more, shall, after the first day of October and before the first day of February following, before he offers to vote, obtain from the tax collector of the county of his residence a certificate showing his exemption from the payment of a poll tax. Such exempt person shall, on oath, state his name, county of his residence, occupation, race, age, the length of time he has resided in Texas, the length of time he has resided in the county and the length of time he has resided in the city, and the ward and voting precinct in which his residence is located, the street and number of his residence, if numbered. He shall also state the grounds on which he claims exemption from the payment of a poll tax. Such certificate shall be detached from said book, leaving thereunder a duplicate carbon or other copy thereof

which shall contain the same description; and the original shall be delivered, bearing its proper number, to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

CERTIFICATE OF EXEMPTION FROM POLL TAX.

No.

State of Texas, county of.....

I....., tax collector for said county, Texas, do hereby certify that..... personally appeared before me on the..... day of..... A. D....., and being sworn, said his name is....., that his race is....., that he is..... years old, that his occupation is....., that he has resided in Texas for..... years, in the county of..... for..... years, and in the city of..... for..... years, that he now resides in precinct No., in ward No.; and on..... street, and in house No..... (if numbered); that he is exempt from the payment of the poll tax by reason of..... and that he is a qualified voter under the constitution and laws of Texas.

(Seal) (Signed).....

Tax Collector..... county, Texas.

[Id. sec. 19.]

Art. 2954. **Minor reaching majority between Feb. 1, and election day, certificate.**—Every male person who will reach the age of twenty-one years after the first day of February and before the day of a following election at which he wishes to vote, and who possesses all the other qualifications of a voter shall be entitled to vote at such election, if he has obtained a certificate of exemption from the county collector before the first day of February, which shall specify the day when he will be twenty-one years old, and contain all the other requisites of a certificate of exemption. Before the certificate of exemption shall issue, the applicant therefor shall make written affidavit of his age, to be administered and certified to by the county collector, who shall file and preserve the same. [Id. sec. 23.]

Art. 2955. **Poll tax in unorganized counties.**—The poll tax due from citizens of unorganized counties shall be paid in the county to which the unorganized county is attached for judicial purposes. [Id. sec. 13.]

Art. 2956. **Poll tax receipt, etc., books, furnished by commissioners to collector; requisites.**—The commissioners' court of each county shall, before the first day of October every year, furnish to the county tax collector a blank book for each voting precinct, which shall be marked with the name and number of the precinct for which it is intended. Each book shall contain a sufficient number of blank poll tax receipts for each voting precinct not in a city of ten thousand inhabitants or more, and not exceeding three hundred and fifty blank poll tax receipts and certificates of exemptions for each precinct in a city of ten thousand inhabitants or more, of which not more than sixty shall be certificates of exemptions, and a greater or less number of each in the same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in each such book, be bound immediately over a duplicate copy thereof; which duplicate copy, when filled out, shall correspond with the receipt or certificate in its number, the name, length of residence in the state or county, the voting precinct, race, occupation and postoffice address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in a city, the receipt or certificate and duplicate must show the ward, street and number, if numbered, of the citizen's residence (in lieu of postoffice address); and the length of time he has resided in such city. The receipts and certificates shall be numbered in consecutive order. Similar blank

books of poll tax receipts shall be furnished to each unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting. [Id. sec. 14.]

Art. 2957. **Poll tax deputy to be appointed, etc., in certain counties.**—In all counties containing a city of ten thousand inhabitants or more, other than the county seat of such county, it shall be the duty of such collector to have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. [Id. sec. 17.]

Art. 2958. **Collector may administer oaths, etc.**—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. [Id. sec. 24.]

Art. 2959. **Residence, proof of, when; false statement reported to grand jury.**—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and, if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the state, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. [Id. sec. 26.]

Art. 2960. **False swearing to be reported to grand jury.**—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon which such belief is founded to the next grand jury organized in the county. [Id. sec. 20.]

Art. 2961. **Lists of poll taxpayers, etc., furnished by collector to board, and by board to judges; requisites.**—Before the first day of April every year, the county collector of taxes shall deliver to the board that is charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the state and county, his race, occupation and postoffice address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the collector of taxes shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll taxpayers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of

a precinct the certified list and supplemental list of the voters of his precinct at the time when he furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

VOTERS IN ELECTION PRECINCT.

No.
 Name
 Precinct
 Age
 Length of residence in state.....
 Length of residence in county.....
 Occupation
 Race
 Length of residence in city and ward.....
 Street and No. of residence.....
 Postoffice address.....
 [Id. sec. 15.]

Art. 2962. **Poll tax receipts, duplicates to be securely kept, etc.**—The county collector shall keep securely in a safe place the duplicates for each precinct from which such poll tax receipts and certificates of exemption have been detached; and they must remain there except when taken out for examination, which must always be done in his presence, but they shall be burned by the county judge at the expiration of three years. [Id. sec. 29.]

Art. 2963. **Poll tax receipts, statement of, by collector.**—On or before the tenth day of March of each year, the collector of taxes shall make statement to the county clerk showing how many poll tax receipts he has issued; said statement shall show how many poll tax receipts have been issued and to whom issued in each voting precinct in the county; and such statement shall become a record of the county commissioners' court. [Id. sec. 28.]

CHAPTER FIVE.

OFFICIAL BALLOT.

<p>Ballot, vote shall be by; safeguards, etc.; no registration; cities included.....2964 Ballot, official, required; to contain what.....2965 No candidate on ballot except, etc.....2966 Candidates of certain parties not on ballot unless, etc.....2967 Vacancy; where nominee declines or dies, etc., substitution on ballot.....2968 Ballots, how printed; form, etc.; manner of voting2969</p>	<p>Article. Ballot, further regulations as to.....2970 Constitutional amendment and other questions, how submitted.....2971 Ballot, any at school election, city, etc.....2972 Ballots, how many furnished.....2973 Ballots (counted), etc., delivered to judges2974 Ballots, voters may provide when.....2975</p>
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Article 2964. **Ballot, vote shall be by; numbering; safeguards, etc.; no registration; cities included.**—In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No registration in cities with a population of ten thousand or more shall be hereafter required as a qualification to vote, but all the provisions of this title which prescribe qualifications for voting and which regulate the holding of elections, shall apply to elections in cities. [Acts 1905, 1 S. S., p. 521, sec. 5.]

Art. 2965. **Ballot, official, required; to contain what.**—No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the title of the party that nominates them, except as otherwise provided by this title. [Id. sec. 46.]

Art. 2966. **No candidate on ballot, except, etc.**—No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. [Id. sec. 118.]

Art. 2967. **Candidates of certain parties not on ballot unless, etc.**—The name of no candidate of any political party that cast one hundred thousand votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. [Id. sec. 52.]

Art. 2968. **Vacancy, where nominee declines or dies, etc., substitution on ballot, etc.**—Where a nominee shall have declined his nomination, or shall have died, and the vacancy so created shall have been filled, and such facts shall have been certified in accordance with the provisions of article 3172, thereupon the secretary of state or county judge, as the case may be, shall promptly notify the official board created by this act to furnish election supplies that such vacancy has occurred, and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death of the nominee occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification.

No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. [Id. sec. 50.]

Art. 2969. **Ballots, how printed; form, etc.; manner of voting.**—All ballots shall be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon to be seen through the paper, and of uniform style. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by parallel rule. The space which shall contain the title of the office and the name of the candidate (or candidates, if more than one is to be voted for for the same office) shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite to the same office in a full ticket, and the titles of the offices shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When constitutional amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of

such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. [Id. sec. 53.]

[Note.—For provision, prohibiting any symbol or device, etc., on ballot for primary or general election, see Arts. 3096 and 3097.]

Art. 2970. **Ballot, further regulations as to.**—The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the constitution to be held by the same person. The name of the candidate nominated by any political party shall appear on the ballot, and under the head of the party making such nomination. [Id. sec. 49.]

Art. 2971. **Constitutional amendment and other questions, how submitted.**—When a constitutional amendment or other question submitted by the legislature is to be voted on, the form in which it is submitted shall be described by the governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this title, the words “for” and “against” under it; provided, the legislature has failed to prescribe a form. If a proposition or question is to be voted on by the people of any city, county or other subdivision of the state, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. [Id. sec. 4.]

Art. 2972. **Ballot, any, at school election, city, etc.**—At the election of school district officers or school officers for a city, town or village, at which no officer is to be elected, or election of officers of fire departments, any ballot may be used prescribed by local authorities. [Id. sec. 51.]

Art. 2973. **Ballots, how many furnished.**—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. [Id. sec. 48.]

Art. 2974. **Ballots (counted) etc., delivered to judges.**—The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners’ court. In like manner, shall be sent the list of qualified voters for the precinct, certified to by the collector, if the presiding judge has not already received it. [Id. sec. 44.]

Art. 2975. **Ballots, voters may provide when.**—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. [Id. sec. 47.]

CHAPTER SIX.

SUPPLIES, ARRANGEMENTS, AND EXPENSES OF ELECTION.

	Article.		Article.
Booths, voting, required in cities of 10,000 and over.....	2976	Ballot boxes, etc., presiding judge to procure, when	2984
Booths, voting, and guard rails.....	2977	Supplies, report to county commissioners	2985
Same subject	2978	Collector's fees, and how paid.....	2986
Booths, voting	2979	Sheriff's and constable's fees.....	2987
Guard rail and screened shelf, etc., when booths not required.....	2980	Expenses for election supplies, how paid.....	2988
Ballot boxes	2981	Expenses of city election paid by city.....	2989
Ballot boxes, how made.....	2982	Mayor, etc., to perform duties required of county judge, etc.....	2990
Board to provide election supplies.....	2983		

Article 2976. **Booths, voting, required in cities of 10,000 and over.**—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. [Acts 1905, 1 S. S., p. 529, sec. 37.]

Art. 2977. **Booths, voting, and guard rails.**—There shall be one voting booth or place for every seventy citizens who, at the last general election paid their poll tax or obtained certificates of exemption from its payment, and who reside in the voting precinct; provided, the judges of the election may provide as many more booths and places as they shall deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. There shall be provided in each voting place voting booths where voting booths are required, with three sides closed and the front side open. Each booth shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, and shall contain a shelf for convenience of the voter in preparing his ballot; and the booths shall be so constructed with hinges that they can be folded up for storage when not in use. [Id. sec. 38.]

Art. 2978. **Same subject.**—Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. [Id. sec. 40.]

Art. 2979. **Booths, voting.**—The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Id. sec. 41.]

Art. 2980. **Guard rails, and screened shelf, etc., when booth not required.**—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. All booths and voting places shall be properly lighted. [Id. sec. 42.]

Art. 2981. **Ballot boxes.**—For each election precinct, there shall be provided four ballot boxes to be marked as follows: “Ballot box No. 1 for election precinct No.” (giving name and number of precinct); “Ballot box No. 2 for election precinct No.;” “Ballot box No. 3 for election precinct No.;” “Ballot box No. 4 for election precinct No.” [Id. sec. 43.]

Art. 2982. **Ballot boxes, how made.**—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled. [Id. sec. 62.]

Art. 2983. **Board to provide election supplies.**—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the precinct judges. [Id. sec. 38.]

Art. 2984. **Ballot boxes, etc., presiding judge to procure, when.**—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies; and, if the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. [Id. sec. 45.]

Art. 2985. **Supplies, report of to county commissioners.**—For all supplies furnished by the county, the board to provide election supplies shall file with the county commissioners’ court a written report of their action, giving detailed statement of the expenses incurred in procuring such supplies. [Id. sec. 39.]

Art. 2986. **Collector’s fees and how paid.**—The collector of taxes shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him, to be paid pro rata by the state and county in proportion to the amount of poll tax received by each; and this shall include his compensation for administering oaths, furnishing certified lists of qualified voters in election precincts for use in all general elections and primary conventions, when desired, and for all duties required of him under this title; provided, that collectors, whose salaries are fixed by what is known as the fee bill, shall receive ten cents for each poll tax receipt and certificate of exemption issued by him; and such fees shall be ex officio and not accountable under said fee bill. [Id. sec. 144.]

Art. 2987. **Sheriff’s and constable’s fees.**—The sheriff or any constable, for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by statutes for serving civil process. For delivering election supplies to precinct judges, when they are not obtained by such judges in person, the sheriff or constable shall be paid such amount as may be allowed by the commissioners’ court, not to exceed two dollars for each election precinct. [Id. sec. 145.]

Art. 2988. **Expenses for election supplies, how paid.**—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities, which shall be provided for as required by former laws; provided, that all accounts for supplies furnished or services rendered shall first

be approved by the county commissioner's court, except the accounts for voting booths for cities. [Id. sec. 147.]

Art. 2989. **Expense of city election paid by city.**—The expenses of all city elections shall be paid by the city in which same are held. [Id. sec. 45.]

Art. 2990. **Mayor, etc., to perform duties required of county judge, etc.**—In all elections in incorporated cities, towns and villages, the mayor, the city clerk, the board of commissioners or aldermen, shall do and perform each and every act in other elections required to be done and performed respectively by the county judge, the county clerk or the county commissioners' court. [Id. sec. 45.]

CHAPTER SEVEN.

MANNER OF CONDUCTING ELECTIONS AND MAKING RETURNS THEREOF.

	Article.
Oaths of officers of election; instruction cards	2991
Polls, preliminary arrangements of and examination; regulations as to ballots, instruction cards, distance markers, notices as to electioneering, loitering, etc.	2992
Instruction card posted in booth	2993
Judges, appointment by voters, when; certificate; presiding judge to appoint assistants, when	2994
Judges may administer oaths; powers of presiding judge	2995
Ballot boxes, preliminary inspection of	2996
Poll tax receipt	2997
Poll tax receipt, etc., receiving; testing voter, etc.	2998
Examination of challenged voter on oath; noted on poll list	2999
Challenged vote in certain cities, proceedings on	3000
Poll tax receipt stamping; delivery of ballot with signature of presiding judge; preparing ballot	3001
Marked ballot or memorandum; powers and duties of judge	3002
One voter at a time in booth; assistance of illiterates; regulations as to interpreter; supervisors may be present	3003
Judges, etc., shall not electioneer, etc.	3004
Ballots, delivery by voter, deposit and requirements connected therewith	3005
Mutilated, etc., ballots; rule as to	3006
Ballot boxes and ballots, custody; admission to polls; information	3007
Defective, etc., ballots in Box 4; return, statement, opening, etc.	3008
Deposit and count, using Boxes 1 and 2 alternately; voted ballots put in Box 3; return, etc.	3009
Unfolding ballots, etc., forbidden	3010
Signature of judge on ballots; no ballot without, counted	3011
Ballots which shall not be counted	3012
Nominee dying before election, etc., vote counted, etc.	3013
Supervisors may be present	3014
Announcement of vote at each exchange of boxes	3015
Status of count announced, when, etc., memorandum public	3016

No information except as herein permitted	3017
Arrest, privilege from	3018
Loitering and electioneering within 100 feet of booths; special constables	3019
Carriages, etc., forbidden, unless, etc.	3020
Barroom, etc., not to be opened on election day, nor intoxicating liquor sold, etc.	3021
Intoxicating liquor sold on election day, how	3022
Refreshments	3023
Return of elections, how and to whom made	3024
Same subject	3025
Returns, with election supplies; voting booths stored, etc.	3026
Ballots, etc., to be placed in a box and delivered to county clerk	3027
Ballots, etc., shall be burned, when	3028
Presiding officer shall retain one poll and tally list	3029
County commissioners shall open returns, when	3030
Returns shall not be estimated, unless, etc.	3031
Certificates of election to county and precinct officers	3032
Additional regulations by certain cities	3033
When a county is a representative or senatorial district	3034
Returns of election for certain state and district officers	3035
Such returns shall be counted, when and by whom	3036
Governor shall give certificate of election, when	3037
Returns for governor and lieutenant-governor	3038
Secretary of state shall keep returns, etc.	3039
Returns for members of the legislature	3040
Returns shall be transmitted how, and to whom	3041
Duty of county judge	3042
Count may be made before thirtieth day, when	3043
County judge shall certify to secretary of state the officers elected and qualified	3044
Governor shall commission officers, except, etc.	3045

Article 2991. **Oaths of officers of election; instruction cards.**—Before opening the polls, the presiding judge of election shall, in an audible voice, take the following oath or affirmation, which shall be uttered slowly and distinctly, and

each of the other judges and clerks shall repeat the same after him: "I solemnly swear (or affirm) that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or candidates, or for or against any proposition to be voted on; that I will not keep or make any memoranda or entry of anything occurring within the booths or polling places, as the case may be, nor disclose how any one whom I am permitted to assist in voting has voted, except I be called on to testify in a judicial proceeding; and that I will faithfully perform this day my duty as officer of the election, and guard, as far as I am able, the purity of the ballot box. So help me God." [Acts 1905, 1 S. S., p. 533, sec. 56.]

Art. 2992. Polls, preliminary arrangement of and examination; regulation as to ballots, instruction cards, distance markers; notices as to electioneering, loitering, etc.—The judges and clerks of election for each precinct (and supervisors, if any have been selected) shall meet at the polling place at least half an hour before the time for opening the polls, and shall proceed to arrange the guard rail, the space within the guard rail, the voting booths, (if any), and the furniture for the orderly and legal conduct of the election. The judges of election shall then examine the ballot boxes required for the reception of the ballots and the blank official ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4 for mutilated or returned ballots. They shall also examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber or wooden stamps, and all things required for the election; but the package containing the official ballots shall not be opened until the morning of the election and at the polling place. One instruction card shall be posted near each distance marker, where it can be read by citizens before voting. The package of official ballots shall remain in the custody of the judges and the polling clerks. The judges shall cause to be placed at the distance of one hundred feet from the entrance of the room at which the election is held visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance markers. No electioneering or loitering between this point and the entrance to the polls." The judges shall examine the ballot boxes and then relock them, after all present can see they are empty. The instruction cards and distance markers shall be posted up and shall not be defaced or removed during the progress of the election. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of qualified voters for the precinct, and the supervisors, if there are any, shall be as conveniently near each other as practicable within the polling place. [Id. sec. 55.]

Art. 2993. Instruction card posted in booth.—Before the election begins, one instruction card shall be posted up in each voting booth where it can be read; and, when there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. [Id. sec. 56.]

Art. 2994. Judges, appointment by voters, when; certificate; presiding judge to appoint assistant, when.—If a presiding judge fails to attend on election day, or fails to act, or none shall have been appointed, the voters present may appoint their own presiding officer, who has paid his poll tax, and such voters may also appoint the necessary assistant judges of election. When a presiding officer, who has been appointed by a commissioners' court, fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk has not been appointed, or, having been theretofore appointed, fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place

another with the same qualifications, and return a certificate of such appointment with each election return. [Id. sec. 83.]

Art. 2995. Judges may administer oaths; powers of presiding judge.—Judges of elections are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election, and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so; provided, that, if said party is drunk from the use of intoxicating liquor, he shall not be permitted to vote until he is sober. [Id. sec. 67.]

Art. 2996. Ballot boxes, preliminary inspection.—Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty, relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. [Id. sec. 68.]

Art. 2997. Poll tax receipt, etc.—No citizen shall be permitted to vote, unless he first presents to the judge of election his poll tax receipt or certificate of exemption issued to him before the first day of February of the year in which he offers to vote, except as otherwise permitted in this title, unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this title. [Id. sec. 66.]

Art. 2998. Poll tax receipt, etc., receiving; testing voter, etc.—One of the election judges shall receive from the voter his poll tax receipt or certificate of exemption, when he presents himself to vote; the voter shall announce his name, and the judge, after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter and his number, as given in the list of qualified voters. If the voter has lost, mislaid or left at home his receipt or certificate, and shall present his written affidavit of that fact, and if his appearance tallies with that given for the same number and name on the list of qualified voters, or if the voter presents his written affidavit of removal from some other precinct or county, in cases where the same is permitted by this title, together with his receipt or certificate or affidavit of the loss thereof, and the judges of election shall be satisfied that he paid his poll tax or received his certificate of exemption before the first day of the preceding February, the judge shall in like manner pronounce in an audible voice the name and number of the elector on the certified list of qualified voters with the word, "correct." [Id. sec. 71.]

Art. 2999. Examination of challenged voter on oath; noted on poll list.—When a person offering to vote shall be objected to by an election judge or a supervisor or challenger, the presiding judge shall examine him upon an oath touching the points of such objection, and, if such person fails to establish his right to vote to the satisfaction of the majority of the judges, he shall

not vote. If his vote be received, the word, "sworn," shall be written upon the poll list opposite the name of the voter. [Id. sec. 73.]

Art. 3000. [1736] **Challenged vote in certain cities, proceedings on.**—In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more, according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged, proceedings shall be had as prescribed in article 790. [Acts 1891, p. 47.]

Art. 3001. **Poll tax receipt stamping; delivery of ballot with signature of presiding judge; preparing ballot.**—When the judges are satisfied as to the right of the citizen to vote, and one has pronounced in an audible voice his name and number as shown on the list of qualified voters of the precinct, and the word, "correct," the judge shall stamp in legible characters with a stamp of wood or rubber the poll tax receipt or certificate of exemption with the words: "Voted —— day of ——, A. D. 19——," or write the same words in ink and then return said receipt or certificate to the voter, and shall at the same time deliver to him one official ballot on the blank side of which the presiding judge shall have previously written his signature. The voter shall then immediately repair to one of the voting booths, or places prepared for voting by the election officers, and there prepare his ballot, in the manner provided by article 2969. [Id. sec. 72.]

Art. 3002. **Marked ballot or memorandum; powers and duties of judge.**—Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot or paper, if he has one. [Id. sec. 70.]

Art. 3003. **One voter at a time in booth; assistance to illiterates; regulations as to interpreter; supervisors may be present, etc.**—Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, except, when a voter is unable to prepare his ballot from inability to read or write, or physical disability, two judges or an interpreter, if he can not both read and speak the English language, shall assist him, they having been first sworn that they will not suggest, by word or sign or gesture, how the voter shall vote; that they will confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as the voter himself shall direct. The judges who assist the voter in preparing his ballot shall be of different political parties, if there be such judges present, and an election supervisor or supervisors may be present, but must remain silent, except in case of irregularity or violation of the law. [Id. sec. 82.]

Art. 3004. **Judge, etc., shall not electioneer, etc.**—No election judge, clerk or other person connected with the holding of an election shall, on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of article 3003. [Id. sec. 65.]

Art. 3005. **Ballot delivery by voter, deposit, and requirements connected therewith.**—When a citizen shall have prepared his ballot, he shall fold the same so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the blank side, which shall always be indorsed by the judge before the ballot is delivered, and shall, after leaving the booth, hand to the numbering judge his ballot, who shall number the same. If the judges are satisfied that the ballot returned is the one delivered to the voter, the numbering judge shall number the ballot, writing on the blank side the number

opposite the voter's name on the voting list, and shall stamp or write the same with the word, "voted," and deposit the ballot in the ballot box. The letter, "v," shall, at the same time, be marked by one of the clerks on the certified list or supplemental list of qualified voters opposite the voter's name thereon, and the voter shall thereupon immediately leave the polling place. [Id. sec. 74.]

Art. 3006. **Mutilated, etc., ballots, rule as to.**—No voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first returns such ballot and it is deposited in box No. 4; nor shall any one be supplied with more than three ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots, which shall be deposited in box No. 4, in which shall also be deposited and returned all official ballots not used. [Id. sec. 75.]

Art. 3007. **Ballot boxes and ballots, custody; admission to polls, information.**—From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges and supervisors, if there are any. No person shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, supervisors of election, and persons admitted for the purpose of voting; provided, that the officers of the election shall permit an interpreter to assist any voter who can not both speak and read the English language. [Id. sec. 76.]

Art. 3008. **Defective, etc., ballots in box 4; return, statement, opening, etc.**—In ballot box No. 4 shall be deposited, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The box shall be locked and so returned sealed to the county clerk, with a statement which shall be placed therein signed by the presiding judge of the number of ballots received by him, the number of mutilated or defaced ballots that the box contained, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. Such ballot box shall, when the returns of votes cast are canvassed by the commissioners' court, be opened, the ballots counted and a record made of what they have found to be its contents. [Id. sec. 69.]

Art. 3009. **Deposit and count, using Boxes 1 and 2 alternately; voted ballots put in box 3; return, etc.**—At the expiration of one hour after voting has begun, the receiving judges shall deliver ballot box No. 1 to the counting judges, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined in the presence of all the judges and securely closed and locked; and, until the ballots in ballot box No. 1 have been counted, the receiving judge shall receive and deposit ballots in ballot box No. 2. Ballot box No. 1 shall, on its receipt by the counting judges, be immediately opened and the tickets taken out by one of them, one by one, when he shall read and distinctly announce, while the ticket remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheets, and shall then deliver the ballot to the other counting judge, who shall place the same in box No. 3, which shall remain locked and in view until the counting is finished, when said box shall be returned with the other boxes, locked and sealed, to the county clerk. Ballot boxes Nos. 1 and 2 shall be used by the receiving judge and the counting judge alternately, as above provided, as often as the counting judge has counted and exhausted the ballots in either box. [Id. sec. 80.]

Art. 3010. **Unfolding ballots, etc., forbidden.**—No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the

indorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor compare it with the clerk's list of voters, when the ballots are counted, nor shall he permit the same to be done, nor shall he examine, nor permit to be examined, the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases specially provided by law. [Id. sec. 77.]

Art. 3011. **Signature of judge on ballots, no ballot without, counted.**—The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, and shall count no ballots that do not bear his signature or are unnumbered, or if, on examination by the judges, such signature is found to be a forgery. [Id. sec. 78.]

Art. 3012. [1741] [1697] **Ballots which shall not be counted.**—No ballot which is not numbered as provided in article 3005 shall be counted, nor shall either of two or more ballots folded together be counted, and where the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. [Acts 1876, p. 308, sec. 16. R. S. 1879, 1697.]

Art. 3013. **Nominee dying before election, etc., vote counted, etc.**—If a nominee dies or declines the nomination before the election, and no one is nominated to take his place, the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy shall be filled as in case of a vacancy occurring after the election. [Id. sec. 50.]

Art. 3014. **Supervisors may be present.**—The election supervisors may be present when the ballots are being examined and the votes called off and noted on the tally sheets. [Acts 1905, S. S. p. 538, sec. 80.]

Art. 3015. **Announcement of vote at each exchange of boxes.**—At each change of the boxes, one of the judges shall announce at the outer door of the voting place the number of votes already cast. [Id. sec. 81.]

Art. 3016. **Status of count announced, when, etc.; memorandum public.**—Immediately upon the closing of the polls, and at intervals of two hours thereafter, the presiding judge or an associate judge shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the ballot; and thereupon he shall publicly announce from such memorandum the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially newspaper reporters, who may call for information; and the presiding judge or an associate judge may furnish reporters information concerning the status of the count at other times after the polls have closed. The announcement of the status of the count shall continue as aforesaid until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be announced in the manner above provided. This section [article] shall also apply so as to require the same reports from judges of primary elections. [Id. sec. 88.]

Art. 3017. **No information except as herein permitted.**—No judge or clerk shall make any statement, nor give information in any manner, of the number of votes nor any other fact regarding their opinion of the state of the polls, after the closing thereof, except as herein permitted. [Id. sec. 76.]

Art. 3018. [1807] **Arrest, privilege from.**—In all cases, except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Id. sec. 63. R. S. 1879, art. 1755. P. D. 3625.]

Art. 3019. Loitering and electioneering within 100 feet of booths; special constable.—The election judges shall prevent loitering and electioneering while the polls are open, within one hundred feet of the door through which voters enter to vote, and within one hundred feet of the place where the voter is required to prepare his ballot; and, for this purpose, they shall appoint a special constable to enforce this authority. [Id. sec. 84.]

Art. 3020. Carriages, etc., forbidden, unless, etc.—No carriage or other vehicle shall be used by any person to convey voters to the voting places, unless the voter is physically unable to go to or to enter the polling place without assistance, in which event two of the judges of different political parties, if there are such, may deliver an official ballot to him at the entrance to the polling place and permit him to make out his ballot and deliver it there. [Id. sec. 85.]

Art. 3021. Barroom, etc., not to be opened on election day, nor intoxicating liquor sold, etc.—No person shall open or keep open any barroom, drinking saloon or wholesale beer or liquor house, where vinous, malt, spirituous and intoxicating liquors are sold during any portion of the day on which an election, either general, special or primary, is held for any purpose, in the voting precinct where such an election is held; nor shall any one, in such voting precinct, sell, barter or give away any vinous, spirituous or intoxicating liquor during the day of such election, nor shall any one carry, or cause to be carried, to the polling place on the day of election, any intoxicating liquor for the purpose of sale, gift or to be drunk; and if any one shall find any intoxicating liquor on election day he shall refrain from taking possession of it and shall not inform another of its whereabouts. [Id. sec. 86.]

Art. 3022. Intoxicating liquor sold on election day, how.—Intoxicating liquor may be sold on election day by a druggist only to fill prescriptions by a physician, but who at the time must certify in writing, on his honor, that it is needed by his sick patient. [Id. sec. 87.]

Art. 3023. Refreshments.—If the officers of election need refreshments during the voting and before the canvass of votes, they shall be taken at the polling places, and in view of the ballot boxes; provided, that the refreshments shall contain no alcoholic, vinous, malt or intoxicating liquors. [Id. sec. 79.]

Art. 3024. [1743] [1698] Return of elections, how and to whom made.—When the ballots have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, together with poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the precinct judges to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to the clerk of the county court of the county, to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of election. [Acts 1883, p. 50. as modified by Acts 1905, S. S. p. 541, sec. 91.]

Art. 3025. [1744] [1699] Same subject.—In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns shall be delivered to the clerk of the county court of the county, who shall safely keep the same in his office, and he, or the county judge, as the case may be, shall deliver the same to the county commissioners' court on the day appointed by law to open and compare the polls. [R. S. 1879, 1699.]

Art. 3026. Returns, with election supplies; voting booths stored, etc.—One of the precinct judges shall deliver the returns of election, with certified lists of qualified voters, with all stationery, rubber stamps and blank forms and other election supplies not used, to the county judge, immediately after the votes have been counted. He shall provide for the safe storage of the voting booths in some place in the precinct, and notify the county judge. [Acts 1905, S. S. p. 541, sec. 91.]

Art. 3027. [1747] [1702] Ballots, etc., to be placed in a box and delivered to county clerk.—Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the clerk of the county court of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and, in the event of any contest growing out of elections within one year thereafter, he shall deliver said ballot box to any competent officer having a process therefor, from any tribunal or authority authorized by law to demand such ballot box; provided, that all questions arising at any election board shall be settled and determined by the presiding officer and the judges, anything in any law to the contrary notwithstanding. [Acts of 1811, p. 97. R. S. 1879, 1702.]

Art. 3028. [1748] [1703] Ballots, etc., shall be burned, when.—In the event that no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same. [Id. R. S. 1879, 1703.]

Art. 3029. [1749] [1704] Presiding officer shall retain one poll and tally list.—The presiding officer of election shall retain in his custody one of the poll lists and one of the tally lists of the election, and shall keep the same for one year after election, subject to the inspection of any one interested in such election. [R. S. 1879, 1704.]

Art. 3030. [1753] [1705] County commissioners shall open returns, when.—On the Monday next following the day of election, and not before, the county commissioners' court shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the commissioners' court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter. [Acts of 1883, p. 50.]

Art. 3031. [1754] [1706] Returns shall not be estimated, unless, etc.—No-election returns shall be opened or estimated, unless the same have been returned in accordance with the provisions of this title.

Art. 3032. [1755] [1707] Certificates of election to county and precinct officers.—After an estimate of the result of an election has been made, as provided for in this title, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed.

Art. 3033. [1792] Additional regulations by certain cities.—Cities containing a population of ten thousand inhabitants or more may, through their city council, adopt such methods to protect the purity of the ballot in elections held at their municipal elections, not inconsistent with the provisions of this chapter, as may be deemed advisable. [Acts 1892, S. S., p. 18. sec. 30.]

Art. 3034. [1756] [1708] **When a county is a representative or senatorial district.**—If the county constitutes a senatorial or representative district of itself, the county commissioners' court shall at the same time make an estimate of the votes polled for members of the legislature; and the county judge shall give a like certificate of election, as provided in the preceding article, to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such certificate to the secretary of state. [Acts of 1883, p. 50.]

Art. 3035. [1757] **Returns of election for certain state and district officers.**—In all elections for comptroller of public accounts, treasurer of the state, commissioner of the general land office, attorney general, state superintendent of public instruction, commissioner of agriculture, railroad commissioners, judges of the supreme court, court of criminal appeals, courts of civil appeals, and district courts, district attorneys, representatives in the congress of the United States, and for the adoption or rejection of proposed constitutional amendments, the county judge shall, on the Monday next following the day of election, or as soon thereafter as the commissioners' court shall have opened the returns and estimated the result, as provided in article 3030, make out duplicate returns of the election; one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the secretary of state, and endorsed, "Election Returns for..... county, for" [filling the first blank with the name of the county and the other blank with the name of the office for which the election was held, or a designation of the proposed amendments to the constitution voted upon, as the case may be]; and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. [Acts 1897, p. 31.]

Art. 3036. [1758] [1710] **Such returns shall be counted, when and by whom.**—On the fortieth day after the election, the day of election excluded, and not before, the secretary of state, in the presence of the governor and attorney general, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election. [Acts 1883, p. 50.]

Art. 3037. [1759] [1711] **Governor shall give certificate of election, when.**—When the returns have been counted, the governor shall immediately make out, sign and deliver a certificate of election, with the seal of the state thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices. [Id.]

Art. 3038. [1760] [1712] **Returns for governor and lieutenant-governor.**—The county judges of the several counties shall promptly make duplicate returns of the election for governor and lieutenant-governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of government in this state, directed to the speaker of the house of representatives, and indorsed as provided in article 3035, and the other of said returns shall be deposited in the office of the clerk of the county court of said county. [Id.]

Art. 3039. [1761] [1713] **Secretary of state shall keep returns, etc.**—The transmitted returns provided for in the preceding article, directed to the secretary of state, shall be taken charge of by him, and preserved in his office, the package and seal thereon to remain unbroken until the organization of the next legislature, when he shall, on the first day thereof, deliver the said return to the speaker of the house of representatives. [Id.]

Art. 3040. [1762] [1714] **Returns for members of the legislature.**—When an election shall have been held for members of the legislature in a district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the legislature, shall make out

and send complete returns of such election for members of the legislature in his county immediately after examining and recording the same, to the county judge of the county, who may by law be authorized to give certificates of election to members of the legislature for such district. [Id. sec. 26.]

Art. 3041. [1763] [1715] **Returns shall be transmitted how, and to whom.**—The returns provided for in the preceding article shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed, "Election returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance. [Id.]

Art. 3042. [1764] [1716] **Duty of county judge.**—The county judge to whom the returns named in the two preceding articles are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the clerk of the county court of such county, or his deputy, shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count said returns in the presence of at least two qualified voters of said district, and, after recording the same, shall give a certificate or certificates of election to the person or persons receiving the highest number of votes for senator or representative in that district; which certificate shall be under the seal of the county court of the county from whence it issues, and shall state the number of votes received by the person to whom the same is given; and the officer giving such certificate shall immediately forward a duplicate of the same to the secretary of state. [Id.]

Art. 3043. [1765] [1717] **Count may be made before 30th day, when.**—If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificate of election as provided for in the preceding article at any time before said thirtieth day. [Id.]

Art. 3044. [1766] [1718] **County judge shall certify to secretary of state the officers elected and qualified.**—At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, the county judge of each county shall make out and certify to the secretary of state a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct, (if precinct officers), and he shall also certify the result of the vote for members of the legislature; and he shall in like manner report to the secretary of state all special elections to fill a vacancy in any county [or] precinct office, certifying when and how the vacancy occurred. [Act March 6, 1863. P. D. 3604.]

Art. 3045. [1809] [1758] **Governor shall commission officers, except, etc.**—The governor shall commission all officers, except governor, members of congress, electors for president and vice-president of the United States, members of the legislature and municipal officers. [Act Aug. 23, 1876, p. 310, sec. 22.]

CHAPTER EIGHT.

CONTESTING ELECTIONS.

Article.	Article.
Contest of election for district attorney.....3046	Election to be declared void, when..... 3063
Contest of election for district judge....3047	Bonds subject to suit..... 3064
Contest of election for appellate judges..3048	Appeal available, and shall have precedence 3065
Contest of election for county office....3049	Transcript on appeal 3068
Other contested elections..... 3050	Costs, how taxed..... 3067
Notice of contest..... 3051	Measure of damages..... 3068
Reply to notice of contest..... 3052	Record, copies of, how sent up..... 3069
Service of notice..... 3053	Depositions in such case..... 3070
Copy of notice and reply to be filed.....3054	Who may take depositions..... 3071
Cause to have precedence; procedure in contest for district clerk..... 3055	Depositions, how returned..... 3072
Rules of evidence and procedure on trial.3056	Procedure in the house in which contest is pending 3073
Contestee in certain cases to execute bond 3057	Committee on privileges and elections powers and duties..... 3074
Contestee failing, contestant to execute bond 3058	Procedure on trial by the body; fees, etc. 3075
Execution of bond certified to governor..3059	Contest for governor, lieutenant-governor, etc. 3076
Contestant commissioned, when..... 3060	Other contested elections..... 3077
Contestee commissioned, when..... 3061	Parties defendant under preceding article 3078
Fraudulent votes not to be counted.....3062	

[Note.—This chapter comprised the Act of April 6, 1895, p. 58. It repealed and superseded the same chapter of the codification of 1893, being articles 1793 to 1804, inclusive, or old articles 1724 to 1726, inclusive, and 1746 to 1751, inclusive, and repealed all other conflicting laws.]

Article 3046. [1793] **Contest of election for district attorney.**—Contested elections for the office of district attorney shall be tried by the district judge of the district in the county where the candidate who shall have received the certificate of election shall reside and, if there are two district judges in said county, then to be tried before either of said judges. [Acts of 1895, p. 58.]

Art. 3047. [1794] **Contest of election for district judge.**—Contested elections for the office of district judge shall be tried in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate who shall have received the certificate of election, and by the district court of such adjoining district, and in counties having two or more district courts, then to be tried by the district court of the adjoining district in said county. [Id.]

Art. 3048. [1795] **Contest of election for appellate judges.**—Contested elections for the office of chief justice or associate justice of the supreme court and judges of the court of criminal appeals shall be tried in the county and by the district court of the district, or one of them, in which the seat of government is located. And contested elections for the office of chief justice of the court of civil appeals, or associate justice of any supreme judicial district in the state, shall be tried by the district court, or either of them if there are more than one, in the county where said court of civil appeals has its sittings. [Id.]

Art. 3049. [1796] **Contest of election for any county office.**—Contested elections for any county office shall be tried by the district court in the county where the election was held. If there are two such courts, then to be tried by either of them. [Id.]

Art. 3050. [1797] **Other contested elections than for officers.**—Contested elections for other purposes than the election of officers shall be tried by the district court in the county where the election was held, or either of them, if there is more than one such court. [Id.]

Art. 3051. [1798] **Notice of contest.**—Any person intending to contest the election of any one holding a certificate of election as a member of the

legislature, or for any office mentioned in this law, shall, within thirty days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. [Id.]

Art. 3052. [1799] **Reply to notice of contest.**—The person holding such certificate shall, within ten days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. [Id.]

Art. 3053. [1800] **Service of notice etc.**—The notice, statement and reply required by the two preceding articles may be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years at the usual place of abode or business of such person. [Id.]

Art. 3054. [1801] **Copy of notice and reply to be filed, etc.**—If the contest be for the validity of an election for any state office, except the office of governor and lieutenant-governor, or for any district office, except members of the legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case. [Id.]

Art. 3055. [1802] **Cause to have precedence; procedure if contest be for district clerk.**—When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. Should the office contested for be that of clerk of the district court, then a clerk pro tem. shall be appointed as is provided now by law in suits where the clerk is a party to the suit. [Id.]

Art. 3056. [1803] **Rules of evidence and procedure on trial.**—In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases; and, as to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes. [Id.]

Art. 3057. [1804] **Contestee in certain cases to execute bond.**—Whenever the validity of an election for an officer other than for members of the legislature is contested, the contestee shall, within twenty days after the service of the notice and statement of such contest upon him, as provided in this law, file with the clerk of the court in which such contest is pending a bond with two or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two years. Said bond to be conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3058. [1804a] **On failure of contestee in such cases, contestant to execute bond.**—Should the contestee fail to file the bond as required in the preceding article, and within the time therein prescribed, it shall be the duty of said clerk to notify the contestant immediately of such failure; and such contestant shall have the right, within ten days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision

of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3059. [1804b] **Execution of bond by contestant to be certified to governor.**—Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the governor that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law. [Id.]

Art. 3060. [1804c] **Governor to commission contestant to perform duties of office pending determination of contest.**—Upon receiving such certificate from the clerk, it shall be the duty of the governor to issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof, unless it shall be otherwise determined and ordered by the court upon the trial of such contest. [Id.]

Art. 3061. [1804d] **On failure of contestant to execute bond governor to commission contestee.**—It shall be the duty of the governor to issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by article 3057, in which event the governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in article 3058, and within the time therein required, it shall be the duty of the clerk to certify all the facts in the case under his official seal to the governor, who shall thereupon issue the commission to the contestee. [Id.]

Art. 3062. [1804e] **Fraudulent votes not to be counted.**—If, upon the trial of any contested election case, any vote or votes be found to be illegal or fraudulent, the court trying the same shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs. [Id.]

Art. 3063. [1804f] **Election to be declared void, when.**—Should it appear on the trial of any contest provided for in article 3054 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the state. [Id.]

Art. 3064. [1804g] **Bonds subject to suit.**—The bonds required to be filed by the contestant and contestee under the provisions of this chapter shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds. [Id.]

Art. 3065. [1804h] **Appeal available, and to have precedence of hearing.**—Either the contestant or contestee may appeal from the judgment of the district court to the court of civil appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the court of civil appeals over all other cases. [Id.]

Art. 3066. [1804i] **Transcript on appeal.**—In case of appeal as provided for in the preceding article, the clerk shall, without delay, make up the tran-

script and forward the same to the clerk of the court of civil appeals for that district. [Id.]

Art. 3067. [1804j] **Costs, how taxed.**—The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits. [Id.]

Art. 3068. [1804k] **Measure of damages.**—Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office.

Art. 3069. [1804l] **Record, copies of, how sent up.**—If the contest be for the validity of an election for members of the legislature, a copy of the notice, the statement, and the reply served upon the parties as required by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelope the same, together with a certified copy of the poll book or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and address the package to the president of the senate or speaker of the house of representatives, as the case may be, to the care of the secretary of state, and shall forward the same by mail or other safe conveyance to the seat of government, so as to reach there if possible before the convening of the legislature. [Id.]

Art. 3070. [1804m] **Depositions may be taken in such case.**—At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom such interrogatories will be answered, as well as the time and place of taking such testimony. [Id.]

Art. 3071. [1804n] **Who may take such depositions.**—Any officer authorized by the law of this state to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed, upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross-interrogatories as may be propounded in writing.

Art. 3072. [1804o] **How depositions may be returned.**—The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of the said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the president of the senate or the speaker of the house of representatives, as the case may be, to the care of the secretary of state, at the seat of government.

Art. 3073. [1804p] **Procedure in the house in which the contest is pending.**—The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the legislature be opened by the president of the senate or the speaker of the house of representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the house in which the contest is pending, which com-

mittee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report. [Id.]

Art. 3074. [1804q] **Hearing of evidence by committee on privileges and election; powers and duties of committee.**—The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this state shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairmen of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as may be designated by the presiding officer of said house. [Id.]

Art. 3075. [1804r] **Procedure on final trial by the body; fees, etc.**—The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 3063, and in such case the governor shall be at once notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided. [Id.]

Art. 3076. [1804s] **Contest for governor; lieutenant-governor, etc.**—If the contest be for the validity of an election for governor, lieutenant-governor, comptroller of public accounts, treasurer, commissioner of the general land office or attorney general, the same shall be tried and determined by both houses of the legislature in joint session, and the provisions of this chapter governing in the case of a contest for the validity of an election for members of the legislature shall apply to and govern in a contest for the offices above named, as far as the same may be applicable. [Id. Const., art. 4, sec. 3.]

Art. 3077. [1804t] **Other contested elections.**—If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Art. 3078. [1804u] **Parties defendant under preceding article.**—In any case provided for in the preceding article, the county attorney of the county, or where there is no county attorney the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply

thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town or village which they may represent, nor shall such contestee be required to give any bond upon an appeal. [Id.]

CHAPTER NINE.

MISCELLANEOUS PROVISIONS.

County commissioners shall act, when...3079	Article.	Persons not eligible to hold office.....3082	Article.
County judge shall certify death of certain officers to the secretary of state...3080		Certificate of election shall not issue, unless, etc. ....3083	
Provisions of this title shall apply to all elections .....3081			

Article 3079. [1806] [1755] **County commissioners shall act, when.**—Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may perform such duty; and it shall be the duty of said commissioners to perform such duty in such case. [Act Feb. 11, 1850. P. D. 3625.]

Art. 3080. [1808] [1757] **County judge shall certify death of certain officers to secretary of state.**—When any state or district officer, member of congress, member of the legislature or notary public, shall depart this life, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the secretary of state. [Act March 6, 1863. P. D. 3604.]

Art. 3081. [1810] [1759] **Provisions of title apply to all elections, except, etc.**—The provisions of this title shall apply to all elections held in this state, except as otherwise herein provided. [Act 1905, S. S., p. 520, sec. 93.]

Art. 3082. [1810a] **Persons not eligible to hold office.**—No person shall be eligible to any county or state office in the state of Texas, unless he shall have resided in this state for the period of twelve months, and six months in the county in which he offers himself as a candidate next preceding any general or special election, and shall have been an actual bona fide citizen in said county for more than six months. [Act 1895, p. 81.]

Art. 3083. [1810b] **Certificate of election shall not issue, unless, etc.**—There shall not be issued by the county judge of any county in this state to any person elected or appointed to any office in this state a certificate of election, unless he shall have resided in this state for the period of twelve months, and having been an actual bona fide citizen of said county for more than six months in the county or district in which he offers himself for election next preceding any general or special election. [Id.]

CHAPTER TEN.

NOMINATIONS—BY PRIMARY ELECTIONS AND OTHERWISE.

Article.	Article.
1. Nominations by Parties of One Hundred Thousand Votes and Over.	List of nominees made by committee, and certified by chairman to county clerk... 3125
Candidates of parties of 100,000 votes and over to be nominated by primary election..... 3084	County chairman to prepare statement of vote, etc., mail to state and district chairmen, presented to committees... 3126
Primary election defined..... 3085	Nominees for state, etc., offices published and certified to whom..... 3127
Primary election day and second primary; special primaries; city, etc., primaries... 3086	Ballots accounted for..... 3128
Place of holding primaries..... 3087	Boxes and ballots, disposition of..... 3129
Polls, primary; hours for opening and closing, etc..... 3088	County clerk to publish, etc., nominees... 3130
Officers, etc., of primary election; appointment and qualifications..... 3089	Objections to nomination to be made within five days..... 3131
Judges of primary election, powers and duties..... 3090	Names printed on ballot, when and how... 3132
Majority or plurality vote, question of determined, how; second election..... 3091	County clerk to post names of candidates ten days before printing on ballot, etc. 3133
Majority or plurality vote, question of determined, how..... 3092	County conventions..... 3134
Qualifications for voting; poll tax in cities of 10,000 and over; additional qualifications, etc..... 3093	County convention may be held at time for meeting of executive committee... 3135
Expenses of primary election, how met... 3094	District conventions..... 3136
Ballot, official, at primaries, form, etc., of and manner of voting..... 3095	Place for state convention, fixed how... 3137
Ballot, primary, no symbol, etc., on, except, etc., ballot without test not counted..... 3096	State executive committee to canvass returns as to nominations for state offices; statement of vote; list of delegates; presented to chairman of state convention, etc..... 3138
Ballot, primary or general, no symbol, etc., on, etc..... 3097	State convention to canvass vote for candidates for state offices and declare result, according to plurality in primary; certified by chairman and secretary of convention to secretary of state..... 3139
Referendum on U. S. senator..... 3097	State convention; time of meeting; further duties..... 3140
Ballot, primary, candidate for state office placed on, how..... 3098	Every certificate of nomination to state, what..... 3141
State executive committee to meet when and certify names of candidates in primary to county chairman..... 3099	Convention vote of each county, in state or district convention..... 3142
Ballot, primary, candidate for district office placed on how, certification..... 3100	Mandamus to compel performance of duties..... 3143
Ballot, primary, candidate for county, etc., office placed on how..... 3101	Errors and violations of law, immaterial, not to vitiate election, etc..... 3144
Candidates before primary, certificates of, presented to county committee by chairman..... 3102	Expenses of candidates, statement of... 3145
Primary committee; appointment; to make up official ballot..... 3103	Expenses of manager of political headquarters, etc., statement of required, etc..... 3146
No candidate placed on ballot who has not paid pro rata expenses..... 3104	Contests of primary elections, decided by executive committees or district court... 3147
Order of names on ballot, determined how, and when..... 3105	Place for hearing contests of primary elections by committee..... 3148
Order of names on ballot determined how, and when..... 3106	Contest before executive committee; procedure, etc..... 3149
County executive committees, county and precinct chairmen, elected at primary, etc..... 3107	Ballot boxes may be opened by committee, when..... 3150
County chairman, voted for; member of district committee, etc., term..... 3108	Certificate and printing name on ballot, on decision by committee, unless appeal..... 3151
Chairman, county or precinct, where no candidate for, blanks..... 3109	Same, where such appeal not perfected... 3152
Referendum on platform demands, and submission of same, upon..... 3110	Appeal from executive committee to district court; procedure..... 3153
Referendum, instruction of delegates by, method, etc..... 3111	Review of certificates of nomination, by district court; procedure..... 3154
Supplies, executive committee to supervise and distribute..... 3112	Ballot boxes may be opened by court, when; disposition of..... 3155
If presiding officer fails to obtain supplies, to whom delivered..... 3113	Judgment of court final in what cases... 3156
Booths, etc., for general election, used for primary..... 3114	Certifying judgment, and printing names on ballot..... 3157
Safeguards against fraud; list of voters; stamping, etc..... 3115	Appeal to court of civil appeals in what cases; advanced..... 3158
List of voters furnished, to be used in primary, etc..... 3116	
Same subject..... 3117	2. Nominations by Parties of Ten Thousand and Less Than One Hundred Thousand Votes.
Precaution to secure purity of ballot... 3118	May nominate, how..... 3159
Ballots, others furnished where mutilated, etc..... 3119	Nominations of such parties, state committee to determine mode..... 3160
Intoxicating liquors, sale of, prohibited; officers not to partake..... 3120	Nominations of such parties for district offices..... 3161
Returns of primary elections, ballot boxes, etc..... 3121	Nominations of such parties to be certified by whom..... 3162
Returns to county chairman; canvass by executive committee, when..... 3122	Poll tax requirement in such primary convention..... 3163
Canvass of result of primary election by county executive committee, when... 3123	
Tie in primary election, as to county and precinct office, determined by lot, etc. 3124	

	Article.		Article.
3. Non-partisan and Independent Candidates.		5. Party Nominations for City and Town Elections.	
Non-partisan and independent candidates names placed on ballot, how.....	3164	Cities and towns, elections, nominations for, how made; executive committee....	3170
Same subject	3165	Executive committee, in cities and towns, powers of	3171
Same subject	3166		
Same subject	3167	6. Miscellaneous Provisions.	
Same subject, in county, city or town elections	3168	Nomination declined, how; vacancy how filled, etc.; posters used when, etc.....	3172
4. Local Nominations of Parties Having No State Organization.		No executive committee to nominate, except	3173
Nominations, local, of parties having no state organization	3169	Parties, new, etc., name of, regulated....	3174

1. NOMINATIONS BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER.

Article 3084. Candidates of parties of 100,000 votes and over to be nominated by primary election.—On primary election day in 1912, and every two years thereafter, candidates for governor and for all other state offices to be chosen by a vote of the entire state, and candidates for congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. [Acts 1905, S. S. p. 549, sec. 117.]

Art. 3085. Primary election defined.—The term, “primary election,” as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. [Id. sec. 102.]

Art. 3086. Primary election day and second primary; special primaries; city, etc., primaries.—The fourth Saturday in July in the year 1912, and every two years thereafter, shall be the legal primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. Any political party may hold a second primary election on the second Saturday in August to nominate candidates for a county or precinct office, where a majority vote is required to make a nomination; but, at such second primary, only the two candidates who received the two highest votes at the first primary for the same office shall be voted for. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations; provided, that all precincts in the same county and all counties in the same district, shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method of conducting county primary elections shall apply to them. [Id. sec. 105.]

Art. 3087. Places of holding primaries.—The places of holding primary elections of political parties in the various precincts of the state shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairman of the executive committees of the different parties can not agree on the places where precinct primary elections to be held on the same day shall be held, such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct. [Id. sec. 122.]

Art. 3088. Polls, primary, hours for opening and closing, etc.—The polls at primary elections shall be open at eight o'clock in the morning and closed at seven o'clock in the evening of the same day, and the election shall be held for one day only. [Id. sec. 125.]

Art. 3089. Officers, etc., of primary election; appointment and qualifications.—All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and approval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct. No one shall serve as judge, clerk or supervisor at a primary election, unless he has paid his poll tax. [Id. sec. 123.]

Art. 3090. Judges of primary election, powers and duties.—Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, anyone engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title. [Id. secs. 134 and 104.]

Art. 3091. Majority or plurality vote, question of, determined how; second election.—The county executive committee shall decide whether the nomination of county officers shall be by majority or plurality vote, and, if by majority vote, the committee shall call as many such elections as may be necessary to make such nomination, and, in case the committee fails to so decide, then the nomination of all such officers shall be by a plurality of the votes cast at such election. [Acts 1905, S. S., p. 546, sec. 111.]

Art. 3092. Majority or plurality vote, question of, determined how.—The county executive committee may determine whether the nomination of county officers shall be by a majority or plurality vote in such county, and, if by a majority vote, then the committee may call as many such elections as may be necessary to make such nomination. [Id. sec. 117.]

Art. 3093. Qualifications for voting; poll tax in cities of 10,000 and over; additional qualifications, etc.—No one shall vote in any primary election, unless he has paid his poll tax or obtained his certificate of exemption from its payment, in cases where such certificate is required, before the first of February next preceding, which fact must be ascertained by the officers conducting the primary election by an inspection of the certified lists of qualified voters of the precinct, and of the poll tax receipts or certificates of exemption; nor shall he vote in any primary election except in the voting precinct of his residence; provided, that, if this receipt or certificate be lost or misplaced, or inadvertently left at home, that fact must be sworn to by the party offering to vote; and provided, further, that the requirements as to presentation of the poll tax receipt, certificate of exemption or affidavit shall apply only to cities of ten thousand population or over as shown by the last United States census; provided, that the executive committee of any party for any county may prescribe additional qualifications for voters in such primaries, not inconsistent with this title. [Id. sec. 103.]

Art. 3094. **Expenses of primary election how met.**—At the meeting of the county executive committee provided for in article 3106, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such primaries in such counties, and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices to be filled by the voters of such county, or precinct only, (candidates for state offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made, and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the fourth Monday in June thereafter. [Id. sec. 111.]

Art. 3095. **Ballot, official, at primaries, form, etc., of, and manner of voting.**—The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all the names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate thereof for state and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as shown by the tax collector's list. Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidates shall be voted for and nominations made separately, and all nominations shall be separately designated on the official ballots by numbering the same, "1," "2," "3," etc., printing the abbreviation "No.," and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nominations shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination. [Id. sec. 107.]

Art. 3096. **Ballot, primary, no symbol, etc., on, except, etc., ballot without test not counted, etc.**—No official ballot for primary election shall have on it any symbol or device or any printed matter, except a primary test, to be uniform throughout the state, which shall read as follows: "I am a _____ (inserting the name of the political party or organization of which the voter is a member) and pledge myself to support the nominees of this primary;" and any ballot which shall not contain such test printed above the names of the candidates thereon, shall be void and shall not be counted. Such ballot shall also contain the names and residences of the candidates.

Art. 3097. **Ballot, primary or general, no symbol, etc., on, etc.; referendum on U. S. senator.**—No official ballot, either for a primary or general election, shall have on it any symbol or device or any printed matter, except that which is authorized by law; and no ballot cast in violation of this article shall be

counted for any candidate. Provided, that the executive committee of the party for any county shall print on the primary ticket the names of all persons whose names, not less than thirty days prior to the day of the primary, shall be requested to be printed thereon as candidates for United States senator; and the executive committee shall forward to each nominee of the party for state senator and representative voted for by the voters of such county, a certified statement of the vote cast in the county for each such candidate. [Id. sec 124.]

Art. 3098. **Ballot, primary, candidate for state office, placed on, how.**—Any person affiliating with any party who desires his name to appear on the official ballot for a general primary, as a candidate for the nomination of such party for any state office, shall file with the state chairman not later than the first Monday in June preceding such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination named therein, giving his age and occupation, the county of his residence and his post-office address, which shall be signed by him and acknowledged by him before some officer. Any twenty-five qualified voters may likewise join in the request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for any state nomination, giving the occupation, county of residence and postoffice address of such person signing and acknowledging the same as above provided, and may file the same with the state chairman on, or prior to, the date above mentioned, with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All such requests shall be considered filed with the state chairman when they are sent from any point in this state by registered mail, addressed to the state chairman at his postoffice address. [Id. sec. 108.]

Art. 3099. **State executive committee to meet when and certify names of candidates in primary to county chairman.**—On the second Monday in June preceding each general primary, the state committee shall meet at some place to be designated by its chairman, of which designation it shall be the duty of such chairman to notify by mail all members of said committee, and all persons whose names have been requested to be placed upon the official ballot, not less than three days prior to such meeting. Such committee at this meeting shall, by resolution, direct their chairman to certify to each county chairman in the state the names of such candidates and county of residence of each as shown by the requests filed with the state chairman. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish the same, and one copy shall be immediately mailed to the chairman of the executive committee of each county. [Id., sec. 109.]

Art. 3100. **Ballot, primary, candidate for district office placed on how; certification.**—Any person desiring his name to appear on the official ballot as a candidate for the nomination for chief justice or associate justice of the court of civil appeals, or for representative in congress, or for state senator, or for representative, or district judge, or district attorney, in representative or judicial districts composed of more than one county, shall file with the chairman of the executive committee of the party for the district, the request prescribed in this chapter, with reference to the candidate for state nominations, or, if there be no chairman of such district executive committee, then with the chairman of each county composing such district, not later than the first Monday in June preceding the general primary. Such requests may likewise be filed not later than said date by any twenty-five qualified voters resident within such district, signed and acknowledged by such voters in the manner prescribed respecting such request signed by a candidate named therein. Immediately after said date it shall be the duty of each such district chairman to certify the names of all persons for whom such requests have been filed to the county chairman of each county composing such district; and each county

committee shall determine by lot the order in which the names of all candidates for each such district office shall be printed upon the official ballot. [Id. sec. 110].

Art. 3101. Ballot, primary, candidate for county, etc., office placed on, how.—Any person desiring his name to appear on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county, or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than the Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and postoffice address, giving the street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated. [Id. sec. 111.]

Art 3102. Candidates before primary, certificates of presented to county committee by chairman.—At the meeting of the county executive committee provided for in article 3106, the county chairman shall present to the committee the certificates of the chairman of the state and the various district executive committees, showing the names of all persons whose names are to appear on the official ballot as candidates for state and district offices. [Id. sec. 111.]

Art. 3103. Primary committee; appointment; to make up official ballot.—The county chairman shall appoint, subject to the approval of the committee, a subcommittee of five members to be known as the primary committee, of which he shall be ex officio chairman, which subcommittee shall meet on the second Monday in July and make up the official ballot for such general primary in such county, in accordance with the certificates of the state and district chairman, and the requests filed with the county chairman and placing [place] the name of candidates for nomination for state, district, county and precinct officers thereon in the order determined by the county executive committee as herein provided. [Id. sec. 111.]

Art. 3104. No candidate placed on ballot who has not paid pro rata expenses.—The name of no person shall be placed on the ballot for a county or precinct office who has not paid to the county executive committee the amount of the estimated expenses of holding such primary, apportioned to him by the county executive committee, as hereinbefore provided. No candidate for a state or district office, unless such district is composed of one county only, shall be required to pay any portion of such cost, unless the executive committee of the county shall so direct; but in no event shall more than one dollar apiece be assessed against any such candidate for a state or district office, unless such district is composed of one county only. [Id. sec. 111.]

Art. 3105. Order of names on ballot, determined how, and when.—It shall be the duty of the various county committees of any political party, on the day and date set apart by this chapter for arranging for primary elections, to determine the order in which the names of the various candidates for state or district or county and precinct offices shall appear on the ticket, and said order shall be determined by lot, so no preference shall be given to any candidate. [Id. sec. 113.]

Art. 3106. Order of names on ballot determined how, and when.—On the third Monday in June preceding such general primary, the county executive

committee of each county shall meet at the county seat and determine by lot the order in which the names of all candidates for each nomination or position requested to be printed on the official ballot shall be printed thereon. [Id. sec. 111.]

Art. 3107. County executive committees, county, and precinct chairmen, elected at primary, etc.—There shall be, for each political party required by this law to hold primary elections for nomination of its candidates, a county executive committee, to be composed of one member from each voting or justice precinct in such county, as the party executive committee may direct, the members of which county executive committee as well as the county chairman and a precinct chairman for each voting or justice precinct, as the case may be, shall be elected by the qualified voters of the county on primary election day; provided, that, in case of a vacancy occurring in the office of chairman, county or precinct, or any member of such committee, such vacancy shall be filled by a majority vote of said executive committee. [Acts 1905, S. S. p. 544. Acts 1907, p. 331, sec. 106.]

Art. 3108. County chairman, voted for; member of district committee, etc., term.—On primary election day, when candidates for state, district, county and precinct offices are nominated, the voters of each organized political party shall vote for a chairman of the county executive committee, and the result shall be reported to the county clerk, and the county chairman thus elected shall at once enter upon the discharge of the duties of such position; the said county chairman shall be ex officio a member of the executive committee of all districts of which his county is a part; and the district committee thus formed shall elect its own chairman. [Acts 1905, S. S., p. 551, sec. 121.]

Art. 3109. Chairman, county or precinct, where no candidates for, blanks.—If there are no requests filed for candidates for county or precinct chairman, a blank space shall be left on the ticket beneath the designation of such position. [Id. sec. 111.]

Art. 3110. Referendum on platform demands, and submission of same, upon.—Any political party in this state, in convention assembled, shall never place in the platform or resolutions of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority vote of all the votes cast in the primary election of such party; provided, that the state executive committee shall, on petition of ten per cent of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the voters at the general primary next preceding the state convention. [Acts 1907, p. 328, sec. 120.]

Art. 3111. Referendum instruction of delegates by, method, etc.—Whenever delegates are to be selected by any political party to any state or county convention, by primary election or primary convention, or candidates are instructed or nominated, it shall be the duty of the chairman of the county or precinct executive committee of said political party, upon the application of ten per cent of the members of said party, who are legally qualified voters in said county or precinct, to submit, at the time and place of selecting said delegates, any proposition desired to be voted upon by said voters; and the delegates selected at that time shall be considered instructed for whichever proposition for which a majority of the votes are cast; provided, that the number of voters belonging to said political party shall be determined by the votes cast for the party nominee for governor at the preceding election; and provided, further, that said application is filed with the county or precinct chairman at least five days before the tickets are to be printed, and the chairman may require a sworn statement that the names of said applicants are genuine. [Acts 1905, S. S., p. 556, sec. 140.]

[Note.—For provision for referendum on U. S. senator, see article 3097.]

Art. 3112. **Supplies, executive committee to supervise and distribute.**—The executive committee shall have general supervision of the primary in such county, and shall be charged with the full responsibility for the distribution of all supplies necessary for holding same in each precinct, to the presiding judge thereof. [Id. sec. 123.]

Art. 3113. **If presiding officer fail to obtain supplies, to whom delivered.**—If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls. [Id. sec. 123.]

Art. 3114. **Booths, etc., for general election, used for primary.**—The voting booths, ballot boxes and guard rails, prepared for a general election, may be used by the organized political party nominating by primary election that cast over one hundred thousand votes at the last preceding general election. [Id. sec. 128.]

Art. 3115. **Safeguards against fraud; list of voters; stamping, etc.**—To guard against fraud, a certified list and supplemental list of the qualified voters of the voting precinct, furnished by the collector of taxes, shall be in the possession of the officers conducting the primary election for reference and comparison, and opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary—voted," with the date of such primary under the same. [Id. sec. 104.]

Art. 3116. **List of voters furnished, to be used in primary, etc.**—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, who have paid their poll tax or received certificates of exemption; and it shall be the duty of such chairman to place the same in the hands of the election officers of each election precinct before the polls are open; and no primary election shall be legal, unless such list is obtained and used for reference during the election. For each list of all the qualified voters of the county who have paid their poll taxes and received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as above provided. [Id. sec. 129.]

Art. 3117. **Same subject.**—It shall be the duty of the tax collector of each county, upon application by the county chairman of the various political parties, to furnish to the presiding judges of the election in the several precincts certified copies of the list of qualified voters of the several precincts, which said copies shall be furnished at least four days prior to said primary election. [Id. sec. 104.]

Art. 3118. **Precaution to secure purity of ballot.**—The same precautions required by law to secure the purity of the ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections. [Id. sec. 135.]

Art. 3119. **Ballots, others, furnished where mutilated, etc.**—No more than three ballots in succession shall be furnished a voter who mutilates or other-

wise spoils his ballot; and the judges may, as in general election, require a voter, before he receives an official ballot, to surrender to them any ballot or paper on which is written or printed any names for which the voter has agreed to vote or been requested to vote. [Id. sec. 138.]

Art. 3120. Intoxicating liquors, sale of prohibited; officers not to partake.—The law prohibiting the sale of intoxicating liquor on election day applies to primary elections with all its prohibitions; and the officers of primary elections shall not, on primary election day, partake of spirituous, vinous, malt or intoxicating liquors after the polls are open. [Id. sec. 127.]

Art. 3121. Returns of primary elections, ballot boxes, etc.—Returns shall be made within four days to the chairman of the executive committee by the precinct judges, of the ballot boxes containing the ballots voted, locked and sealed, tally sheets, return sheets, ballots mutilated and defaced, and ballots not voted, for which he shall account to the executive committee of the county [Id. sec. 136.]

Art. 3122. Returns to county chairman; canvass by executive committee, when.—All returns of precinct primary elections, properly signed and certified as correct by the judges and clerks thereof, showing the vote cast for each candidate, shall be sealed and immediately delivered, after such primary election, to the chairman of the county executive committee of the party. Such party chairman shall give notice to the members of the county executive committee to assemble at the county seat of the county on the first Saturday after the first primary election; and said returns shall then be opened under the direction of such executive committee and canvassed by them. [Id. sec. 131.]

Art. 3123. Canvass of result of primary election by county executive committee, when.—All county executive committees of organized political parties shall meet the first Saturday after each primary election to canvass the result of such election. [Id. sec. 112.]

Art. 3124. Tie in primary election, as to county or precinct office, determined by lot, etc.—If, on counting the vote in a primary election, it shall appear that, for a county or precinct office, the largest vote has been cast for two candidates for the same office, and that they have each received the same number of votes, the chairman of the executive committee shall, in the presence of the executive committee or the county convention, as the case may be, cast lots for the nomination in such manner as they may direct and in the presence of rival candidates, if they desire to be present, and declare and certify the result of that candidate who is successful by lot. [Id. sec. 133.]

Art. 3125. List of nominees made by committee, and certified by chairman to county clerk.—The county executive committee shall make a list of the candidates who have received the highest vote for office, and the chairman of the executive committee shall certify to the same and deliver it to the county clerk of the county. [Id. sec. 131.]

Art. 3126. County chairman to prepare statement of vote, etc., mail to state and district chairman, presented to committees.—The chairman of the executive committee in each county shall, as soon as the vote cast in the primary election has been counted and canvassed as herein provided for, prepare a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of that cast for county chairman, as shown by the canvass made by the county executive committee, and shall immediately mail such statement as to a state or district office, in a sealed envelope by registered letter, to the chairman of the state executive committee, and district executive committee, respectively, who shall present the same to the state and district committee at its meeting to be held as herein provided. [Id. sec. 117.]

Art. 3127. Nominees for state, etc., offices, published and certified, to whom.—As to candidates for governor, or for an office to be filled by all the

voters of the state, or of any district composed of more than one county, the chairman of the county executive committee and its secretary shall certify the number of votes cast for each of such candidates, and cause the same to be published in some newspaper of the county, if there be one, and deliver his certificate of the vote cast for each candidate for such office to the president of the next state convention of the party in the manner required in this title, and certify the vote cast for each district office to the chairman of the district committee. [Id. sec. 131.]

Art. 3128. **Ballots accounted for.**—All ballots given to the election judges of the precinct by the executive chairman, or some member of the executive committee, shall be used and accounted for as in general elections. [Id. sec. 130.]

Art. 3129. **Boxes, and ballots, disposition of.**—Ballot boxes after being used in primary elections shall be returned with the ballots cast, or contained in each box as they were deposited by the election judges, locked and sealed, to the county clerk, and, unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty days after such primary election. [Id. sec. 143.]

Art. 3130. **County clerk to publish, etc., nominees.**—The county clerk shall cause the names of the candidates who have received the necessary vote to nominate, as directed by the county executive committee, for each office, to be printed in some newspaper published in the county, and, if no newspaper be published in a county, then he shall post a list of such names in at least five public places in the county, one of which shall be upon the door of the court house in said county. [Id. sec. 131.]

Art. 3131. **Objections to nomination to be made within five days.**—All objections to the regularity or validity of the nomination of any person, whose name appears in said list, shall be made within five days after such printing or posting, by a notice in writing filed with the county clerk, setting forth the grounds of objections. In case no such objection is filed within the time prescribed, the regularity or validity of the nomination of no person whose name is so printed or posted, shall be thereafter contested. [Id. sec. 131.]

Art. 3132. **Names printed on ballot, when and how.**—After said names have been so printed or posted for the period above required, the said clerk shall cause said names to be printed on the official ballot in the column for the ticket of that party. [Id. sec. 131.]

Art. 3133. **County clerk to post names of candidates ten days before printing on ballot, etc.**—It shall be the duty of the county clerk of each county to post in a conspicuous place in his office, for the inspection and information of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. [Id. sec. 132.]

Art. 3134. **County conventions; and precinct conventions.**—On the first Saturday after primary election day for 1912, and each two years thereafter, there shall be held in each county a county convention of each party, to be composed of one delegate from each precinct in such county for each twenty-five votes, or a major fraction thereof, cast for the party's candidate for governor at the last preceding election, which delegates shall be elected by the voters of each precinct on primary election day, in such manner as may be prescribed by the county executive committee at their meeting on the second Monday in June, which convention shall elect one delegate to the state and several district conventions for each three hundred votes, or a major fraction thereof,

cast for the party's candidate for governor in such county at the last preceding general election; and the delegates to the said conventions so elected, or such of them as may attend the said conventions, shall cast the vote of the county in such conventions. Immediately upon the adjournment of each such county convention, the president thereof shall make out a certified list of the delegates to each of said conventions chosen by such county convention and shall sign the same, the secretary of such convention attesting his signature, and shall forward such certified list by sealed registered letter to the chairman of the state and district executive committees, who shall present the same to the respective committees at its meeting prior to the convention; and, from such certified list, the respective committees shall prepare a temporary roll of those selected as delegates to such convention; provided, that no proxies shall be allowed to, or recognized in, any convention held by authority of this title, where a delegate from the county is present in the convention. [Id. sec. 115.]

Art. 3135. County convention may be held at time for meeting of executive committee.—Nothing in this chapter shall prevent the holding of the county convention at the time named in article 3122, for the meeting of the executive committee for the purpose of counting and declaring the result; but the chairman of the executive committee shall certify the result as required by this chapter. [Id. sec. 131.]

Art. 3136. District conventions.—On the fourth Saturday in August succeeding each general primary, there shall be held in each district within the state in which any candidate or candidates for any district office are to be elected at the succeeding regular election, a district convention, which shall be composed of delegates from the county or counties composing such district, selected in the manner herein provided; notice of the time and place of holding such convention shall be given by the executive committee of such district at least ten days prior to such meeting. Before such convention assembles, the executive committee of such district shall meet and elect one of its number chairman of such committee, shall prepare a list of delegates from the various counties composing such district which have been certified to the district committee by the chairmen of the various county committees, shall tabulate the vote cast in the various counties for each candidate for district office, which has been certified to such committee as provided in this chapter, and shall also prepare a statement, showing the number of convention votes which each county in such district is entitled to cast in said convention upon the basis set forth in article 3142, and shall present such list of delegates, tabulated vote and convention vote to the convention when it assembles. The district convention shall then canvass the returns of the votes cast in all of the counties of the district for each candidate as presented to them by the district committee, and shall declare the person found to have received the largest number of votes at the primary in the district for such office the nominee of the party for such office; and the chairman and secretary of the convention shall forthwith certify such nomination to the secretary of state. But, in the event there is only one name on the ballot for a district office without an opponent, the district chairman shall, as soon as practicable after the primary election, certify that the person on the ballot is the nominee of the party and that there shall be no convention held for the purpose of declaring the result. [Acts 1905, S. S., p. 547. Acts 1907, p. 329.]

Art. 3137. Place for state convention, fixed how.—At the meeting of the state executive committee held on the second Monday in June preceding each general primary election, the said committee shall decide upon and publish the place where the state convention of the party shall be held on the second Tuesday in August thereafter. [Acts 1905, S. S., p. 545, sec. 109.]

Art. 3138. State executive committee to canvass returns as to nominations for state offices; statement of vote; list of delegates, presented to chairman of

state convention, etc.—On the Monday preceding the second Tuesday in August, 1912, and every two years thereafter, the state executive committee shall meet at the place selected for the meeting of the state convention, and shall open and canvass the returns of the primary election as to nominations for state officers, as certified by the various county chairmen to the state chairman for each county, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. At this meeting the state committee shall also prepare a complete list of the delegates elected to the state convention from each county, as certified to the state chairman by each county chairman. The state chairman shall present said tabulated statement and said list of delegates to the chairman of the state convention immediately after its temporary organization on the following day, for its approval or disapproval. [Id. sec. 119.]

Art. 3139. State convention to canvass vote for candidates for state offices and declare result, according to plurality in primary; certified by chairman and secretary of convention to secretary of state.—The state convention shall canvass the vote cast in the entire state for each candidate for each state office, as shown by the statement thereof presented to it by the state committee, and shall declare the candidate for each state office who has received the largest number of votes in the primary election for such state office the nominee of the party for such office; and the chairman and secretary of the state convention shall forthwith certify all such nominations to the secretary of state. [Acts 1905, 2 S. S., p. 4. Acts 1905, S. S., p. 550. Acts 1907, p. 329, sec. 120.]

Art. 3140. State convention; time of meeting; further duties.—All party state conventions to announce a platform of principles and announce nominations for governor and state offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the second Tuesday in August, A. D., 1912, and every two years thereafter, and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Provided, that said convention shall, among other things, elect a chairman of the executive committee and thirty-one members thereof, one from each senatorial district of the state, the members of said committee to be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, a majority of the members of said committee shall fill the same by electing some eligible person thereto. [Acts 1905, S. S., p. 549, sec. 116.]

Art. 3141. Every certificate of nomination to state what.—Every certificate of nomination made by the president of the state convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made. [Id. sec. 118.]

[Note.—For requirement of referendum on platform demands and of submission of such questions, see article 3110.]

Art. 3142. Convention vote of each county, in state or district convention.—Each county in the state or district convention shall be entitled to one vote for each five hundred votes, or major fraction thereof, cast for the candidate for governor of the political party holding the convention, at the last preceding primary election. In case, at such primary election, there were cast for such candidate for governor less than five hundred votes in any county, then all such counties shall have one vote. [Acts 1907, p. 329, sec. 120.]

Art. 3143. Mandamus to compel performance of duties.—Any executive committee or committeeman or primary election officer, or other person herein charged with any duty relative to the holding of the primary election, or the canvassing, determination or declaration of the result thereof, may be com-

pelled by mandamus to perform the same in accordance with the provisions of this title. [Acts 1905, S. S. p. 557, sec. 142.]

Art. 3144. Errors and violations of law, immaterial, not to vitiate election, etc.—No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct. [Id. sec. 137.]

Art. 3145. Expenses of candidates, statement of.—Within ten days after a primary and also after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to inspection of the public. [Id. sec. 90.]

Art. 3146. Expenses of manager of political headquarters, etc., statement of required, etc.—Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, reside, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what reward was given or promised, by whom and to whom, and what influence was promised, by whom promised and to whom said promise was given. He shall also state whether he had been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employe of, or was acting for or in the interest of, any corporation, giving his name, and, if so, of what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be: all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to inspection of the public. [Id. sec. 89.]

Art 3147. Contests of primary elections, decided by executive committees or district court.—In all contests for a primary election or nomination of a convention, based on charges of fraud or illegality in the method of conducting the elections, or fraud or illegality in selecting the delegates to the convention, or in certifying to the convention, or in nominating candidates in state, district, county, precinct or municipal conventions, or in issuing certificates of nominations from such conventions, the same shall be decided by the executive committee of the state, district, or county, as the nature of the office may require, each executive committee having control, in its own jurisdiction, or by the district court, or judge of said court in vacation, of the district where the contestee resides, said executive committee and the district courts having concurrent jurisdiction. [Acts 1909, 2 S. S., p. 452, sec. 141.]

Art. 3148. Place for hearing contests of primary elections by committee.—In all contests between candidates for state office, the committee shall hold its hearing in the city of Austin, Travis county, unless some other place is agreed upon by the parties; and in all contests between candidates for any district, county, municipal or precinct office, the committee may hold its hearing, at its election, either in the county of the residence of the contestee or in

any county where the fraud or illegality complained of is alleged to have occurred, or at such other place as the parties may agree upon. [Id. sec. 141.]

Art. 3149. **Contest before executive committee; procedure, etc.**—The complaining candidate, if he desires to file a contest with the executive committee, shall, within five days after the result has been declared by the committee or convention, cause a notice to be served on the chairman or some member of the executive committee, in which he shall state specifically the ground of his contest; also shall serve, or cause to be served, on the opposing candidate a copy of such notice, at least five days prior to the date set for hearing by the committee. If special charges of fraud or illegality in the conduct of the election, or in the manner of holding the convention, or in the manner of making nominations, are made, and not otherwise, the chairman, or, in case he fails or refuses, any member of the committee, shall within twenty days after the primary election, or the convention, convene the executive committee, who shall then examine the charges, hear evidence and decide in favor of the party who in their opinion was nominated in the primary election, or in the convention; provided, that, before any advantage can be taken of the disregard or violation of any directory provision of the law, it must appear that, but for such disregard or violation, the result would have been different. [Id. sec. 141.]

Art. 3150. **Ballot boxes may be opened by committee, when.**—The executive committee may, if in its opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. [Id. sec. 141.]

Art. 3151. **Certificate and printing name on ballot, on decision by committee, unless appeal.**—When the committee has decided the contest, unless notice of appeal to the district court is given, the executive chairman shall certify its findings to the officers charged with the duty of providing the official ballot; and the name of the candidate in whose favor the executive committee shall find shall be printed on the official ballot for the general election. [Id. sec. 141.]

Art. 3152. **Same, where such appeal not perfected.**—In case such appeal is not perfected in the manner and time as herein provided, the chairman of the executive committee trying such contest shall certify the name of the party held by the executive committee to have been nominated to the proper office, to be placed on the official ballot. [Id. sec. 141.]

Art. 3153. **Appeal from executive committee to district court; procedure.**—Where contests are originally filed with the executive committee, either party shall have the right to appeal from the final decision of the executive committee to the district court having jurisdiction; and said contest shall there be tried de novo by said court. The party taking such appeal shall, within three days from final decision of the executive committee, file written notice of such appeal with the chairman or secretary of such executive committee. Upon the filing of such notice of appeal, the secretary of said executive committee shall prepare a certificate showing that such contest had been tried and determined by such executive committee, the decision of such committee, and that notice of appeal had been given, and shall file same, together with all papers filed in such contest, in the district court, or with the district judge, in vacation, of the district having jurisdiction of such appeal, within ten days after the decision of the executive committee is rendered; and the filing of such certificate and papers in said court, or with said judge in vacation, shall be held to perfect such appeal. And if for any cause the secretary of said executive committee shall fail or refuse to file said certificate and other papers pertaining to such appeal, in the district court of such district, or with the judge of said district, within ten days after such decision has been rendered by said committee, then in such event the contestant may prepare a brief statement of the action

of said committee in such contest, and perfect his appeal by filing same with said district court, or with the judge of said district, within fifteen days after such decision by the executive committee. [Id. sec. 141.]

Art. 3154. Review of certificates of nomination by district court; procedure.—In state, district, county, precinct or municipal offices, the certificate of nomination issued by the president or chairman of the nominating convention, or chairman of the county executive committee, shall be subject to review, upon allegations of fraud or illegality, by the district court of the county in which the contestee resides, or the judge of said court in vacation; provided, that such allegations are filed in said court within ten days after the issuance of said certificate; and when said allegations are so filed, or the appeal from the decision of the executive committee is perfected, the judge of the district court shall set same down for hearing, either in term time or vacation, at the earliest practical time; and a copy of said grounds of contest, together with the notice of the date set for said hearing, shall be prepared and issued by the clerk of the district court and be served upon the contestee five days before the hearing before said court or judge, and the parties to said contest shall have the right to summon witnesses. [Id. sec. 141.]

Art. 3155. Ballot boxes may be opened by court, when; disposition of.—The court or judge may, if in his opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. [Id. sec. 141.]

Art. 3156. Judgment of court final in what cases.—The said court or judge shall determine said contest; and the decision of said court or judge shall be final as to all district, county, precinct, or municipal offices. [Id. sec. 141.]

Art. 3157. Certifying judgment, and printing names on ballot.—A certified copy of the judgment of said court or judge shall be transmitted by the clerk thereof to the officers charged with the duty of providing the official ballot, and the name of the candidate in whose favor said judgment shall be rendered shall be printed in the official ballot for the general election. [Id. sec. 141.]

Art. 3158. Appeal to court of civil appeals in what cases; advanced.—In all contests for state offices before the district court, exercising either its original or appellate jurisdiction, either party may appeal to the court of civil appeals, and such appeal shall be advanced on the docket of said appellate court and have precedence of all other cases. [Id. sec. 141.]

2. NOMINATIONS BY PARTIES OF TEN THOUSAND AND LESS THAN ONE HUNDRED THOUSAND VOTES.

Art. 3159. May nominate, how.—Each political party, whose nominee for governor in the last preceding general election received as many as ten thousand and less than one hundred thousand votes, may nominate candidates for state, district and county offices under the provisions of this law by primary election, and they may nominate candidates for state offices at a state convention, which shall be held the second Tuesday in August, and which shall be composed of delegates elected in the various counties and county conventions held on the first Saturday after primary election day, which shall be composed of delegates from the general election precinct in such counties elected therein at primary conventions, held in such precincts on the fourth Saturday in July. [Acts 1905, S. S. p. 542, sec. 99.]

Art. 3160. Nominations of such parties, state committee to determine mode.—The state committee of all such parties shall meet at some place in

the state to be designated by the chairman thereof on the second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate state, district and county officers by convention or by primary elections, and shall certify their decision to the secretary of state. [Id. sec. 99.]

Art. 3161. **Nominations of such parties for district offices.**—Nominations for district offices made by such parties shall be made by conventions held on the same days as herein prescribed for district conventions of other parties, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties, all of which county conventions shall nominate candidates for county offices of such party of such county. [Id. sec. 99.]

Art. 3162. **Nominations of such parties to be certified by whom.**—All nominations so made by a state or district convention shall be certified by the chairman of the state or district committee of such party to the secretary of state, and a nomination made by a county convention, by the chairman of the county committee. [Id. sec. 99.]

Art. 3163. **Poll tax requirement in such primary convention.**—No person shall be allowed to vote or participate in any such primary convention, unless he shall have first produced evidence that he has paid his poll tax or is exempt; and no person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day. [Id. sec. 99.]

3. NON-PARTISAN AND INDEPENDENT CANDIDATES.

Art. 3164. **Non-partisan and independent candidates' names placed on ballot how.**—The name of a non-partisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the secretary of state and delivered to him within thirty days after primary election day as follows: If for a state office to be voted for throughout the state, one per cent of the entire vote of the state cast at the last preceding general election; if for a congressional, supreme judicial, senatorial, representative, flatorial or judicial district office, three per cent of the entire vote cast in any such district at the last preceding general election; provided, that the number of signatures need not exceed five hundred for any congressional, senatorial or judicial office, nor for any other office that is not filled by all the voters of the state. [Id. sec. 94.]

Art. 3165. **Same subject.**—No application to the secretary of state shall contain the name of more than one candidate, and no citizen shall sign such application, unless he has paid his poll tax or received his certificate of exemption; provided, that, if the office is one to which two or more persons are to be elected, his application may be for as many candidates as there are persons to be elected to that office; and provided, also, that no person who has voted at a primary election shall sign an application in favor of any one for an office for which a nomination was made at such primary election. [Id. sec. 95.]

Art. 3166. **Same subject.**—To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: "I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I desire (here insert the name) to be a candidate; I am a qualified voter at the next general election under the constitution and laws in force, and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered. [Id. sec. 96.]

Art. 3167. **Same subject.**—The secretary of state shall, on the receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this state, or of the district, as the case may require, directing that the name of the citizen, in whose favor the application is made, shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that the citizen, in whose favor the application is made, shall first file his written consent with the secretary of state to become a candidate, within thirty days after primary election day. [Id. sec. 97.]

Art. 3168. **Same subject, in county, city or town elections.**—Independent candidates for office at a county, city or town election may have their names printed upon the official ballot on application to the county judge, if for a county office, or to the mayor, if for a city or town office, such application being in the same form and subject to the same requirements herein prescribed for applications to be made to the secretary of state in case of state or district independent nomination; provided, that a petition of five per cent of the entire vote cast in such county, city or town at the last general election shall be required for such nomination. [Id. sec. 98.]

4. LOCAL NOMINATIONS OF PARTIES HAVING NO STATE ORGANIZATION.

Art. 3169. **Nominations, local, of parties having no state organization.**—Any political party, not having a state organization, but desiring to nominate candidates for county and precinct offices only, may nominate such candidates therefor under the provisions of this title, by primary elections or by a county convention held on the legal primary election day, as herein defined, which county convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of eight a. m. and ten p. m. of the preceding Saturday. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties certified to the clerk, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent of the entire vote cast in such county at the last general election. [Id. sec. 100.]

5. PARTY NOMINATIONS FOR CITY AND TOWN ELECTIONS.

Art. 3170. **Cities and towns, elections, nominations for, how made; executive committee.**—Each and every incorporated town and city in the state of Texas, whether incorporated under general or special laws, may make nominations for office in the following manner: In each of said cities and towns there shall be an executive committee, for each political party, consisting of a city chairman and one member for each ward in said city or town, and, in case said city or town is not divided into wards, then there shall be selected four members of said committee in addition to the city chairman. In all cities and towns which now have a duly selected executive committee, the same shall serve until the next city election; and, in cities and towns having no executive committee, the county chairman of the political party desiring to make nominations in such cities and towns, shall appoint an executive committee to serve until the next city election shall be held; and, in each city and town in this state in which a political party may desire to make nominations, there shall be held, at least thirty days prior to the regular election, an election at which there may be nominated, by each political party, officers to be selected at the next city election, and at which said election there shall be selected

the executive committee for said city or town herein provided for; and in all such city primary elections the provisions of the law relating to primary elections and general elections shall be observed. [Id. sec. 128a.]

Art. 3171. **Executive committee, in cities and towns, powers of.**—The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; and, in case it is decided that no nomination shall be made, such executive committee shall call a meeting of the members of such political party at least thirty days prior to a regular election, at which a new executive committee shall be selected to serve during the ensuing term; provided, that this title shall not be construed to prevent independent candidates for city offices from having their names upon the official ballot, as provided for in articles 3159 to 3163, inclusive. [Id. sec. 128a.]

6. MISCELLANEOUS PROVISIONS.

Art. 3172. **Nomination declined, how; vacancy how filled, etc.; posters used when, etc.**—A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the state, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the secretary of state in the case of state or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when and how he was nominated. [Id. sec. 50.]

Art. 3173. **No executive committee to nominate, except.**—No executive committee shall ever have any power of nomination, except where a nominee has died or declined the nomination as provided in article 3172. [Id. sec. 118.]

Art. 3174. **Parties, new, etc., name of, regulated.**—No new political party shall assume the name of any pre-existing party; and the party name printed on the official ballot shall not consist of more than three words. [Id. sec. 101.]

CHAPTER ELEVEN.

NATIONAL CONVENTION, STATE CONVENTION TO SELECT DELEGATES TO.

National convention, state convention to select delegates to.....^{Article}3175

Article 3175. National convention, state convention to select delegates to.— Any political party, desiring to elect delegates to a national convention, shall hold a state convention at such place as may be designated by the state executive committee of said party, on the fourth Tuesday of May, 1912, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the state at primary conventions to be held on the first Saturday in May, 1912, and every four years thereafter. Said primary conventions shall be held between the hours of ten o'clock a. m. and eight o'clock p. m. These primary conventions shall elect delegates to the county convention of the several counties, which shall be held on the first Tuesday after the first Saturday in May, 1912, and every four years thereafter. The qualified voters of each voting precinct of the county shall assemble on the date named, and shall be presided over by a chairman who shall have been previously appointed by the county executive committee of the party, and shall be a qualified voter in said election precinct; and said convention may elect from among their number a secretary and such other officers as may be necessary to conduct the business of the convention. The chairman of said convention shall possess all the power and authority that is given to election judges under the provisions of this title. Before transacting any business, the chairman shall make, or cause to be made, a list of all qualified voters present; and the name of no person shall be entered upon said list, nor shall he be permitted to vote or to participate in the business of such convention, until it is made to appear that he is a qualified voter in said precinct, from a certified list of qualified voters, the same as is required in conducting a general election. After the convention is organized as above provided, it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of said convention shall keep a written record of its proceedings, including a list of the delegates elected to the county convention, which record shall constitute the returns from said convention. The same shall be signed officially, sealed up and safely transmitted by the officers thereof to the chairman of the county executive committee of the party, and to be used by the executive committee in making up a roll of the delegates to the county convention. [Acts 1905, S. S. p. 555, sec. 139.]

TITLE 50.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Time of election of electors, and who are qualified to be electors and to vote for electors</td> <td style="width: 20%; text-align: right; vertical-align: bottom;">3176</td> </tr> <tr> <td>Mode, places, etc., for election of electors</td> <td style="text-align: right; vertical-align: bottom;">3177</td> </tr> <tr> <td>Returns of election by precinct officers</td> <td style="text-align: right; vertical-align: bottom;">3178</td> </tr> <tr> <td>Returns of election by counties</td> <td style="text-align: right; vertical-align: bottom;">3179</td> </tr> <tr> <td>Secretary of state shall count returns, when, etc.</td> <td style="text-align: right; vertical-align: bottom;">3180</td> </tr> </table>	Time of election of electors, and who are qualified to be electors and to vote for electors	3176	Mode, places, etc., for election of electors	3177	Returns of election by precinct officers	3178	Returns of election by counties	3179	Secretary of state shall count returns, when, etc.	3180	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Contests; filed when; how tried</td> <td style="width: 20%; text-align: right; vertical-align: bottom;">3181</td> </tr> <tr> <td>Electors shall convene, when and where, etc., place of absent or disqualified electors, how supplied</td> <td style="text-align: right; vertical-align: bottom;">3182</td> </tr> <tr> <td>Governor shall cause list of electors to be made, etc.</td> <td style="text-align: right; vertical-align: bottom;">3183</td> </tr> <tr> <td>Governor shall issue proclamation, etc.</td> <td style="text-align: right; vertical-align: bottom;">3184</td> </tr> <tr> <td>Compensation of electors</td> <td style="text-align: right; vertical-align: bottom;">3185</td> </tr> </table>	Contests; filed when; how tried	3181	Electors shall convene, when and where, etc., place of absent or disqualified electors, how supplied	3182	Governor shall cause list of electors to be made, etc.	3183	Governor shall issue proclamation, etc.	3184	Compensation of electors	3185
Time of election of electors, and who are qualified to be electors and to vote for electors	3176																				
Mode, places, etc., for election of electors	3177																				
Returns of election by precinct officers	3178																				
Returns of election by counties	3179																				
Secretary of state shall count returns, when, etc.	3180																				
Contests; filed when; how tried	3181																				
Electors shall convene, when and where, etc., place of absent or disqualified electors, how supplied	3182																				
Governor shall cause list of electors to be made, etc.	3183																				
Governor shall issue proclamation, etc.	3184																				
Compensation of electors	3185																				

Article 3176. [1811] [1760] **Time of election of electors and who are qualified to be electors and to vote for electors.**—On the Tuesday next after the first Monday in November, A. D. 1912, and on the first Tuesday next after the first Monday in November every four years thereafter, the qualified voters for members of the house of representatives of the state legislature shall elect from among the resident citizens, over twenty-one years of age, and not members of either house of congress of the United States, as many electors of president and vice-president of the United States as the state of Texas may at the time be entitled to elect. [Act March 15, 1848. P. D. 3644.]

Art. 3177. [1812] [1761] **Mode, places, etc., of election for electors.**—Such election shall be held in the same manner, at the same places, under the same regulations, and by officers and managers appointed in the same way as elections for members of the house of representatives of this state may be; except that such qualified voter shall be authorized to vote for the whole number of electors that the state will then be empowered to elect. [Id. P. D. 3645.]

Art. 3178. [1813] [1762] **Returns of election by precinct officers.**—The officers conducting said elections, or the managers thereof at each precinct, shall, within three days after holding said election, add up and compare the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the state legislature. [Id. P. D. 3646.]

Art. 3179. **Returns of elections by counties.**—On the Monday next following the day of election, or as soon thereafter as the commissioners' court shall have opened the election returns, and estimated the result, in accordance with article 3030, the county judge shall make duplicate returns of the election, one of which he shall immediately transmit to the seat of government in this state, sealed in an envelope, directed to the secretary of state, and endorsed "Election Returns for County for Presidential Electors," [filling the blank with the name of the county] and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. [Id. P. D. 3647.]

Art. 3180. [1815] **Secretary of state shall count returns when, etc.**—It shall be the duty of the secretary of state, in the presence of the governor and attorney general, or either of them, on the fourth Monday in November next after said election, to open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of the persons elected, to be forthwith published in some newspaper printed at the seat of government, and shall issue certificates of election to the persons so elected. [Id. P. D. 3648.]

Art. 3181. [1851a] **Contests; filed when; how tried.**—Any person or persons intending to contest the election of any or all of the persons declared elected, as provided in article 3180, as electors of president and vice-president, shall, within fifteen days from the said fourth Monday in November, file with the secretary of state a written statement of the ground on which such contestant relies to sustain such contest, and shall, within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within ten days after receiving such notice, file with the secretary of state his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the state board of canvassers, consisting of the governor, attorney general and secretary of state, or any two of them; and their decision shall be rendered at least six days before the time fixed by law for the meeting of the electors. Such decision, in which two at least of such board shall join, shall be final, and certificates of election, in accordance therewith, shall at once be issued by the secretary of state to the proper parties. Where not otherwise herein provided, the provisions of chapter 8 of title 49, relating to contests for the validity of an election for members of the legislature, shall apply to such contests for presidential electors. [Id.]

Art. 3182. [1816-1817] [1765-1766] **Electors shall convene, when and where.**—The electors so chosen shall convene in the capitol at the seat of government of the state, on the second Monday in January next after their election, and vote for president and vice-president of the United States, and make returns thereof as is, or hereafter may be, required by the laws of the United States. [Acts 1897, p. 25. P. D. 3649. U. S. Rev. Stat., p. 21.]

Place of absent or disqualified electors, how supplied.—If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such absent or disqualified person, and shall immediately report their action to the secretary of state aforesaid. [Id. P. D. 3650. Acts 1848, p. 104.]

Art. 3183. [1818] [1767] **Governor shall cause list of electors to be made, etc.**—The governor shall, on or before the meeting of the electors, cause three lists of the names of such electors to be made out and delivered to them, as required by act of congress. [Id. P. D. 3651.]

Art. 3184. [1819] [1768] **Governor shall issue proclamation, etc.**—It shall be the duty of the governor, or in case of his inability, then of the lieutenant-governor, to issue a proclamation under the seal of the state, and have the same published for at least forty days before an election for electors, in some newspaper printed at the seat of government, requiring the county judge, or other proper officer or officers, of each county in the state to cause an election to be held at each precinct in the county at the time and for the purpose prescribed in this title. [Id. P. D. 3652.]

Art. 3185. [1820] [1769] **Compensation of electors.**—Electors for president and vice-president of the United States shall receive the same pay for mileage in traveling to and from the seat of government of the state, and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the legislature of this state. [Act Dec. 1, 1849. P. D. 3653.]

TITLE 51.

ESCHEAT.

[See "Estates of Decedents." See "Aliens."]

Article.	Article.
When estates shall escheat; evidence; service of Process.....	3186
District attorney to file petition for escheat, when; venue; requisites of petition	3187
Clerk to issue citation to those alleged to be in possession.....	3188
Citation published and its requisites.....	3189
Claimants may appear and plead.....	3190
If no person appears.....	3191
If any person appears, issue and trial.....	3192
Judgment for the state, when.....	3193
Costs against the state, how paid.....	3194
Judgment to contain description, vest title in state, and stay writ of possession	3195
Claimant not personally served may sue to divest title, etc.....	3196
Writ of seizure and proceedings thereunder	3197
Appeal or writ of error.....	3198
Comptroller to keep accounts.....	3199
Heirs afterward appearing may bring suit, etc.	3200
Order of court in favor of claimant.....	3201
Proceeds of escheated property subject to disposition by the state.....	3202
Final decree of probate court may be revised, when	3203
Governor may cause proceedings to be instituted, when	3204
Suit must be in name of state.....	3205

Article 3186. [1821] [1770] **When estates shall escheat; evidence; service of process.**—If any person die seized of any real or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devise of his estate, such estate shall escheat to and vest in the state; provided, that, where no will is recorded or probated in the county where such property is situated, within seven years after the death of the owner, it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be deemed prima facie evidence of the death of the owner, and of the failure of heirs; and the court trying the cause may, if such evidence is not rebutted, find therefrom in favor of the state; provided, further, that any one paying taxes to the state on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party to such escheat proceedings, and a personal service of citation be had upon him, if a resident of this state, and his address can be secured by reasonable diligence, but, if he be a non-resident of the state and can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such reasonable diligence to include an investigation of the records of the office and inquiry of the state and county tax collector and the state and county tax assessor of the county in which the property sought to be escheated is situated. [Acts 1885, p. 35. Acts 1907, p. 111.]

Art. 3187. [1822] [1771] **District attorney to file petition for escheat, when; venue; requisites of petition.**—When the district or county attorney shall be informed, or have reason to believe, that an executor or executors, if more than one, has been named under the will of any person who has died without heirs and without having devised his estate, has not accepted the trust, that no administrator with the will annexed, has been appointed, or where such attorney shall discover that no letters of administration on the estate of an intestate who has died without heirs have been granted, or where such attorney finds any estate, real or personal, in the condition specified in the next preceding article, he shall file a petition in behalf of the state in the district or the county where such

property, or any part thereof, lies; which petition shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim or whose claim may be discovered by the exercise of reasonable diligence, and the facts or circumstances in consequence of which such estate is claimed to have escheated, and the diligence exercised to discover the claimants of same, praying that such property be escheated and for a writ of possession for the same in behalf of the state. Such petition shall be sworn to by such attorney. [Id.]

Art. 3188. [1823] [1772] **Clerk to issue citation to those alleged to be in possession, etc.**—The clerk of the court shall issue citation, as in other civil causes, for such of the defendants as shall be alleged in the petition to hold possession of or claim such estate and for such other persons as this title provides shall be cited, requiring them to appear and answer at the next term of court. [Id.]

Art. 3189. [1824] [1773] **Citation published and its requisites.**—The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits. [Acts of 1885, p. 35.]

Art. 3190. [1825] [1774] **Claimants may appear and plead.**—All persons named in such petition as tenants or persons in actual possession or claimants of the estate may appear and plead to such proceedings, and may traverse the facts stated in the petition, or the title of the state to the lands and tenements therein mentioned, as in civil cases, and any other person claiming an interest in such estate may appear and be made a defendant and plead as in other cases. [P. D. 3661.]

Art. 3191. [1826] [1775] **If no person appears.**—If no person, after notice as aforesaid, shall appear and plead within the time prescribed by law then judgment shall be rendered by default in behalf of the state. [P. D. 3662.]

Art. 3192. [1827] [1776] **If any person appears, issue and trial.**—If any person appear and deny the title set up by the state, or traverse any material fact in the petition, issue shall be made up and tried as other issues of fact; and a survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question. [P. D. 3663.]

Art. 3193. [1828] [1777] **Judgment for the state, when.**—If, after the issue and trial, it appears from the facts found or admitted that the state has good title to the estate, real or personal, in the petition mentioned, or any part thereof, judgment shall be rendered that the state shall be seized or possessed thereof, and at the discretion of the court recover costs against the defendants: provided, that whenever judgment is rendered in favor of the state, whether by default or after trial upon the merits, a writ of possession shall be awarded as in other civil suits. [Acts of 1885, p. 35.]

Art. 3194. [1829] [1778] **Costs against the state, how paid.**—If it appears that the state has no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk: and the comptroller of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the treasury, which shall be paid as other demands on the treasury. [P. D. 3665.]

Art. 3195. [1830] [1779] **Judgment to contain description, vest title in state and stay writ of possession.**—When any judgment shall be rendered that the state be seized or possessed of any estate, such judgment shall contain a description thereof, and shall vest title in the state; such judgment, when rendered for real estate, shall further provide that no writ of possession

for such property shall issue within two years from the date when such judgment becomes final, and no sale thereof be made within such time. [Acts 1907, p. 112.]

Art. 3196. [1830] [1779] **Claimant not personally served may sue to divest title, etc.**—Such title to such real property, or any part thereof, so adjudged to the state, shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the state in any court having jurisdiction, within two years after the date when such judgment in the escheat proceedings has become final, and who shall finally be adjudged owner of the property, for the recovery of which the suit is brought, or any part thereof. [Id.]

Art. 3197. [1831] [1780] **Writ of seizure and proceedings thereunder.**—A writ shall be issued to the sheriff or any constable of the proper county commanding him to seize such estate vested in the state; and, if the same be personal property or real estate, he shall dispose of the same at public auction in the manner provided by law for the sale of property under execution; and the proceeds, less the costs of court and attorneys' commissions, shall be paid into the treasury of the state; provided, that no real estate shall be sold by the sheriff or constable at less than the minimum price to be fixed by the judge before whom the cause was tried, said minimum valuation to be distinctly stated in the advertisement, and, should there be on the day of sale no bona fide bid for as high an amount as the valuation fixed by the judge before whom the cause was tried, there shall be no sale, and the writ shall be immediately returned to the court issuing the same; and thereafter said real estate may be sold by the attorney general in the same manner as lands bid in by the state under authority of article 358 are now sold by that officer. [Acts of 1885, p. 35.]

Art. 3198. [1832] [1781] **Appeal or writ of error.**—Any party who shall have appeared to any such proceedings, and the district or county attorney, on behalf of the state, shall have the right to prosecute an appeal or writ of error upon such judgment. [P. D. 3669.]

Art. 3199. [1833] [1782] **Comptroller to keep accounts.**—The comptroller shall keep just accounts of all moneys paid into the treasury, and of all lands vested in the state under the provisions of this chapter. [P. D. 3670.]

Art. 3200. [1834] [1783] **Heir, etc., afterward appearing, may bring suit.**—If any person appear after the death of the testator or intestate and claim any money paid into the treasury under this chapter, as heir, or devisee, or legatee thereof, he may file a petition in the district court for the county where the estate was sold, stating the nature of his claim and praying that such money be paid to him; a copy of which petition shall be served on the district or county attorney at least twenty days previous to the return day of the process, who shall put in an answer to the same. [P. D. 3671.]

Art. 3201. [1835] [1784] **Order of court in favor of claimant.**—The court shall examine the claim and the allegations and proofs; and, if it shall find that such person is an heir, devisee, legatee or legal representative, whether citizen or foreigner, such court shall make an order directing the comptroller to issue his warrant on the treasury for the payment of the same, but without interests or costs; a copy of which order under the seal of the court shall be a sufficient voucher for issuing such warrant; and the same proceedings shall be instituted for the recovery of any money or property heretofore deposited with the treasurer or comptroller in accordance with the laws heretofore existing; provided, that, if such heir, devisee, legatee or legal representative or their assigns shall sue for and recover such estate, real or personal, in any court of competent jurisdiction in this state from any purchaser at sheriff's sale, as hereinbefore provided, or from his heirs, devisees, legatees, legal representatives or assigns, then, and in any such event, a cer-

tified copy of such judgment of recovery, together with the affidavit of the party cast in the suit that he is the owner of, and entitled to, the money theretofore paid into the state treasury as the proceeds of such escheated estate, shall be sufficient authority for the issuance by the comptroller of a warrant on the state treasury for the payment to such purchaser, his heirs, legal representatives or assigns, such net amount of money as was paid into the state treasury by reason of said sheriff's sale of such estate. [P. D. 3672; amend. 1895, p. 189.]

Art. 3202. [1836] [1785] **Proceeds of escheated property subject to disposition by the state.**—The proceeds of all property escheated in accordance with the provisions of this chapter shall remain subject to the disposition of the state, as may hereafter be prescribed by law. [P. D. 3674.]

Art. 3203. [1837] [1786] **Final decree of probate court may be revised, when.**—Any decree of the probate court finally closing any estate may be revised and corrected in the district court of the county in which the letters were granted to such executor or administrator, upon the ground that there was error, fraud or mistake of law or fact, in such final account, and settlement, upon the application of the state, by bill of review, in the same manner as is now provided by law for the revision and correction of any such account and settlement by any individual interested in an estate. [Act Nov. 13, 1866, p. 236, sec. 1.]

Art. 3204. [1838] [1787] **Governor may cause proceedings to be instituted, when.**—In any case in which the governor has reason to believe that there has been fraud, error or mistake of law or fact, in any such final account and settlement, he is authorized to retain counsel and have proceedings instituted, in accordance with the provisions of this chapter and the laws, to have such final account and settlement revised and corrected for the protection of the rights of the state; and for such services the counsel so retained shall be allowed a reasonable compensation. [Act Nov. 13, 1866, p. 236, sec. 2.]

Art. 3205. [1839] [1788] **Suit must be in name of state.**—All suits brought for the collection of the assets turned over to the treasurer, under this chapter, shall be brought in the name of, "The State of Texas." [Id. sec. 3.]

TITLE 52.

ESTATES OF DECEDENTS.

(See Title, "Fees of Office.")

<p>Chapter.</p> <ol style="list-style-type: none"> 1. Jurisdiction. 2. Record Books. 3. General Provisions. 4. Applications for the Probate of Wills and for Letters. 5. Probate of Wills. 6. Granting Letters. 7. Temporary Administration. 8. Oath and Bond of Executors and Administrators. 9. Issuance of Letters. 10. Inventory, Appraisement and List of Claims. 11. Certain Rights, Duties and Powers of Executors and Administrators. 12. Administration Under a Will. 13. Subsequent Executors and Administrators. 14. Withdrawing Estates from Administration. 15. Removal of Executors and Administrators. 16. Resignation of Executors and Administrators. 	<p>Chapter.</p> <ol style="list-style-type: none"> 17. Allowance to Widow and Minor Children. 18. Setting Apart the Homestead and Other Exempt Property to Widow and Children. 19. Presentment, etc., of Claims Against an Estate. 20. Classification and Payment of Claims. 21. Hiring and Renting. 22. Sales. 23. Report of Sales, etc. 24. Enforcing Specific Performance of Contracts. 25. Heirship, etc.—Adjudication of. 26. Partition and Distribution. 27. Final Settlement, etc. 28. Payment of Estates into the Treasury. 29. Administration of Community property. 30. Transfer of Administration. 31. Costs. 32. Appeal to the District Court.
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CHAPTER ONE.

JURISDICTION.

<p>Article.</p> <p>Probate jurisdiction of county court.... 3206</p> <p>Probate jurisdiction of district court.... 3207</p> <p>Proceedings of probate of will, etc., void, when, etc..... 3208</p>	<p>Article.</p> <p>In what counties will shall be probated and letters granted..... 3209</p> <p>In case of concurrent jurisdiction of several courts 3210</p>
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Article 3206. [1840] [1789] **Probate jurisdiction of the county court.**—The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates. [Const., art. 5, sec. 16.]

Art. 3207. [1841] [1790] **Probate jurisdiction of district court.**—The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators, and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law. [Const., art 5, sec. 8.]

Art. 3208. [1842] [1791] **Proceedings of probate of will, etc., void, when, etc.**—If a will be probated before the death of the testator, or if administration be granted upon the estate of a living person, the proceedings shall be void; but the bond or bonds of the executor or administrator shall

not be void, but may be recovered upon as other bonds. [18 Texas, 195; 15 Texas, 617.]

Art. 3209. [1843] [1792] **In what counties wills shall be probated and letters granted.**—Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the state.

2. If the deceased had no domicile or fixed place of residence in the state, but died in the state, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed place of residence in the state, and died without the limits of the state, then in any county in this state where his nearest kin may reside.

4. But if he has no kindred in this state, then in the county where his principal estate was situated at the time of his death. [Act Aug. 9, 1876, p. 93, sec. 1.]

Art. 3210. [1844] [1793] **In case of concurrent jurisdiction of several courts.**—When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed shall have and retain jurisdiction of such estate, to the exclusion of such other court or courts.

CHAPTER TWO.

RECORD BOOKS

	Article.		Article.
Judge's probate docket.....	3211	Record books shall be indexed, etc.....	3215
Probate minutes	3212	Shall be evidence.....	3216
Claim docket	3213	What papers shall be recorded in probate minutes	3217
Probate fee book.....	3214		

Article 3211. [1845] [1794] **Judges probate docket.**—There shall be kept by the clerk of the county court a record book to be styled, "Judge's probate docket," in which shall be entered:

1. The name of each deceased person upon whose estate proceedings are had or sought to be had.

2. The name of the executor or administrator of such estate, or of the applicant for letters, as the case may be.

3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.

4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.

5. Each estate shall be numbered upon such docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

Art. 3212. [1846] [1795] **Probate minutes.**—Said clerk shall also keep a record book to be styled, "Probate minutes," in which he shall enter in full all the orders, judgments, decrees and proceedings of the court, and in which shall be recorded all papers of estates required by law to be recorded.

Art. 3213. [1847] [1796] **Claim docket.**—Said clerk shall also keep a record book to be styled, "Claim docket," in which shall be entered all claims presented against an estate for approval by the court. This docket shall be

ruled at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. In the first or marginal column shall be entered the names of the claimants in the order in which their claims are filed; in the second, the amount of the claim; in the third, its date; in the fourth, when due; in the fifth, the date from which it bears interest; in the sixth, the rate of interest; in the seventh, when allowed in whole or in part by the executor or administrator; in the eighth, the amount allowed; in the ninth, the date of rejection; in the tenth, the date of filing; in the eleventh, when approved; in the twelfth, the amount approved; in the thirteenth, when disapproved; in the fourteenth, the class to which the claim belongs; in the fifteenth, when established by judgment of a court; in the sixteenth, the amount of such judgment. [Act Aug. 15, 1870, p. 169. P. D. 5673.]

Art. 3214. [1848] [1797] **Probate fee book.**—Said clerk shall also keep a record book, to be styled, "Probate fee book," in which shall be entered each item of costs which accrue to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same and the estate or party liable therefor.

Art. 3215. [1849] [1798] **Record books shall be indexed, etc.**—Each record book shall be provided by the clerk with a convenient index, and shall be open to the inspection of any person desiring to examine the same, but shall not be taken from the office of the clerk.

Art. 3216. [1850] [1799] **Shall be evidence.**—Said record books, or certified copies therefrom, shall be evidence in any of the courts of this state.

Art. 3217. [1851] [1800] **What papers shall be recorded in probate minutes.**—The following papers of an estate shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.
2. The citation and return thereon in such cases.
3. The will and the testimony upon which the same was admitted to probate.
4. All bonds and the oaths of executors and administrators.
5. The notice to persons holding claims against an estate.
6. All inventories and appraisements and lists of claims.
7. All exhibits and accounts.
8. All reports of hiring, renting or sale.
9. All applications for the sale of real estate.
10. All reports of commissioners of partition.

Papers which have been disapproved by the court, and vouchers and all other papers not above enumerated, shall not be recorded. [P. D. 5772.]

CHAPTER THREE.

GENERAL PROVISIONS.

Article.	Article.
Decisions, etc., of court shall be rendered in open court.....	Depositions and rules of evidence.....
3218	3234
And shall be entered of record, etc.....	In whom property vests upon death of testator or intestate.....
3219	3235
Probate docket disposed of promptly.....	Any person interested in an estate may file opposition, etc.....
3220	3236
No trial by jury in probate matters.....	Duty of county judge to call dockets, etc.....
3221	3237
Duty of clerk to file papers, etc.....	Meaning of "term of court," "docket" and "minutes".....
3222	3238
Clerk shall issue all notices, etc.....	Duty of judge to sign the minutes, etc.....
3223	3239
Power of court to attach and imprison executors, etc.....	Attachment for property of estate may issue, when.....
3224	3240
Person having will, etc., may be attached, etc.....	Annual exhibits required; final settlement, when.....
3225	3241
Executions in probate matters.....	Twenty days' notice of filing of exhibit shall be give, etc.....
3226	3242
County judge may enforce orders, etc., of previous court.....	When an executor or administrator shall be deemed to have qualified.....
3227	3243
Requisites of citation in probate matters.....	Depositions and rules of evidence.....
3228	3244
Service of citation.....	Titles made by executors, etc., valid, although, etc.....
3229	3245
Service of posting.....	Sales by foreign executors validated....
3230	3246
Mode of posting citation and return of same.....	
3231	
Citation by publication.....	
3232	
Rights, etc., of executor, etc., regulated by common law, etc.....	
3233	

Article 3218. [1852] [1801] **Decisions, etc., of court shall be rendered in open court, etc.**—All decisions, orders, decrees and judgments of the county court in probate matters shall be rendered in open court, and at a regular term of such court for civil and probate business, unless in cases where it is otherwise specially provided.

Art. 3219. [1853] [1802] **And shall be entered of record.**—All such decisions, orders, decrees and judgments shall be entered on the records of the court, during the term at which the same are rendered; and any such decision, order, decree or judgment shall be a nullity unless entered of record.

Art. 3220. [1854] [1802a] **Probate docket disposed of promptly.**—When the probate docket is taken up, it shall be disposed of with dispatch, without an adjournment of the court for more than three days at any time; and, in case of such adjournment, the reason therefor must appear upon the minutes. [Acts of 1881, p. 31.]

Art. 3221. [1855] [1803] **No trial by jury in probate matters.**—There shall be no trial by jury in probate matters, except when expressly provided by law. [P. D. 5481.]

Art. 3222. [1856] [1804] **Duty of clerk to file papers, etc.**—The clerk of the county court shall receive and file all applications, complaints, petitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date when it was filed, and sign his name officially to such indorsement, and shall also place thereon the docket number of the estate to which it belongs.

Art. 3223. [1857] [1805] **Clerk shall issue all notices, etc.**—Said clerk shall issue all necessary notices, citations, writs and process from said court in probate matters without any order from the county judge, unless such order is required by some provision of this title. [Act Aug. 9, 1876, p. 129, sec. 138.]

Art. 3224. [1858] [1806] **Power of court to attach and imprison executor, etc.**—The county judge shall have power to enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except in the case provided for in the succeeding article. [Id. p. 129, sec. 135.]

Art. 3225. [1859] [1807] **Person having will, etc., may be attached, etc.**—When complaint shall be made in writing to any county judge that any person has the last will of any testator or testatrix, or any papers be-

longing to the estate of a testator or intestate, said county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator; and upon the return of such citation served, unless such will or papers are so delivered or good cause be shown to the court for not delivering the same, the county judge, if satisfied that such person had such will or papers at the time of the complaint being filed, may cause him to be arrested and imprisoned until he shall so deliver them. [Id. p. 128, sec. 126.]

Art. 3226. [1860] [1808] **Executions in probate matters.**—Executions issued from the county court in probate matters shall be directed to the sheriff or any constable of a county, shall be made returnable in sixty days, and shall be tested and signed by the clerk officially and sealed with the seal of the court; and all proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the district court in so far as the same may be applicable. [Id. p. 129, sec. 135.]

Art. 3227. [1861] [1809] **County judge may enforce orders, etc., of previous court.**—The county judge shall have the same power to enforce all orders, decrees and judgments heretofore made and rendered in the probate court of his county, as if such orders, decrees or judgments had been made and rendered under the provisions of this title. [Id. p. 130, sec. 140.]

Art. 3228. [1862] [1810] **Requisites of citation in probate matters.**—All citations in probate matters shall be in writing, dated and signed by the clerk officially, and sealed with the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time when, and place where, such party is required to appear.

Art. 3229. [1863] [1811] **Service of citation.**—A citation is served either by posting, by delivery in person, or by publication, and, when the mode of service is not expressly provided by law, it must be served upon the party to be cited in person, by delivering to him a true copy of such citation at least ten days, exclusive of the day of service, before the day upon which he is required to appear and answer.

Art. 3230. [1864] [1812] **Service by posting.**—When citation is required to be posted, it means for ten days, exclusive of the day of posting, before the day upon which the party is required to appear and answer, at three of the most public places in the county, one of which shall be at the court house door, and no two of which shall be in the same city or town, unless the contrary be expressed by the law which provides for such citation. [P. D. 5475.]

Art. 3231. [1865] [1813] **Mode of posting citation and return of same.**—When a citation is required to be posted, the clerk shall place the original citation, together with three copies thereof, in the hands of the sheriff or any constable of the proper county, who shall post such copies as required by the preceding article, and shall return the original to the clerk, stating in a written return thereon the time when, and the place where, he posted such copies. [Id.]

Art. 3232. [1866] [1814] **Citation by publication.**—In all cases where it is necessary to cite any person by publication, and the manner of citing such person is not otherwise provided for, the citation by publication shall be made in like manner as in suits in the district court. [Act Aug. 9, 1876, p. 129, sec. 137.]

Art. 3233. [1867] [1815] **Rights, etc., of executors, etc., regulated by common law.**—The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with any of the provisions of the statutes of this state. [Id. p. 130, sec. 141.]

Art. 3234. [1868] [1816] **Depositions and rules of evidence.**—In all proceedings in the county court, arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence under the same regulations and rules as in the district court; and all laws in relation to witnesses and evidence which govern in the district court shall apply to proceedings in the county court, in so far as the same are applicable. [Id. p. 129, sec. 136.]

Art. 3235. [1869] [1817] **In whom property vests upon death of testator or intestate.**—When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; but all of such estate, whether devised or bequeathed or not, except such as may be exempted by law from the payment of debts, shall still be liable and subject in their hands to the payment of the debts of such testator or intestate; and, whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but, upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and it shall be the duty of such executor or administrator to recover possession of and hold such estate in trust to be disposed of in accordance with law. [Id. p. 127, sec. 125.]

Art. 3236. [1870] [1818] **Any person interested in an estate may file opposition, etc.**—Any person interested in an estate may, at any time before any application, petition, exhibit, account, claim or other proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

Art. 3237. [1871] [1819] **Duty of county judge to call dockets, etc.**—It shall be the duty of the county judge, at each regular term of his court for probate business, to call the estates in their regular order upon his docket, and also to call the claim docket, and to make such orders as may be necessary. It shall also be his duty to see that executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Art. 3238. [1872] [1820] **Meaning of "term of court," "docket," and "minutes."**—When a term of the county court is mentioned in this title, a regular term of said court for probate business is meant, and when the word, "docket," is used, the probate docket is meant, and when the word, "minutes," is used, the probate minutes are meant.

Art. 3239. [1873] [1821] **Duty of the judge to sign the minutes, etc.**—It shall be the duty of the county judge, whenever he enters an order upon the minutes in vacation, to date and sign the same officially; and, at the close of each term of his court, he shall in open court sign the minutes of such term officially, after ascertaining that all orders, judgments, decrees and proceedings of the term have been properly entered, and that all papers required to be recorded therein have been so recorded.

Art. 3240. [1874] [1822] **Attachment for property of estate may be issued, when.**—Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator of such estate is about to remove said estate, or any part thereof, beyond the limits of this state, such judge shall have power to order a writ to issue, directed to the sheriff or any constable of any county in the state, commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge may make on

such complaint; provided, that no such writ shall issue, unless the complainant shall give bond with two or more good and sufficient sureties, in such sum as the said judge may require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that may be recovered for the wrongful suing out of such writ. [Act Aug. 9, 1876, p. 129, sec. 139.]

Art. 3241. [1875] [1822a] **Annual exhibits required; final settlement, when.**—Executors and administrators shall be required to make annual exhibits under oath, fully showing the condition of the estate; they shall be required to make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing being made under oath; and, upon failure in either case, shall be removed as provided in article 3394. [Acts of 1881, p. 31.]

Art. 3242. [1876] [1823] **Twenty days notice of filing exhibit shall be given, etc.**—All exhibits made by executors or administrators, showing a list of claims allowed and approved, or established against the estate they represent, or showing the condition of said estate, and an account of the moneys received and of the moneys paid out on account of said estate, returned to the court before the filing of the account for final settlement of said estate, shall be filed with the clerk, unless otherwise specially provided in this title. Notice of such filing shall be posted on the court house door of the county for which such court is held; and no other action shall be had thereon until the expiration of at least twenty days from the posting of said notice, after which time the county judge shall, in term time, examine said exhibit, and, if the same be found to be correct, render judgment of approval thereon and order said exhibit to be recorded. [Act Aug. 9, 1876, p. 109, sec. 68.]

Art. 3243. [1877] [1824] **When an executor or administrator shall be deemed to have qualified.**—An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath required by law, and when he shall have given the bond required by law, and when said bond has been approved and filed. In case of an executor where no bond is required, he shall be deemed to have been duly qualified when he shall have taken the oath required by law.

Art. 3244. [1887] [1825] **Depositions and rules of evidence.**—In all proceedings in the county court arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence, under the same rules and regulations as in the district court, and all laws in relation to witnesses and evidence which govern the district court shall apply to all proceedings in the county court, under the provisions of this title so far as they are applicable.

Art. 3245. [1879] [1826] **Titles made by executor, etc., valid although, etc.**—When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and with law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled and declared invalid.

Art. 3246. [1879a] **Sales by foreign executors validated.**—All sales of real estate within this state, which have been heretofore made by executors of wills, which, prior to such sales, had been probated according to the laws of another state of the United States, having jurisdiction, and which wills possessed the requisites to pass title to real estate required by the statutes of this state, where such wills conferred upon the executors the power to sell the real estate so sold, independent of the probate court, and where such sales would have been valid and effectual to pass the title to such real estate

had the wills been probated in this state, be and the same are hereby validated; provided, however, that the validation of such sales shall not defeat the rights of creditors of the testators of such wills, nor affect the title of purchasers for value from the heirs or devisees of the testators of such wills, where such purchases were made prior to the enactment hereof. [Acts of 1893, p. 102.]

CHAPTER FOUR.

APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS.

Article.	Article.
Application for letters must be filed within four years after death of testator or intestate, exception.....	Citation to issue, and shall state, what.....
3247	3256
Wills shall not be probated after lapse of four years.....	Service of such citation, how made.....
3248	3257
Administration not barred, when.....	Citation where will can not be produced, or where it is nuncupative.....
3249	3258
Applications shall be in writing and filed.....	Service of such citation, how made.....
3250	3259
Application for probate of written will produced in court shall state, what.....	Service of such citation by publication, when.....
3251	3260
Will shall be filed with the application, etc.....	No action shall be had until service of citation.....
3252	3261
What the application shall state where the will can not be produced in court.....	Application may be made, by whom.....
3253	3262
Application for probate of nuncupative will shall state, what.....	Administration may be prevented, how.....
3254	3263
Application for letters of administration shall state, what.....	One creditor may apply in behalf of several, etc.....
3255	3264
	Bond shall be filed, etc.....
	3265
	Lien upon estate to secure bond.....
	3266

Article 3247. [1880] [1827] **Application for letters must be filed within four years after death of testator, or intestate, exception.**—All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; and, if four years have elapsed between the death of such testator or intestate and the filing of such application, such application shall be refused and dismissed; provided, that this article shall not apply to citizens of this state who have suffered losses by Indian depredations, or by the occupation or taking of their property by troops enlisted in, or belonging to, the United States army, and have died since such loss, and make the application for the purpose of recovering compensation for such loss. In all such cases, the proper courts of this state are authorized to grant letters of administration upon the estate of any citizen, without regard to the date of his death, when the applicant for letters alleges in his application that the testator or intestate suffered losses by Indian depredations or by the occupation or taking of their property by troops enlisted in, or belonging to, the United States army, and that letters are sought for the purpose of enabling him or her to bring suit in the United States court of claims to recover compensation for such loss. [Acts 1893, p. 6. Acts 1876, p. 94. Acts 1899, p. 244. P. D. 5505.]

Art. 3248. [1881] [1828] **Will shall not be probated after a lapse of four years, unless, etc.**—No will shall be admitted to probate after the lapse of four years from the death of the testator, unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

Art. 3249. [1882] [1829] **Administration not barred, when.**—Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time,

to compel a settlement of the estate when it does not appear from the record that the administration thereof has been closed. [P. D. 5507.]

Art. 3250. [1883] [1830] **Applications shall be in writing and filed.**—All applications for probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the clerk of the county court of the proper county. [Act Aug. 9, 1876, p. 94, sec. 2.]

Art. 3251. [1884] [1831] **Application for probate of written will produced in court shall state what.**—An application for the probate of a written will produced in court shall state:

1. The name of the testator and that he is dead, and the time and place of his death.

2. The facts necessary to show that the court has jurisdiction of the estate.

3. The nature and probable value of the estate.

4. The name and residence of the executor named in the will, if any, and if none be named in the will, then the name and residence of the applicant.

5. That such executor or applicant, as the case may be, is not disqualified by law from accepting letters, if letters be desired.

Art. 3252. [1885] [1832] **Will shall be filed with the application, etc.**—The written will shall be filed with the application for the probate thereof, and shall thereafter remain in the office of the clerk with whom it is filed, unless removed therefrom by order of the county or district court.

Art. 3253. [1886] [1833] **What the application shall state where the will can not be produced in court.**—An application for the probate of a written will which cannot be produced in court, in addition to the requirements of article 3197, shall state:

1. The reason why such will can not be produced.

2. The contents of such will as far as known.

3. The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.

4. The names and residences, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

Art. 3254. [1887] [1834] **Application for nuncupative will shall state, what.**—An application for the probate of a nuncupative will, in addition to the requirements of article 3251, shall state:

1. The substance of the testamentary words spoken.

2. The names and residence of the witnesses thereto.

3. The names and residence, if known, of the heirs at law of the testator, and, if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

Art. 3255. [1888] [1835] **Application for letters of administration shall state, what.**—An application for letters of administration shall state:

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.

2. The facts necessary to show that the court has jurisdiction of the estate.

3. The nature and probable value of the estate.

4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.

5. That the applicant is not disqualified by law to act as administrator.

Art. 3256. [1889] [1836] **Citation to issue, and shall state, what.**—When an application for the probate of a written will, together with such will, is filed with the clerk, or when an application for letters of administration is

filed, the clerk shall issue a citation to all parties interested in such estate, which citation shall state:

1. That such application has been filed, and the nature of it.
2. The name of the deceased and of the applicant.
3. The time when, and the court by which, the application will be acted upon.
4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application, should they desire to do so.

Art. 3257. [1890] [1837] **Service of such citation, how made.**—The citation provided for in the preceding article shall be served by posting for at least ten days, exclusive of the day of posting, before the first day of the term of the court to which such citation is returnable.

Art. 3258. [1891] [1838] **Citation when will can not be produced, or where it is nuncupative.**—When the application is for the probate of a written will which can not be produced in court, or for the probate of a nuncupative will, the citation shall contain substantially the statements made in the application, and the time when, place where, and the court before which such application will be acted upon.

Art. 3259. [1892] [1839] **Service of such citation, how made.**—If the heirs of the testator be residents of this state and their residence be known, the citation provided for in the preceding article shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten days, exclusive of the day of service, before the first day of the term of the court to which such citation is returnable.

Art. 3260. [1893] [1840] **Service of such citation by publication.**—Service of such citation may be made by publication thereof in a newspaper published in the county in which such citation is issued, if there be one, and, if there be none, then in the newspaper which is published nearest to the court house of such county, for four successive weeks previous to the first day of the term of the court to which such citation is returnable, in the following cases:

1. When the heirs are non-residents of this state.
2. When their names or their residences are unknown.
3. When they are transient persons.

Art. 3261. [1894] [1841] **No action shall be had until service of citation.**—No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case required by the preceding articles of this chapter.

Art. 3262. [1895] [1842] **Application may be made to whom.**—Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person. [Act Aug. 9, 1876, p. 95, sec. 6.]

Art. 3263. [1896] [1843] **Administration may be prevented, how.**—When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application:

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.

3. By executing a bond with two or more good and sufficient sureties, payable to, and to be approved by, the county judge, in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate. [P. D. 5558.]

Art. 3264. [1897] [1844] **One creditor may apply in behalf of several, etc.**—Several creditors may authorize one of their number to apply for letters in behalf of them all; and, in such case, the grant of letters can not be defeated without complying with the requirements of the preceding article as to all the claims so represented. [P. D. 5559.]

Art. 3265. [1898] [1845] **Bond shall be filed, etc.**—The bond provided for in article 3263, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, to secure the payment of whose debt the same was executed, may sue thereon in his own name for the recovery of his debt.

Art. 3266. [1899] [1846] **Lien upon estate to secure bond.**—A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for in article 3263.

CHAPTER FIVE.

PROBATE OF WILLS.

	Article.
How a written will which is produced in court may be proved.....	3267
How written will not produced may be proved.....	3268
Nuncupative will shall not be proved, when.....	3269
Nuncupative will must be proved, how.....	3270
Facts which must be proved.....	3271
Further proof in case of will which can not be produced in court.....	3272

	Article.
All testimony shall be committed to writing, etc.....	3273
Order shall be entered, will, etc., shall be recorded, when.....	3274
Certified copy of record, etc., may be read in evidence, etc.....	3275
Will probated in another state or country may be filed and recorded in this state.....	3276

Article 3267. [1900] [1847] **How a written will which is produced in court may be proved.**—A written will produced in court may be proved:

1. By the written affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those resident of the county are unable to attend court, it may be proved by the testimony of any one or more of them taken by deposition.
3. If none of the witnesses are living, it may be probated on proof by two witnesses of the handwriting of the subscribing witnesses thereto, and also of the testator, if he was able to write, which proof may be either by affidavit taken in open court and subscribed by the witnesses, or by deposition.
4. If the will was wholly written by the testator it may be probated on proof by two witnesses of his handwriting, which proof may also be made by affidavit taken in open court and subscribed to by the witnesses, or by deposition. [Act Aug. 9, 1876, p. 94, sec. 3.]

Art. 3268. [1901] [1848] **How written will not produced may be proved.**—A written will which can not be produced in court, upon proof of that fact, may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court. [Tyner vs. Paschal, 27 Texas, 286.]

Art. 3269. [1902] [1849] **Nuncupative will shall not be proved, when, etc.**—No nuncupative will shall be proved within fourteen days after the death of

the testator; nor shall any such will be probated after six months have elapsed from the time of speaking the pretended testamentary words, unless the same, or the substance thereof, shall have been committed to writing within six days after making such will; nor shall any such will be probated, unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation. [Id. p. 95, sec. 4. P. D. 1264.]

Art. 3270. [1903] [1850] **Nuncupative will must be proved, how.**—No nuncupative will shall be probated, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate [10 Texas, 121; 20 Texas, 384. P. D. 1264.]

Art. 3271. [1904] [1851] **Facts which must be proved.**—Before admitting a will to probate, it must be proved to the satisfaction of the court:

1. That the testator, at the time of executing the will, was at least twenty-one years of age, or was married, that he was of sound mind, and that he is dead.

2. That the court has jurisdiction of his estate.

3. That citation has been served and returned in the manner and for the length of time required by law.

4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.

5. That such will has not been revoked by the testator. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 3272. [1905] [1852] **Further proof in case of will which can not be produced in court.**—If the will be a written will which can not be produced in court, the cause of its non-production must be proved; and such cause must be sufficient to satisfy the court that it can not by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read the same, or who has heard it read.

Art. 3273. [1906] [1853] **All testimony shall be committed to writing, etc.**—All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk. [Id. p. 95, sec. 7.]

Art. 3274. [1907] [1854] **Order shall be entered, will, etc., shall be recorded, when.**—Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes; and such will, together with the application for the probate thereof, and all the testimony in the case, shall be recorded in the minutes; provided, that the substance only of depositions shall be so recorded.

Art. 3275. [1908] [1855] **Certified copy of record may be read in evidence.**—A certified copy of such record of testimony may be read in evidence on the trial of the same matter in any other court when taken there by appeal or otherwise. [Id. p. 95, sec. 7.]

Art. 3276. [1909] [1856] **Will probated in another state or country may be filed and recorded in this state.**—When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed,

if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; provided, that the validity of such will may be contested in the same manner as the original might have been. [Id. sec. 5.]

CHAPTER SIX.

GRANTING LETTERS.

Article.	Article.
Who are disqualified from being executors or administrators.....	Letters shall not be revoked, except upon application and citation
3277	3287
Where a will has been probated letters testamentary shall be granted.....	Where will is discovered after grant of administration
3278	3288
When administration shall be granted.....	Executor of will proved in another state entitled to letters within this state, when
3279	3289
Administration shall not be granted, unless, etc.	Bond shall be required as in other cases.....
3280	3290
Order in which letters shall be granted.....	Further administration shall be granted, when
3281	3291
Where applicants are equally entitled.....	Executor, etc., who has been removed shall not afterward be appointed, etc.....
3282	3292
Certain persons entitled to letters may waive right in favor of another, how.....	What facts must appear before granting letters testamentary
3283	3293
Letters revoked and granted to person having prior right.....	What facts must appear before grant of letters of administration.....
3284	3294
Letters revoked and granted to executor upon attaining lawful age.....	Order of court granting letters.....
3285	3295
Executor absent from state, etc., may qualify, within what time, etc.....	Grant of letters may be opposed, etc.....
3286	3296

Article 3277. [1910] [1857] **Who are disqualified from being executors or administrators.**—Letters testamentary or of administration shall not be granted to any person who is under twenty-one years of age, or of unsound mind; provided, however, that such letters may be granted to a surviving husband or wife who may be under twenty-one years of age. [Act Aug. 9, 1876, p. 96, sec. 10.]

Art. 3278. [1911] [1858] **When a will has been probated letters testamentary shall be granted.**—When a will shall have been probated, it shall be the duty of the court to grant letters testamentary to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law within twenty days after such probate, except in the case provided for in article 3248. [Id. p. 95, sec. 8.]

Art. 3279. [1912] [1859] **When administration shall be granted.**—When any person shall die intestate, or where no executor is named in a will, or where the executor renounces, dies, becomes of unsound mind, or is removed, or is disqualified, or shall neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary. [Id. sec. 9.]

Art. 3280. [1913] [1860] **Administration shall not be granted unless, etc.**—No administration upon any estate shall be granted, unless it be made to appear to the satisfaction of the court that there exists a necessity therefor, such necessity to be determined by the court hearing the application.

Art. 3281. [1914] [1861] **Order in which letters shall be granted.**—Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.
4. To any devisee or legatee of the testator.
5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county. [Id. P. D. 5508.]

Art. 3282. [1915] [1862] **Where applicants are equally entitled**—When applicants are equally entitled, the letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants. [P. D. 5512.]

Art. 3283. [1916] [1863] **Certain persons entitled to letters may waive right in favor of another, how.**—The surviving husband or wife, or, if there be no such survivor, the heirs, or any one of the heirs, of the deceased, to the exclusion of any person not equally entitled, may, in open court, or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

Art. 3284. [1917] [1864] **Letters revoked and granted to person having prior right.**—Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for letters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled. [Id. p. 96, secs. 13, 14. P. D. 5518.]

Art. 3285. [1918] [1865] **Letters revoked and granted to executor upon attaining lawful age.**—Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration revoked and letters testamentary granted to himself. And when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, the letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters. [Id. p. 96, sec. 11.]

Art. 3286. [1919] [1866] **Executor absent from the state, etc., may qualify within what time, etc.**—Whenever any person named as executor in a will shall have been absent from the state when the testator died or when the will was proved, whereby he was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will, or whenever he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he shall be allowed to accept and qualify as executor at any time within sixty days after his return to the state or his recovery from sickness, upon making proof to the court that he was so absent or prevented by sickness; and, if in the meantime letters of administration have been granted, such letters shall be revoked. [Id. p. 96, sec. 12.]

Art. 3287. [1920] [1867] **Letters shall not be revoked except upon application and citation.**—Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless applica-

tion therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases, when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Art. 3288. [1921] [1868] **When will is discovered after grant of administration.**—Whenever letters of administration shall have been granted upon an estate, and it shall afterward be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed, shall be as valid as if no such will had been discovered. [Id. p. 97, sec. 15.]

Art. 3289. [1922] [1869] **Executor of will proved in another state entitled to letters within this state, when.**—When a will has been admitted to probate in any of the United States or territories thereof, or in the District of Columbia, or in any country out of the limits of the United States, and the executor named in such will has qualified, and a copy of such will and the probate thereof has been filed and recorded in any county court of this state having jurisdiction of the estate, and letters of administration have been granted by such court to any person other than such executor, upon the application of such executor, and after citation served upon the person to whom such letters have been granted, such letters shall be revoked, and letters testamentary shall be granted to such applicant. [Id. p. 97, sec. 16. P. D. 5517.]

Art. 3290. [1923] [1870] **Bond shall be required as in other cases.**—In the case provided for in the preceding article, the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law. [P. D. 5517.]

Art. 3291. [1924] [1871] **Further administration shall be granted, when.**—Whenever an estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of original executors or administrators. [Id. p. 97, sec. 18.]

Art. 3292. [1925] [1872] **Executor, etc., who has been removed, shall not afterward be appointed, etc.**—Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof. [Id. p. 100, sec. 28.]

Art. 3293. [1926] [1873] **What facts must appear before granting letters testamentary.**—Before granting letters testamentary, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.

6. That the person named as executor is not disqualified by law.

The first three subdivisions of this article have no application where letters of administration upon such estate have been previously granted in said court. [Id. p. 94, sec. 2.]

Art. 3294. [1927] [1874] **What facts must appear before granting letters of administration.**—Before granting letters of administration, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three subdivisions of this article have no application when letters testamentary or of administration have been previously granted upon such estate by said court. [Id. p. 94, sec. 2.]

Art. 3295. [1928] [1875] **Order of court granting letters.**—When letters testamentary or of administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state:

1. The name of the testator or intestate.
2. The name of the person to whom the grant of letters is made.
3. If bond is required, the amount thereof.
4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

Art. 3296. [1929] [1876] **Grant of letters may be opposed, etc.**—When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to the provisions of this title, without further notice than that of the original application.

CHAPTER SEVEN.

TEMPORARY ADMINISTRATION.

County judge may appoint temporary administrator, when 3297 Appointment may be made without application, etc. 3298 Oath and bond required. 3299 Appointment shall cease to be of force, when 3300	Article. Pending contest, the county judge may appoint temporary administrator. 3301 Rights and powers of temporary administrator 3302 List, return of sales, exhibit and account shall be made. 3303 List, etc., shall be acted upon by the court 3304
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Article 3297. [1930] [1877] **County judge may appoint temporary administrator, when.**—Whenever it may appear to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall, either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint some suitable person temporary administrator with such limited powers as the circumstances of the case may require. [Act Aug. 9, 1876, p. 98, sec. 20.]

Art. 3298. [1931] [1878] **Appointment may be made without application, etc.**—Such appointment may be made either upon written application or without such application, and without citation. It shall define the powers conferred, and before being delivered to the person appointed shall be recorded in the minutes of the court, and the clerk shall indorse thereon a certificate that it has been so recorded, and until such record and certificate are made such appointment shall not take effect. [Id. p. 98, sec. 20.]

Art. 3299. [1932] [1879] **Oath and bond required.**—Such appointment shall not be delivered or take effect until the person appointed has taken the oath and has given bond as required by law. [Id. p. 98, sec. 22.]

Art. 3300. [1933] [1880] **Appointment shall cease to be of force, when.**—Such appointment shall cease to be of force on the day designated for taking up probate business at the first term of the court held next after the date thereof, unless at such term it be continued in force by an order entered upon the minutes in open court; and in no case shall such appointment continue in force beyond the day designated. [Id. p. 98, sec. 20.]

Art. 3301. [1934] [1881] **Pending contest the county judge may appoint temporary administrator.**—Pending any contest relative to the probate of a will, or the granting of letters of administration, whether such contest be in the county court or in the district court, it shall be the duty of the county judge, should he deem it necessary, to appoint a temporary administrator in the manner prescribed in the preceding articles in this chapter, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. [Id. p. 98, sec. 21.]

Art. 3302. [1935] [1882] **Rights and powers of temporary administrator.**—Temporary administrators shall have and exercise only such rights and powers with regard to the estate, or such portions thereof as may be committed to their charge, as are specifically and clearly expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

Art. 3303. [1936] [1883] **List, return of sales, exhibit and account shall be made.**—At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court a list of all the property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator, all of which shall be verified by his affidavit. [P. D. 5531.]

Art. 3304. [1937] [1884] **List, etc., shall be acted upon by the court.**—The list, return, exhibit and account required to be made by the temporary administrator under the preceding article shall be acted upon by the court at the same or a subsequent term, and whenever temporary letters shall expire, or cease to be of effect from any cause, the court shall immediately, either in term time or in vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

CHAPTER EIGHT.

OATH AND BOND OF EXECUTORS AND ADMINISTRATORS.

Article.	Article.		
Oath of executor or administrator with will annexed	3305	When new bond may be required.....	3316
Oath of administrator.....	3309	Duty of county judge to require new bond, when	3317
Oath of temporary administrator.....	3307	Any person interested in an estate may demand new bond.....	3318
Oath may be taken before any officer authorized to administer oaths, etc.....	3308	Sureties may ask to be discharged, and for new bonds	3319
Bond of executors and administrators.....	3309	Citation to executor or administrator.....	3320
Form of bond.....	3310	Order requiring new bond.....	3321
Oath and bond, within what time.....	3311	After order requiring new bond, functions of executor, etc., suspended.....	3322
Bonds shall be filed and recorded.....	3312	Sureties discharged when new bond is approved	3323
Where will provides that no bond shall be required	3313	Bond shall not be void on first recovery, etc.	3324
Bond of married woman.....	3314		
Bond of husband or wife, who is a minor	3315		

Article 3305. [1938] [1885] **Oath of executor or administrator with will annexed.**—Before the issuance of letters testamentary or of administration with the will annexed, the person named executor or appointed administrator with the will annexed shall take and subscribe an oath in form as follows: “I do solemnly swear that the writing which has been offered for probate is the last will of ———, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said ———.” [Act Aug. 9, 1876, p. 100, sec. 30.]

Art. 3306. [1939] [1886] **Oath of administrator.**—Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: “I do solemnly swear that ———, deceased, died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased.” [Id. p. 100, sec. 31.]

Art. 3307. [1940] [1887] **Oath of temporary administrator.**—Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: “I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of ———, deceased, in accordance with law, and with the order of the court appointing me such administrator.” [Id. p. 98, sec. 22.]

Art. 3308. [1941] [1888] **Oath may be taken before any officer authorized to administer oaths, etc.**—The oaths prescribed by the three preceding articles may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

Art. 3309. [1942] [1889] **Bond of executors and administrators.**—Before the issuance of letters testamentary or of administration, the person to whom letters are granted shall enter into bond, with at least two good and sufficient sureties, who shall be bona fide residents of this state, to be approved by, and payable to, the county judge of the county, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate, except in the case of temporary administrator, when the bond shall be in such sum as the county judge may direct; provided, that such bond may be made by any corporation or corporations organized or created under the laws of this state, or foreign corporations permitted to do business in this state, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and may be accepted by the county judge. [Acts 1876, p. 100. Acts 1897, p. 58.]

Art. 3310. [1943] [1890] **Form of bond.**—The following form, or the same in substance, may be used for the bonds of executors and administrators: “The State of Texas,

“County of _____

“Know all men by these presents, that we, A B as principal, and C D and E F as sureties, are held and firmly bound unto the county judge of the county of _____, and his successors in office, in the sum of _____ dollars; conditioned that the above bound A B, who has been appointed executor of the last will and testament of J C, deceased, (or has been appointed by the county judge of _____ county, administrator with the will annexed of the estate of J C, deceased, or, has been appointed by the county judge of _____ county, administrator of the estate of J C, deceased, or has been appointed by the county judge of _____ county, temporary administrator of the estate of J C, deceased, as the case may be), shall well and truly perform all the duties required of him under said appointment.

“A B,
“C D,
“E F.”

[Act Aug. 9, 1876, p. 101, sec. 34.]

Art. 3311. [1944] [1891] **Oath and bond within what time.**—The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed. [Id. p. 101, sec. 33.]

Art. 3312. [1945] [1892] **Bond shall be filed and recorded.**—All bonds of executors and administrators when approved shall be filed with the clerk of the court and shall be recorded in the minutes of the court. [Id. p. 101, sec. 33.]

Art. 3313. [1946] [1893] **When will provides that no bond shall be required.**—When any testator shall direct in his will that no security shall be required of the person named therein as the executor, letters testamentary shall be issued to such person without any bond being required, except in the case provided for in article 3290 in which case bond is required, notwithstanding the will may provide to the contrary. [Id. p. 101, sec. 32.]

Art. 3314. [1947] [1894] **Bond of married woman.**—When a married woman may be appointed executrix or administratrix, she may, jointly with her husband, or without her husband, if he be absent from the state, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county where the will was proved or letters were granted; and such bond shall bind her separate estate in the same manner as if she were unmarried, but

shall not bind her husband as surety unless he sign and be approved as such. [Id. p. 101, sec. 35. P. D. 5571.]

Art. 3315. [1948] [1895] **Bond of a husband or wife who is a minor.**—When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bonds as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. [Id. p. 101, sec. 36.]

Art. 3316. [1949] [1896] **When new bond may be required.**—An executor or administrator may be required to give a new bond in the following cases:

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the state, or become insolvent.

2. When, in the opinion of the county judge, the sureties upon any such bond are insufficient.

3. When, in the opinion of the county judge, any such bond is defective.

4. When the amount of any such bond is insufficient.

5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.

6. When the bond and the record thereof have been lost or destroyed. [Id. pp. 101, 102, secs. 37, 39.]

Art. 3317. [1950] [1897] **Duty of county judge to require new bond, when.**—When it shall come to the knowledge of the county judge that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, it shall be his duty without delay to cause the executor or administrator to be cited to show cause why he should not give a new bond.

Art. 3318. [1951] [1898] **Any person interested in estate may demand new bond.**—Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond. [Id. p. 102, sec. 38.]

Art. 3319. [1952] [1899] **Sureties may ask to be discharged, and for new bond.**—The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such executor or administrator may be required to give a new bond, and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond. [Id. sec. 39.]

Art. 3320. [1953] [1900] **Citation to executor or administrator.**—The citations required in the three preceding articles may be issued either in term time or in vacation, and shall require the party cited to appear before the county judge on some day named therein, not later than ten days from the date of such citation, either in term time or in vacation, and five days service thereof, exclusive of the day of service, shall be sufficient.

Art. 3321. [1954] [1901] **Order requiring new bond.**—Upon the return of any such citation served, the county judge shall, on the day named in such citation for the hearing of the matter, whether it be in term time or in vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect upon the minutes, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order. [Id. p. 102.]

Art. 3322. [1955] [1902] **After order requiring new bond, functions of executor, etc., suspended.**—Whenever an executor or administrator has been required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved. [Id. p. 102, sec. 40.]

Art. 3323. [1956] [1903] **Sureties discharged when new bond is approved.**—When a new bond has been given and approved, the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court. [Id. sec. 39.]

Art. 3324. [1957] [1904] **Bond shall not be void on first recovery, etc.**—The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

CHAPTER NINE.

ISSUANCE OF LETTERS.

	Article.		Article.
Clerk shall issue letters, when.....	3325	| Letters shall issue to each one qualifying	3328
What constitutes letters.....	3326		3329
Letters and certificates of letters, made evidence	3327		3329

Article 3325. [1958] [1905] **Clerk shall issue letters, when.**—Whenever an executor or administrator has been qualified in the manner required by law, it shall be the duty of the clerk of the court granting the letters testamentary or of administration to forthwith issue and deliver the letters to such executor or administrator. [Act Aug. 9, 1876, p. 97, sec. 19.]

Art. 3326. [1959] [1906] **What constitutes letters.**—Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased. [Id.]

Art. 3327. [1960] [1907] **Letters and certificate of letters made evidence.**—Such letters, or a certificate of the clerk of the court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification. [Id. P. D. 1236.]

Art. 3328. [1961] [1908] **Letters shall issue to each one qualifying.**—When two or more persons qualify as executors or administrators, letters shall be issued to each one of them so qualifying.

Art. 3329. [1962] [1909] **Other letters may be issued, when.**—When letters have been lost or destroyed, the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

CHAPTER TEN.

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

	Article.	Article.	
Appointment of appraisers.....	3330	Order requiring additional inventory, etc.	3342
Same subject	3331	Erroneous inventory or list may be corrected	3343
Inventory and appraisalment.....	3332	New appraisalment may be required.....	3344
Appraisalment shall be sworn to.....	3333	Order for same.....	3345
List of claims.....	3334	New appraisalment in place of original.....	3346
Inventory and list shall be sworn to.....	3335	Not more than one reappraisalment.....	3347
Shall be returned within sixty days.....	3336	Shall be evidence, to what extent.....	3348
Court shall approve or disapprove.....	3337	Where more than one executor, etc., qualifies, and some neglect to return inventory, etc.	3349
Order of approval.....	3338		
Order of disapproval.....	3339		
Duty of executor to make additional in- ventory	3340		
May be cited to make, etc.....	3341		

Article 3330. [1963] [1910] **Appointment of appraisers.**—Whenever letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased. [Act Aug. 9, 1876, p. 103, sec. 43.]

Art. 3331. [1964] [1911] **Same subject.**—If from any cause such appointment be not made, or if the appraisers, or any of them so appointed, fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Art. 3332. [1965] [1912] **Inventory and appraisalment.**—Every executor or administrator shall, immediately after he has qualified as such, with the assistance of any two or more of the appraisers appointed by the county judge, make, or cause to be made, a full inventory and appraisalment of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of said estate is the separate property of the deceased, and what portion, if any, is represented as common property. [Id. p. 103, sec. 44.]

Art. 3333. [1966] [1913] **Appraisalment shall be sworn to.**—The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisalment shall be sworn to and subscribed by the appraisers making the same before some officer of the county where the same is made authorized by law to administer oaths. [Id. p. 103, sec. 44.]

Art. 3334. [1967] [1914] **List of claims.**—Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the names of the parties owing the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased, and what portion, if any, is represented as common property. [Id. p. 103, sec. 44.]

Art. 3335. [1968] [1915] **Inventory and list shall be sworn to.**—Such executor or administrator shall also attach to such inventory and list his affidavit in writing, subscribed and sworn to by him, before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge. [Id. p. 103, sec. 44.]

Art. 3336. [1969] [1916] **Shall be returned within sixty days.**—The inventory, appraisalment and list required to be made by the preceding articles of this chapter shall be returned to the court granting the letters, either in term time or in vacation, within sixty days from the date of granting such letters. [Id. p. 103, sec. 45.]

Art. 3337. [1970] [1917] **Court shall approve or disapprove same.**—Upon the return of any such inventory, appraisal and list, it shall be the duty of the judge, either in term time or in vacation, to examine the same, and to either approve or disapprove the same. [Id.]

Art. 3338. [1971] [1918] **Order of approval.**—Should the inventory, appraisal and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or in vacation, and shall cause such inventory and list to be recorded upon said minutes.

Art. 3339. [1972] [1919] **Order of disapproval.**—Should the inventory, appraisal and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisal and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Art. 3340. [1973] [1920] **Duty of executor, etc., to make additional inventory.**—Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list, or both, of such newly discovered property or claims, or both, without delay; and, upon the return of any such additional inventory, the county judge shall, either in term time or in vacation, appoint appraisers and cause the property named in such additional inventory to be appraised as in the case of original appraisements. [Id. p. 103, sec. 46.]

Art. 3341. [1974] [1921] **May be cited to make, etc.**—Any executor or administrator, on the complaint in writing of any person interested in the estate, shall be cited to appear before the court in which the administration was granted, at a regular term thereof, and show cause why he should not be required to make and return an additional inventory or list of claims, or both. [Id. p. 103, sec. 46.]

Art. 3342. [1975] [1922] **Order requiring additional inventory.**—Upon the hearing of such complaint, the court shall, on sufficient proof being made that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list, or both, as the case may be, to be made and returned, including such property or claims, in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes. [Id. p. 103, sec. 46.]

Art. 3343. [1976] [1923] **Erroneous inventory or list may be corrected.**—Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and, if upon the hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

Art. 3344. [1977] [1924] **New appraisal may be required.**—Any person interested in the estate who may deem any appraisal returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to appear at a regular term of the court and show cause why a new appraisal should not be made. [Id. p. 104, sec. 48.]

Art. 3345. [1978] [1925] **Order for same.**—Upon the hearing of such complaint, if the court be satisfied that such appraisal was manifestly

unjust or erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisalment to be made and returned in like manner as original appraisements. [Id.]

Art. 3346 [1979] [1926] **New appraisalment stands in place of original.**—When any such new appraisalment is made, returned and approved by the court, it shall stand in the place of the original appraisalment of the same property. [Id. p. 104, sec. 48.]

Art. 3347. [1980] [1927] **Not more than one reappraisalment.**—Not more than one reappraisalment shall be made, but any person interested in the estate may contest the approval of any appraisalment by filing his objections thereto in writing at any time before such appraisalment has been approved by the court. [Id.]

Art. 3348. [1981] [1928] **Shall be evidence to what extent.**—All inventories and appraisements and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this state in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown—

1. That there is other property belonging to the estate not inventoried; or,
2. That there are other claims belonging to the estate other than those named in the list; or,
3. That certain property or claims named in the list did not belong to the estate; or,
4. That the property was not separate or common property as specified in such inventory or list; or,
5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof. [Id. p. 104, sec. 47.]

Art. 3349. [1982] [1929] **Where more than one executor or administrator qualifies and some neglect to return inventory, etc.**—If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisalment and list of claims as required by the provisions of this chapter; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have thereafter the whole administration, unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and, if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters. [Id. p. 98, sec. 23.]

CHAPTER ELEVEN.

CERTAIN RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS.

	Article.		Article.
What care to take of property of estate.....	3350	Property may be purchased, compromises made, etc., under order of the court.....	3354
Duty in regard to plantation, manufactory or business.....	3351	Power to release mortgages.....	3355
Action of executor, etc., in regard to plantation, etc., may be controlled by court.....	3352	Acts of one co-executor or co-administrator valid.....	3356
Ordinary diligence shall be used to collect claims and recover property of estate.....	3353	Preceding article does not apply, when.....	3357

Article 3350. [1983] [1930] **What care to take of property of estate.**—It shall be the duty of the executor or administrator to take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate it shall be his duty to keep the same in tenable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court. [Act Aug. 9, 1876, p. 104, sec. 49.]

Art. 3351. [1984] [1931] **Duty in regard to plantation, manufactory or business.**—If there be a plantation, manufactory or business belonging to the estate, and the disposition thereof is not specially directed by will, and, if the same be not required to be at once sold for the payment of debts, it shall be the duty of the executor or administrator to carry on the plantation, manufactory or business, or cause the same to be done, or to rent the same, as shall appear to him to be most for the interest of the estate. In coming to a determination, he shall take into consideration the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies, and shall not extend the time of renting any of the property beyond what may consist with the speedy settlement of the estate. [Id. sec. 104, p. 50.]

Art. 3352. [1985] [1932] **Action of executor, etc., in regard to plantation, etc., may be controlled by court.**—Any person interested in the estate may, upon complaint in writing, after citation of the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes, controlling the action of such executor or administrator in regard to such plantation, manufactory or business. [Id. p. 104, sec. 50.]

Art. 3353. [1986] [1933] **Ordinary diligence shall be used to collect claims and recover property of estate.**—Every executor or administrator shall use ordinary diligence to collect every claim due to the estate he represents, and to recover possession of all property to which the estate has a right; provided, there is a reasonable prospect that such claim can be collected or such property recovered; and, if any executor or administrator shall neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence. [Id. p. 104, sec. 52.]

Art. 3354. [1987] [1934] **Property may be purchased, compromises made, etc., under order of the court.**—Whenever an executor or administrator may deem it for the interest of the estate he represents to purchase any property, or to exchange any property, or take any claims or property for the use and benefit of the estate in payment of any debt due the estate, or to compound bad or doubtful debts due the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, it shall be

his duty to present an application in writing to the county court, at a regular term thereof, representing the facts; and, if the court upon the hearing of such application shall be satisfied that it will be for the interest of the estate to grant the same, an order to that effect shall be entered upon the minutes, setting forth fully the authority granted. [Id. p. 105, sec. 54. P. D. 5622.]

Art. 3355. [1988] [1935] **Power to release mortgage.**—When a mortgagee dies, his executor or administrator, on receipt of the amount due on the mortgage, is authorized to release such mortgage. [Id. p. 105, sec. 55. P. D. 5638.]

Art. 3356. [1989] [1936] **Acts of one co-executor or co-administrator valid.**—Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

Art. 3357. [1990] [1937] **Preceding article does not apply, when.**—The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

CHAPTER TWELVE.

ADMINISTRATION UNDER A WILL.

Articles.	Articles.		
Directions in will to be executed, unless, etc.	3358	Upon failure to give bond, estate shall be administered under direction of the court	3370
Proceedings to annul directions in will.	3359	Bond shall be filed and recorded.	3371
Citation to executor, etc., in such case.	3360	Creditor may sue on bond, etc.	3372
Order of the court in such case.	3361	Costs of such proceedings to be paid by whom	3373
Testator may provide that no action be had in court, except probate of will, etc.	3362	Executor may sell property without order of court, when.	3374
Creditor may sue executor in such case.	3363	Personal property reserved from sale by will	3375
Executor without bond may be required to give bond, when.	3364	Administration under will same as in intestates' estates, except, etc.	3376
Order requiring bond.	3365	Legatee or devisee may obtain order for delivery of legacy or bequest, when and how	3377
Bond in such case.	3366	Naming an executor in a will does not release him from a debt, etc.	3378
Should the executor fail to give required bond, etc.	3367		
Estate shall be partitioned and divided by court, when	3368		
Heirs, etc., may be required to give bond, when	3369		

Article 3358. [1991] [1938] **Directions in will to be executed, unless, etc.**—When a will has been probated, its provisions and directions shall be executed, unless the same are annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate. [P. D. 5623.]

Art. 3359. [1992] [1939] **Proceedings to annul directions in will.**—Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the provisions and directions in the will that are objected to, and the grounds of objection.

Art. 3360. [1993] [1940] **Citation to executor, etc., in such case.**—Upon the filing of such application, the clerk shall issue a citation for the executor or administrator with the will annexed to appear at a regular term of such

court and answer such application, the substance of which application shall be set forth in the citation; and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Art. 3361. [1994] [1941] **Order of the court in such case.**—If it appear upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or suspending the execution of the same until the further order of the court.

Art. 3362. [1995] [1942] **Testator may provide that no action be had in the court, except probate of will, etc.**—Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement and lists of claims of his estate. [Act Aug. 9, 1876, p. 124, sec. 117.]

Art. 3363. [1996] [1943] **Creditor may sue executor in such case.**—In the cases mentioned in the preceding article, any person having a debt or claim against said estate may enforce the payment of the same by suit against the executor of such will; and, when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of the executor that may be subject to such debt; but no such executor shall be required to plead to any suit brought against him for money until the expiration of twelve months from the date of the probate of such will. [Id. p. 124, sec. 117.]

Art. 3364. [1997] [1944] **Executor without bond may be required to give bond, when.**—In cases where no bond has been required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may, by complaint in writing filed in the court where such will was probated, cause such executor to appear before such court at some regular term and show cause why he should not be required to give bond as such executor. [Id. p. 124, sec. 117.]

Art. 3365. [1998] [1945] **Order requiring bond.**—Upon the hearing of such complaint, if it be made to appear by proof to the satisfaction of the court that such executor is wasting, mismanaging or misapplying such estate, and that thereby said creditor may probably lose his debt, or such person his interest in the estate, it shall be the duty of the court to enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order. [Id. p. 124, sec. 117.]

Art. 3366. [1999] [1946] **Bond in such case.**—Such bond shall be signed by the executor with two or more good and sufficient sureties for an amount equal to double the full value of the estate, to be approved by; and payable to, the county judge of the county, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and, when approved by the county judge, shall be recorded in the minutes, and may be recovered upon as other bonds given by executors and administrators. [Id. p. 125, sec. 117.]

Art. 3367. [2000] [1947] **Should executor fail to give required bond.**—Should such executor fail to give such bond within ten days after the order

requiring him to do so, then it shall be the duty of the county judge, without citation, and either in term time or in vacation, to remove such executor and appoint some competent person in his stead, whose duty it shall be to administer said estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article. [Id. p. 125, sec. 117.]

Art. 3368. [2001] [1948] **Estate may be partitioned and divided by court, when.**—If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor shall have the right to file his final account in the court in which the will was probated, and ask partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court. [Id. p. 125, sec. 117.]

Art. 3369. [2002] [1949] **Heirs, etc., may be required to give bond, when.**—When it is provided in a will that no action shall be had in the county court, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by complaint in writing filed in the court where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, with two or more good and sufficient sureties, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that the obligors shall pay all debts that may be established against such estate in the manner provided by law. [Id. p. 126, sec. 123.]

Art. 3370. [2003] [1950] **Upon failure to give bond estate shall be administered under direction of the court.**—Upon the return of the citation served unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. [Id. p. 126, sec. 123.]

Art. 3371. [2004] [1951] **Bond shall be filed and recorded.**—If the obligation provided for in article 3369 is executed and approved, it shall be filed and recorded in the minutes of the court, and no further action shall be had in said court in relation to said estate, except in the case mentioned in article 3368, in which case the action therein provided for may be had. [Id.]

Art. 3372. [2005] [1952] **Creditor may sue on bond, etc.**—Every creditor of such estate shall have the right to sue on such obligation in any court having jurisdiction of the debt, and shall be entitled to judgment thereon for such debt as he may establish against the estate, or such creditors may have their action against those in possession of the estate. [Id.]

Art. 3373. [2006] [1953] **Costs of such proceeding to be paid by whom.**—All costs of the proceedings, provided for in the four last preceding articles, shall be paid by the persons entitled to such estate, according to their respective interests in such estate. [Id.]

Art. 3374. [2007] [1954] **Executor may sell property without order of court, when, etc.**—Whenever in a will power is given to an executor to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and, when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court as hereinafter provided. [Id. p. 113, sec. 82.]

Art. 3375. [2008] [1955] **Personal property reserved from sale by will.**—If a testator in his will directs his personal estate, or any part thereof, not to be sold, the same shall be reserved from sale, unless such sale be necessary for the payment of debts. [Id. p. 130, sec. 146.]

Art. 3376. [2009] [1956] **Administration under will same as intestates' estates, except, etc.**—The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

Art. 3377. [2010] [1957] **Legatee or devisee may obtain order for delivery of legacy or bequest, when and how.**—Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator, with the will annexed, to deliver to him the property devised or bequeathed, whenever it shall appear to such county judge that there will remain in the hands of such executor or administrator, with the will annexed, after such delivery, a sufficient amount of the estate for the payment of all debts against said estate; provided, such devisee shall have first caused the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any, of the estate is coming to them, to be cited to appear and show cause why such order should not be made. [Id. p. 110, sec. 70.]

Art. 3378. [2011] [1958] **Naming an executor in a will does not release him from a debt, etc.**—The naming an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were so much money in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due. [Id. p. 105, sec. 53.]

CHAPTER THIRTEEN.

SUBSEQUENT EXECUTORS AND ADMINISTRATORS.

Subsequent administrator under a will shall succeed to rights of executor, except, etc.	Article. 3379	} Same as to executor after administration 3382 Inventories, etc., to be returned in one month 3383	Article.
Powers of subsequent administrator.....	3380		
How subsequent administration shall proceed	3381		

Article 3379. [2012] [1959] **Subsequent administrator under a will shall succeed to rights of executor, etc.**—When an administrator of the estate not administered has been, or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title on executors generally. [Act Aug. 9, 1876, p. 98, sec. 24.]

Art. 3380. [2013] [1960] **Powers of subsequent administrator.**—Such administrator shall have power to make himself party to all suits prosecuted by the former executor or administrator of the estate, and may be made a

party to all suits prosecuted against the former executor or administrator of the estate. He shall have power to settle with the former executor or administrator of the estate, and to receive and receipt for all such portion of the estate as remains in his hands. He shall have power to bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator. [Id.]

Art. 3381. [2014] [1961] **How subsequent administration shall proceed.**—Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinbefore named. [Id.]

Art. 3382. [2015] [1962] **Same as to executor after administration.**—Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall proceed to administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate. [Id.]

Art. 3383. [2016] [1963] **Inventories, etc., to be returned in one month.**—An executor or administrator who has been qualified as such to succeed a prior administrator or executor shall make and return to the court an inventory and appraisalment and list of claims of the estate, within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims. [Id. p. 98, sec. 24.]

CHAPTER FOURTEEN.

WITHDRAWING ESTATES FROM ADMINISTRATION.

Article.	Article.
Persons entitled to estate may cause executor or administrator to be cited, etc. ....3384 May give bond to pay debts of estate, etc. ....3385 Bond shall be filed and recorded and order of court thereon.....3386 Partition may be had of estate.....3387	Lien on property in hands of distributees .....3388 Creditor whose claim has been allowed, etc., may sue on bond.....3389 Other creditor may sue and recover, to what extent .....3390 Creditor may also sue distributee.....3391 Order discharging executor or administrator, and closing estate.....3392

Article 3384. [2017] [1964] **Persons entitled to estate may cause executor or administrator to be cited, etc.**—At any time after the return of inventory, appraisalment and list of claims of a deceased person, any one entitled to a portion of said estate, as heir, devisee or legatee, or his guardian, if he be a minor, may, by a complaint in writing, filed in the court where such inventory, appraisalment and list of claims have been returned, cause the executor or administrator of the estate to be cited to appear at some regular term of the court and render an exhibit under oath of the condition of such estate. [Act Aug. 9, 1876, p. 126, sec. 124.]

Art. 3385. [2018] [1965] **May give bond to pay debts of estate, etc.**—Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, with two or more good and suffi-

cient sureties, to be approved by such county judge, for an amount equal to at least double the appraised value of the estate as ascertained by the appraisal and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid that have been allowed by the executor or administrator and approved by the county judge, or that have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may be found to be due him by the judgment of the court on his exhibit. [Id.]

Art. 3386. [2019] [1966] **Bond shall be filed and recorded and order of court thereon.**—When the bond provided for in the preceding article has been given and approved, it shall be filed and recorded in the minutes of the court; and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith to such person or persons the portion or portions of such estate to which he or they are entitled. [Id.]

Art. 3387. [2020] [1967] **Partition may be had of estate.**—Any of the persons so entitled to any portion of the estate may, on application in writing to the court, cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. [Id.]

Art. 3388. [2021] [1968] **Lien on property in hands of distributees.**—A lien shall exist on all of said estate in the hands of the distributees, and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. [Id.]

Art. 3389. [2022] [1969] **Creditor whose claim has been allowed, etc., may sue on bond.**—Any creditor of such estate whose claim is yet unpaid, and which claim has been allowed by the executor or administrator previous to the filing of such obligation, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. [Id.]

Art. 3390. [2023] [1970] **Other creditor may sue and recover, to what extent.**—Any other creditor of such estate whose claim is not barred by the laws of limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. [Id.]

Art. 3391. [2024] [1971] **Creditor may also sue distributee.**—Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate; but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. [Id.]

Art. 3392. [2025] [1972] **Order discharging executor or administrator and closing estate.**—When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executor or administrator and declaring the administration closed.

CHAPTER FIFTEEN.

REMOVAL OF EXECUTORS AND ADMINISTRATORS.

	Article.		Article.
In what cases may be removed without notice	3393	|	Citation need not be served, when.....
In what cases may be removed with notice	3394		Order of removal shall set forth cause..
			3395 3396

Article 3393. [2026] [1973] **In what cases may be removed without notice.**—Executors and administrators may be removed by the county judge without notice, at a regular term of the court, by an order entered on the minutes of the court, in the following cases:

1. When they neglect to qualify in the manner and within the time required in this title.
2. When they neglect to return to the court an inventory and appraisement and list of claims of the estate, in the manner and within the time required in this title.
3. When they have been required to give a new bond and neglect to do so within the time prescribed by the court.
4. When they absent themselves from the state for a period of three months at one time, without permission of the court.
5. In such other cases as are specially provided for in this title. [Act Aug. 9, 1876, p. 99, sec. 26.]

Art. 3394. [2027] [1974] **In what cases may be removed with notice.**—Executors and administrators may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint at a regular term of the court, in the following cases:

1. When there shall appear sufficient grounds to believe that they have misapplied, embezzled or removed from the state the property, or any part thereof, committed to their charge, or that they are about to misapply, embezzle or remove from the state any of such property.
2. When it is proved that they have been guilty of gross neglect, or mismanagement in the performance of their duties as such executors or administrators.
3. When they fail to obey any order of the court consistent with this title, made in relation to the estate committed to their charge.
4. When an executor or administrator becomes of unsound mind, or from any other cause is incapable of performing the duties of his trust.
5. When they fail to make an annual exhibit fully showing the condition of the estate they represent, or fail to make to the court any exhibit they are required to make by law.

6. When they fail to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath. [Acts of 1881, p. 31.]

Art. 3395. [2028] [1975] **Citation need not be served, when.**—In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the state, or is eluding the process of the court, the motion or complaint may be heard, though the citation be not served. [Id. p. 99, sec. 27.]

Art. 3396. [2029] [1976] **Order of removal shall set forth cause.**—In all cases when an executor or administrator is removed, an order to that effect shall be entered upon the minutes of the court, which order shall set forth the cause of such removal. [Id. P. D. 5734.]

CHAPTER SIXTEEN.

RESIGNATION OF EXECUTORS AND ADMINISTRATORS.

	Article.		Article.
Application to resign must be accom- panied by exhibit and account.....	3397	Exhibit and account shall be examined, etc., by court.....	3400
Citation in such case.....	3398	Order approving exhibit and account....	3401
How served	3399	Order of discharge.....	3402
		Shall not be discharged until, etc.....	3403

Article 3397. [2030] [1977] **Application to resign must be accompanied by exhibit and account.**—If at any time an executor or administrator shall wish to resign the administration of the estate that has been committed to his charge, he shall present to the court in which the administration is pending an application in writing, stating such wish, and shall accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account; which exhibit and account shall both be verified by affidavit. [Act Aug. 9, 1876, p. 100, sec. 29.]

Art. 3398. [2031] [1978] **Citation in such cases.**—Upon the filing of such application, exhibit and account, it shall be the duty of the clerk to make out a citation returnable to some regular term of the court; which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the said exhibit and account if they see proper. [Id.]

Art. 3399. [2032] [1979] **How served.**—Such citation shall be published for at least twenty days in some newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations. [Id.]

Art. 3400. [2033] [1980] **Exhibit and account shall be examined, etc., by the court.**—At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, restate such exhibit and account, and shall audit and settle the same. [Id.]

Art. 3401. [2034] [1981] **Order approving exhibit and account.**—If, upon such examination and settlement, it shall appear that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order upon the minutes, approving such exhibit and account, and requiring such executor or administrator to deliver the estate, if there be any remaining in his possession, to some person qualified by law to receive it. [Id.]

Art. 3402. [2035] [1982] **Order of discharge.**—When such executor or administrator has delivered the estate in accordance with the order of the court to some person qualified to receive it, and has produced to the court satisfactory evidence of that fact, the court shall enter an order upon the minutes, either in term time or in vacation, accepting the resignation of such executor or administrator and discharging him from such trust. [Id.]

Art. 3403. [2036] [1983] **Shall not be discharged until, etc.**—No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

CHAPTER SEVENTEEN.

ALLOWANCE TO WIDOW AND MINOR CHILDREN.

	Article.		Article.
Allowance to widow and minor children		Widow or guardian may take property	
to be made, when.....	3404	for allowance	3409
Amount of allowance, and with reference		Sale shall be ordered to raise allowance,	
to what time.....	3405	when	3410
Allowance shall not be made, when.....	3406	Allowance to be paid in preference to	
Order fixing allowance.....	3407	other debts or charges, except, etc....	3411
To whom allowance shall be paid.....	3408	Allowance apportioned, how.....	3412

Article 3404. [2037] [1984] **Allowance to widow and minor children to be made, when.**—At the first regular term of the court after the original grant of letters testamentary or of administration, or at any subsequent term thereafter, within twelve months after the grant of such original letters, it shall be the duty of the court to fix the amount of an allowance for the support of the widow and minor children of the deceased. [Act Aug. 9, 1876, p. 105, sec. 56.]

Art. 3405. [2038] [1985] **Amount of allowance, and with reference to what time.**—Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for the term of one year from the time of the death of the testator or intestate; and such allowance to be fixed with regard to the facts existing during the first year after the death of such testator or intestate; provided, that in no case shall such allowance exceed one thousand dollars. [Acts of 1887, p. 73.]

Art. 3406. [2039] [1986] **Allowance shall not be made, when.**—No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance. [Id. Act 1876, p. 105, sec. 56.]

Art. 3407. [2040] [1987] **Order fixing allowance.**—When an allowance has been fixed, an order shall be entered upon the minutes stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Art. 3408. [2041] [1988] **To whom allowance shall be paid.**—The executor or administrator shall pay such allowance—

1. To the widow, if there be one, for the use of herself and the minor children, if such children be hers.

2. If the widow is not the mother of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

Art. 3409. [2042] [1989] **Widow or guardian may take property for allowance.**—The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement returns. [Id.]

Art. 3410. [2043] [1990] **Sale shall be ordered to raise allowance, when.**—If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then it shall be the duty of the county judge, so soon as the inventory and appraisement and list of claims are returned and approved, to order a sale of so much of the estate

for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3411. [2044] [1991] **Allowance to be paid in preference to other debts or charges, except, etc.**—The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except the funeral expenses and expenses of last sickness of deceased, which claims shall be first paid, if presented within the time prescribed by law entitling them to such preference.

Art. 3412. [2045] [1992] **Allowance apportioned, how.**—The allowance provided for in this chapter shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.
2. If there be a widow and no minor child or children, the widow shall receive the whole.
3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

CHAPTER EIGHTEEN.

SETTING APART THE HOMESTEAD AND OTHER EXEMPT PROPERTY TO WIDOW AND CHILDREN.

	Article.		Article.
Court shall set apart exempt property, etc.	3413	Exempt property, etc., not to be considered in ascertaining solvency.....	3423
Allowance in lieu of exempt articles....	3414	When homestead shall not be partitioned	3424
Such allowance shall not exceed, what....	3415	When homestead may be partitioned....	3425
To whom the exempt property shall be delivered	3416	No distinction between separate and community homestead	3426
Allowance shall be paid, how.....	3417	Homestead not liable for debts, except, etc.	3427
To whom allowance shall be paid.....	3418	Other exempt property, liable for what debts	3428
Sale to raise allowance, when.....	3419	Homestead rights of surviving husband.....	3429
Property upon which liens exist shall not be set aside, etc.....	3420		
When estate proves to be solvent.....	3421		
When estate proves to be insolvent.....	3422		

Article 3413. [2046] [1993] **Court shall set apart exempt property, etc.**—At the first term of the court after an inventory, appraisal and list of claims have been returned, it shall be the duty of the court, by an order entered upon the minutes, to set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the state, with the exception of any exemption of one year's supply of provisions. [Act Aug. 9, 1876, p. 106, sec. 57.]

Art. 3414. [2047] [1994] **Allowance in lieu of exempt articles.**—In case there should not be among the effects of the deceased all or any of the specific articles so exempted, it shall be the duty of the court to make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed. [Id.]

Art. 3415. [2048] [1995] **Such allowance shall not exceed, what.**—The allowance in lieu of a homestead shall in no case exceed five thousand dollars, and the allowance for other exempted property shall in no case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter. [Id.]

Art. 3416. [2049] [1996] **To whom the exempt property shall be delivered.**—The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

2. If there be children and no widow, such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.

3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or may be equally divided between them.

4. In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

Art. 3417. [2050] [1997] **Allowance shall be paid, how.**—The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisement, or a part thereof, or both, as they may select. [Id.]

Art. 3418. [2051] [1998] **To whom allowance shall be paid.**—Such allowance shall be paid by the executor or administrator in the following manner:

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow, the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children, the whole to be paid to such widow if she be the mother of such children, but, if she be not the mother of such children, one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them. [Id.]

Art. 3419. [2052] [1999] **Sale to raise allowance, when.**—If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, it shall be the duty of the county judge, on the application in writing of such widow and children, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3420. [2053] [2000] **Property upon which liens exist shall not be set aside, etc.**—No property upon which liens have been given by the husband and wife, acknowledged in a manner legally binding upon the wife to secure creditors, or upon which a vendor's lien exists, shall be set aside to the widow or children as exempted property or appropriated to make up the allowances made in lieu of exempted property, until the debts secured by such liens are first discharged. [Id.]

Art. 3421. [2054] [2001] **When estate proves to be solvent.**—If, upon a final settlement of such estate, it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children, or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate. [Id.]

Art. 3422. [2055] [2002] **When estate proves to be insolvent.**—Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate, except as herein after provided. [Id.]

Art. 3423. [2056] [2003] **Exempt property, etc., not to be considered in ascertaining solvency, etc.**—In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

Art. 3424. [2057] [2004] **When homestead shall not be partitioned.**—The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same. [Const., art. 16, sec. 52.]

Art. 3425. [2058] [2005] **When homestead may be partitioned.**—When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Art. 3426. [2059] [2006] **No distinction between separate and community homestead.**—The homestead rights of the widow and children of deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

Art. 3427. [2060] [2007] **Homestead not liable for debts, except, etc.**—The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead. [Const., art. 16, sec. 50.]

Art. 3428. [2061] [2008] **Other exempt property, liable for what debts.**—The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of deceased, when presented within the time prescribed therefor; but such property shall not be liable for any other debts of the estate.

Art. 3429. [2062] [2009] **Homestead rights of surviving husband.**—On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead. [Const., art. 16, sec. 51.]

CHAPTER NINETEEN.

PRESENTMENT, ETC., OF CLAIMS AGAINST AN ESTATE.

	Article.		Article.
Notice of issuance of letters shall be given	3430	When claim is allowed shall be presented for approval, etc.	3445
Copy of notice to be filed and recorded.	3431	Claims shall be acted upon by the court.	3445
Same subject	3432	Action of the court upon claims.	3447
One notice sufficient.	3433	Any person interested in estate may oppose approval of a claim.	3448
Penalty for neglect to give notice.	3434	When claim has been rejected the owner may bring suit.	3449
Claims shall be postponed if not presented in twelve months.	3435	Judgment establishing claim shall be filed, etc.	3450
Claims for funeral expenses and of last sickness to be presented in sixty days	3435	Costs of suit to be adjudged against claimant, when	3451
Time of absence of executor, etc., not to be computed	3437	Action of court on claim a judgment, etc.	3452
Estate charged with joint obligation.	3438	Claim of executor or administrator.	3453
Affidavit to claim.	3439	Action of court thereon, etc.	3454
Claim lost or destroyed may be presented, how	3440	Provisions of this chapter do not apply to certain claims.	3455
Affidavit made before whom.	3441	Claim shall not be allowed after order for partition	3456
Allowance or approval without affidavit, void.	3442	Judgment shall not be rendered in favor of claim which has not been presented and rejected	3457
Memorandum of allowance of rejection.	3443		
Failure to indorse or annex memorandum	3444		

Article 3430. [2063] [2010] **Notice of issuance of letters shall be given.**—It shall be the duty of an executor or administrator, within one month after receiving letters, to publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate to present the same within the time prescribed by law; which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and postoffice address of such executor or administrator, and shall be published once a week for four successive weeks. [Act Aug. 9, 1876, p. 106, sec. 58.]

Art. 3431. [2064] [2011] **Copy of notice, etc., to be filed and recorded.**—A copy of such printed notice, together with the affidavit of the publisher, sworn to and subscribed before some officer authorized to administer oaths, that it was published once a week for four successive weeks, shall be filed and recorded in the court from which the letters were issued, and a certified copy thereof, or of such record, may be given in evidence in any court in any action by or against the executor or administrator. [Id.]

Art. 3432. [2065] [2012] **Same subject.**—When no newspaper is printed in the county, the notice required shall be posted at the court house door of the county where the letters were issued, for four successive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded, and shall be evidence as provided in the preceding article in the case of a printed notice. [Id.]

Art. 3433. [2066] [2013] **One notice sufficient.**—If such notice has been given by a former executor or administrator, a subsequent executor or administrator need not give it; and such notice given by one executor or administrator, where several are acting as such, shall be sufficient for all.

Art. 3434. [2067] [2014] **Penalty for neglect to give notice.**—If the executor or administrator fails to give such notice or cause the same to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect, unless it appear that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate, after being cited to answer such complaint. [Id. p. 107, sec. 60.]

Art. 3435. [2068] [2015] **Claims shall be postponed, if not presented in twelve months.**—Every claim for money against a testator or intestate shall

be presented to the executor or administrator within twelve months after the original grant of letters testamentary or of administration, or the payment thereof shall be postponed until the claims which have been presented within said twelve months and allowed by the executor or administrator and approved by the county judge have been first entirely paid.

Art. 3436. [2069] [2016] **Claims for funeral expenses and of last sickness to be presented in sixty days, or, etc.**—Claims for funeral expenses and expenses of last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, or the exempted property set apart to the widow and children, or allowances made them under the provisions of chapters seventeen and eighteen of this title, shall no longer be liable to the payment of such claims, or any part thereof.

Art. 3437. [2070] [2017] **Time of absence of executor, etc., not to be computed.**—If the executor or administrator absent himself from the state, the time of such absence shall not be computed in estimating the twelve months or sixty days' time mentioned in the two preceding articles. [Id. sec. 59.]

Art. 3438. [2071] **Estate charged with joint obligation.**—When two or more persons are jointly bound for the payment of a debt or for any other purpose, upon the death of either of said persons so bound, his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly. [Acts of 1887, p. 17.]

Art. 3439. [2072] [2018] **Affidavit to claim.**—No executor or administrator shall allow any claim for money against his testator or intestate, nor shall any county judge approve the same, unless such claim is accompanied by an affidavit in writing that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit. [Acts of 1876, p. 106, sec. 61.]

Art. 3440. [2073] [2019] **Claim lost or destroyed may be presented, how.**—If the claim has been lost or destroyed, the claimant, or some one for him, may make an affidavit to the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; but, in such case, before such claim shall be approved, it must be proved by disinterested testimony taken in open court, or by deposition.

Art. 3441. [2074] [2020] **Affidavit made before whom.**—The affidavit may be made before any officer authorized to administer oaths and give certificates thereof. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 3442. [2075] [2021] **Allowance or approval without affidavit, void.**—If any such claim is allowed or approved without such affidavit as is required by the preceding articles of this chapter, such allowance or approval shall be of no force or effect. [Id. sec. 61.]

Art. 3443. [2076] [2022] **Memorandum of allowance or rejection.**—When any claim for money against an estate shall be presented to the executor or administrator, if the same be properly authenticated in the manner required by this chapter, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be. [Id. sec. 63.]

Art. 3444. [2077] [2023] **Failure to indorse or annex memorandum.**—When a claim for money against the estate of a deceased person shall be presented to the executor or administrator for his action, and he shall fail to indorse thereon, or annex thereto, a memorandum in writing as required by the last preceding article, such failure shall be deemed equivalent to a rejection

of the claim, and shall authorize the claimant to bring a suit for the establishment thereof in like manner as if such claim had been so rejected; and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof being made of such failure. [Id. p. 108, sec. 64.]

Art. 3445. [2078] [2024] **When claim is allowed, shall be presented for approval.**—If a claim, or a part thereof, be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the clerk of the county court of the proper county, who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

Art. 3446. [2079] [2025] **Claim shall be acted upon by the court.**—All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, as to the court may seem right, and they shall also at the same time be classified by the court.

Art. 3447. [2080] [2026] **Action of the court upon claims.**—When the court has acted upon a claim its action shall be entered upon the claim docket and the date thereof, and the county judge shall also indorse upon such claim or annex thereto a memorandum in writing, signed by him officially and dated, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

Art. 3448. [2081] [2027] **Any person interested in estate may oppose the approval of a claim.**—Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same, or any part thereof, in writing, and in such case the court shall hear proof and render such judgment as the facts and the law may require.

Art. 3449. [2082] [2028] **When claim has been rejected the owner may bring suit.**—When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring a suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same; and, on the trial of such suit, the memorandum in writing of the executor or administrator indorsed on, or annexed to, such claim may be given in evidence to prove the facts therein stated, without proof of the handwriting of such executor or administrator, unless the same be denied under oath. [Id. sec. 63.]

Art. 3450. [2083] [2029] **Judgment establishing claim shall be filed, etc.**—No execution shall be issued on a judgment obtained in any such suit, but a certified copy of such judgment shall be filed with the clerk of the county court where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge. [Id.]

Art. 3451. [2084] [2030] **Cost of suit to be adjudged against claimant, when.**—In any suit that may be brought by the holder of a claim to establish the same after rejection, if he fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit. [Id. p. 107, sec. 62.]

Art. 3452. [2085] [2031] **Action of court on claim a judgment, etc.**—The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

Art. 3453. [2086] [2032] **Claim of executor or administrator.**—The provisions of this chapter respecting the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but any such executor or administrator holding any such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified as such executor or administrator, or such claim shall be barred. [Id. p. 110. sec. 71.]

Art. 3454. [2087] [2033] **Action of the court thereon, etc.**—When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Art. 3455. [2088] [2034] **Provisions of this chapter do not apply to certain claims.**—The provisions of this chapter respecting the presentation of claims shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted. [Id. sec. 70.]

Art. 3456. [2089] [2035] **Claim shall not be allowed after order for partition.**—No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of any such claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees or legatees of the estate, but they shall not be bound beyond the value of the property they may receive in such partition and distribution. [Id. sec. 69.]

Art. 3457. [2090] [2036] **Judgment shall not be rendered in favor of claim which has not been presented and rejected.**—No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the executor or administrator, and rejected by such executor or administrator, either in whole or in part. [P. D. 5683.]

CHAPTER TWENTY.

CLASSIFICATION AND PAYMENT OF CLAIMS.

Article.	Article
Classification of claims.....	Order for the payment of claims in full.....
Claims to be paid pro rata, when.....	Order for the payment of claims pro
Order of payment of claims.....	rata
Claim shall not be paid, unless, etc.....	Claims presented after twelve months,
Owner of claim may obtain order for pay- ment, when	paid when
Proceeds of sale of property on which there is a mortgage or other lien.....	Exhibit may be required, when.....
Exhibit of condition of estate after twelve months.....	Liability of executor, etc., for failure to pay money, etc.....
Penalty for failure to return exhibit....	Executor or administrator shall not pur- chase claim against estate.....

Article 3458. [2091] [2037] **Classification of claims.**—The claims against an estate shall be classed and have priority of payment as follows:

1. Funeral expenses and expenses of last sickness.
2. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.
3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and, when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such claims secured by mortgage or lien further than regards the property subject to such mortgage or other lien.

4. All claims legally exhibited within one year after the original grant of letters testamentary or of administration.

5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration. [Act Aug. 9, 1876, p. 115, sec. 88. P. D. 5674.]

Art. 3459. [2092] [2038] **Claims to be paid pro rata, when.**—Where there is a deficiency of assets to pay all claims of the same class, they shall be paid pro rata; and no executor or administrator shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with their pro rata amount of the funds of the estate that have come to hand. [Id. P. D. 5674.]

Art. 3460. [2093] [2039] **Order of payment of claims.**—Executors and administrators, whenever they have funds in their hands belonging to the estate they represent, shall pay—

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.

2. Allowances made to the widow and children, or either.

3. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.

4. Other claims against the estate in the order of their classification. [Id. sec. 89.]

Art. 3461. [2094] [2040] **Claim shall not be paid, unless, etc.**—No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Art. 3462. [2095] [2041] **Owner of claim may obtain order for payment, when.**—Whenever an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or any part thereof, against the estate, and fails to make such payment when required to do so by the owner of such claim, such owner may obtain an order of the county court, at a regular term

thereof, directing such payment to be made, upon making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he fails to make such payment; provided, such executor or administrator shall have first been cited on the complaint in writing of such claimant, filed with the clerk, to appear and show cause why such order should not be made. [Id.]

Art. 3463. [2096] [2042] **Proceeds of sale of property on which there is a mortgage or other lien.**—Whenever any executor or administrator shall have in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, it shall be the duty of such executor or administrator, within twelve months after the grant of letters testamentary or of administration, to pay over such proceeds, or so much thereof as may not be required for the payment of any debts against the estate that have a preference over such mortgage or other lien, to the creditor or creditors having a right thereto; and, if any executor or administrator shall fail so to do, such creditor or creditors, upon proof thereof, may obtain an order from the county court, in like manner as is provided in the preceding article, directing such payment to be made. [Id. p. 116, sec. 90.]

Art. 3464. [2097] [2043] **Exhibit of condition of estate after twelve months.**—At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, it shall be the duty of the executor or administrator to return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after the said original grant of letters testamentary or of administration, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, also setting forth fully the condition of the estate. [Id. p. 109, sec. 66.]

Art. 3465. [2098] [2044] **Penalty for failure to return exhibit.**—Should such executor or administrator fail to return the exhibit as required by the preceding article, any person interested in the estate may, upon complaint in writing, filed with the clerk, cause such executor or administrator to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure; and, upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars. [Id.]

Art. 3466. [2099] [2045] **Order for the payment of claims in full.**—Upon the return of such exhibit, if it shall appear therefrom, or from any other evidence, that the estate is solvent, taking into consideration as well the claims presented before the expiration of twelve months from said granting of letters testamentary or of administration on which suit has been, or can yet be, instituted, as those so presented, allowed and approved, or established by judgment, and that the executor or administrator has in his hands sufficient funds for the payment of all the aforesaid claims, it shall be the duty of the county judge to order immediate payment to be made of all claims allowed and approved or established by judgment. [Id. p. 116, sec. 91.]

Art. 3467. [2100] [2046] **Order for payment of claims pro rata.**—If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate be insolvent and the executor or administrator has any funds in his hands, it shall be the duty of the county judge to order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established.

taking into consideration also the claims that were presented within the twelve months, and in suit or on which suit may yet be instituted. [Id.]

Art. 3468. [2101] [2047] **Claims presented after twelve months, paid when.**—Claims for money against the estate of a deceased person, which may be presented to the executor or administrator after the expiration of twelve months from the original grant of letters testamentary or of administration, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established; and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter for creditors to obtain payment. [Id. p. 116, sec. 92.]

Art. 3469. [2102] [2048] **Exhibit may be required, when, etc.**—At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath, to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, it shall be the duty of the county judge to order the same to be paid out to them according to the provisions of this chapter; or any executor or administrator may voluntarily present such exhibit to the court, and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made. [Id. sec. 93.]

Art. 3470. [2103] [2049] **Liability of executor, etc., for failure to pay money, etc.**—In all cases where an order shall be made by any county judge, under the provisions of this title, for an executor or administrator to pay over money to any person other than the treasurer of the state, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay at the rate of five per cent per month for each and every month he shall so neglect to make such payment after the same was so demanded, such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages. [Id. p. 119, sec. 101.]

Art. 3471. [2104] [2050] **Executor or administrator shall not purchase claim against estate.**—It shall not be lawful for any executor or administrator to purchase for his own use, either directly or indirectly, any claim against the estate he represents; and, should he do so, any person interested in the estate may, upon complaint in writing, cause him to be cited to appear before the court; and, upon proof of such complaint, the court shall enter an order upon the minutes cancelling the claim so purchased; and such executor or administrator shall not be allowed to receive from the estate any portion of such claim. [Id. p. 114, sec. 86.]

CHAPTER TWENTY-ONE.

HIRING AND RENTING.

	Article.		Article.
Executor, etc., may hire out or rent prop-		Note with security for hire or rent shall	
erty of estate.....	3472	be taken.....	3475
May obtain order of the court to hire out		Report of hiring or renting.....	3476
or rent the same.....	3473	Action of court on report.....	3477
When, without order of court, responsi-		Person interested in estate may file com-	
ble, etc.....	3474	plaint to have property hired or rented.	3478

Article 3472. [2105] [2051] **Executor, etc., may hire out or rent property of estate.**—When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or on credit, as he may deem most advantageous to the estate. [Act Aug. 9, 1876, p. 104, sec. 51.]

Art. 3473. [2106] [2052] **May obtain order of the court to hire out or rent same.**—Should such executor or administrator prefer not to act without an order of the court, he may file an application in writing with the clerk of the county court, setting forth the property which he thinks should be hired or rented; and, should the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or on credit, and, if on credit, the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

Art. 3474. [2107] [2053] **When, without order of court, responsible, etc.**—When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Art. 3475. [2108] [2054] **Note with security for hire or rent shall be taken.**—When property is hired or rented on a credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to the executor or administrator a note with good personal security for the amount of such hire or rent; and any executor or administrator, who shall deliver possession of any property so hired or rented on a credit without first receiving such note with good personal security, shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

Art. 3476. [2109] [2055] **Report of hiring or renting.**—When any property of the estate has been hired or rented, the executor or administrator shall, within thirty days after such hiring or renting, return to the court a report in writing, signed by him and sworn to before some officer authorized to administer oaths, stating—

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on a credit, and, if on a credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

Art. 3477. [2110] [2056] **Action of court on report.**—When any such report of hiring or renting is returned to the court, it shall be filed, and, at a regular term of the court thereafter, it shall be examined, and, if found to

be just and reasonable, it shall be approved and confirmed by order of the court entered upon the minutes, and shall be recorded in the minutes; but, if disapproved by the court, an order to that effect shall be entered, and also adjudging against such executor or administrator the reasonable value of the hire or rent of such property, where it appears that, by reason of any fault of such executor or administrator, such property has not been hired or rented for its reasonable value.

Art. 3478. [2111] [2057] **Person interested in estate may file complaint to have property hired or rented.**—Any person interested in an estate may, upon complaint in writing filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem most for the interest of the estate.

CHAPTER TWENTY-TWO.

SALES.

Article.	Article.
Advantage of estate to be considered in ordering sale	Real estate shall be sold on twelve months' credit, except, etc.
No sale without order of court.	May be sold for cash, etc., when.
Sale may be on what term.	Sale of real estate may be private, when.
Sales at public auction of personal property same as under execution.	Twenty days' notice of sale to be given.
Purchaser shall give note and security, when, etc.	What notice of sale shall state.
Property liable to perish or be wasted shall be sold.	Time and place of sale.
Sale of crops.	Sale may be ordered to be made in county where land is situated.
Duty of executor, etc., to sell personal property, etc.	Order of court for sale of property.
Sale of stock.	Any person interested in an estate may apply for an order of sale.
Order for sale of property mortgaged, etc.	Any person interested in an estate may oppose an application for sale.
Duty of executor, etc., to apply for sale of real estate, when.	Executor or administrator shall not purchase property of the estate.
Requisites of such application.	Bidder failing to comply with bid shall be liable, etc.
Citation in such case.	Public sale may be continued from day to day.
Posting and return of citation.	Notice of private sale need not be given, unless, etc.
Action of the court on application.	

Article 3479. [2112] [2058] **Advantage of estate to be considered in ordering sale.**—All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold. [Act Aug. 9, 1876, p. 112, sec. 76.]

Art. 3480. [2113] [2059] **No sale without order of court.**—No sale of any property belonging to an estate shall be made by an executor or administrator without an order of the court authorizing the same.

Art. 3481. [2114] [2060] **Sale may be on what terms.**—The court may order a sale of property, to be made for cash or on a credit, at public auction or privately, as it may consider most to the advantage of the estate, except when herein otherwise specially provided.

Art. 3482. [2115] [2061] **Sales at public auction same as under execution.**—All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided. [Id. p. 130, sec. 148.]

Art. 3483. [2116] [2062] **Purchaser shall give note and security, when.**—When personal property is sold on a credit, it shall not be for a longer time

than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Art. 3484. [2117] [2063] **Property liable to perish or be wasted shall be sold.**—Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes of the court, either in term time or in vacation, may direct the sale of such property, or any part thereof. [Id. p. 111, sec. 74.]

Art. 3485. [2118] [2064] **Sale of crops.**—The county judge may, either in term time or in vacation, by an order entered on the minutes of the court, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold at private sale, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit; provided, that no crops shall be sold under any such order at a less price than their fair market value. [Id. p. 112, sec. 75.]

Art. 3486. [2119] [2065] **Duty of executor, etc., to sell personal property.**—The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except such bonds, securities or other personal property as may, in the opinion of the county judge, be of a character not liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties for the purchase money. [Id. p. 130, sec. 145.]

Art. 3487. [2120] [2066] **Sale of stock.**—If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money; and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property. [Id. p. 131, sec. 150.]

Art. 3488. [2121] [2067] **Order for sale of property mortgaged, etc.**—Any creditor of a deceased person holding a claim secured by mortgage or other lien, which claim has been allowed and approved or established by suit, may obtain at a regular term of the court, from the county court of the county where the letters testamentary or of administration were granted, an order for the sale of the property upon which he has such mortgage or other lien, or so much of said property as may be required to satisfy such claim, by making his application in writing and having such executor or administrator cited to appear and answer the same. And, in case the mortgage or other lien shall be upon real property, the same notice shall be given of said application as is required to obtain an order for the sale of such property. [Id. p. 112, sec. 77.]

Art. 3489. [2122] [2068] **Duty of executor, etc., to apply for sale of real estate, when.**—It shall be the duty of the executor or administrator, so soon as he shall ascertain that it is necessary, to apply to the county judge, at some regular term of the court, for an order to sell so much of the real estate belonging to the estate he represents as he shall think to be sufficient to pay the local charges and claims against the estate. [Id. p. 111, sec. 72.]

Art. 3490. [2123] [2069] **Requisites of such application.**—Such application shall be in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in writing, verified by the affidavit of such executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit, or that have been rejected and may yet be established, and the amount due, or claimed to be due, on each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims. [Id.]

Art. 3491. [2124] [2070] **Citation in such case.**—Upon the filing of such application and exhibit, it shall be the duty of the clerk to issue a general citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so. [Id.]

Art. 3492. [2125] [2071] **Posting and return of citation.**—Such citation shall be posted in the manner required for other citations for at least twenty days before the first day of the term of the court at which such application is to be heard, and shall be returned, and the citation and return recorded, in like manner as other citations and returns thereon. [Acts 1876, p. 112. Acts 1909, S. S. p. 336.]

Art. 3493. [2126] [2072] **Action of the court on application.**—Upon the return of such citation served, it shall be the duty of the court at a regular term thereof to hear such application and to hear evidence in favor of or against the same, and, if satisfied that a necessity exists for such sale, to order the same to be made; but if not satisfied that a necessity exists for such sale, or if satisfied that there is other property of the estate that it would be more to the interest of the estate to have sold than the property sought to be sold, the application shall be refused by an order to that effect entered upon the minutes. [Act Aug. 1876, p. 112, sec. 76.]

Art. 3494. [2127] [2073] **Real estate shall be sold on twelve months' credit, except, etc.**—All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law. [Id. p. 112, sec. 80.]

Art. 3495. [2128] [2074] **May be sold for cash, etc., when.**—Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount, or any part of the amount, of any allowance made to the widow and children, or either, under the provisions of this title.

2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.

3. When such sale is made in accordance with directions contained in a will. [Id.]

Art. 3496. [2129] [2075] **Sale of real estate may be private, when.**—When it shall appear to be for the interest of the estate, the county judge may order a sale of real estate to be made for cash or on a credit of not more than twelve months, as he may direct, at private sale; but, in all such cases, before the county judge shall order a confirmation of the sale, it must be shown, in addition to the other requirements of this chapter, that the sale was made for a fair price. [Id. p. 112, sec. 81.]

Art. 3497. [2130] [2076] **Twenty days' notice of sale to be given.**—All public sales of real estate shall be advertised at least twenty days before the day of sale. The manner of advertising shall be by posting a notice of such sale at the court house of the county where the land is to be sold, and at two

other public places in the county where the sale is to be made, but not in the same city or town. [Id. p. 113, sec. 83.]

Art. 3498. [2131] [2077] **What notice of sale shall state.**—Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold, and shall be signed by the executor or administrator.

Art. 3499. [2132] [2078] **Time and place of sale.**—All public sales of real estate should be made in the county where the letters testamentary or of administration were granted, at the court house door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of ten a. m. and four p. m.

Art. 3500. [2133] [2079] **Sale may be ordered to be made in county where land is situated.**—When the county judge shall deem it for the advantage of the estate, he may order the sale of real estate to be made in the county where it is situated; and, in all cases where such public sale is ordered to be made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties. [Id. p. 113, sec. 83.]

Art. 3501. [2134] [2080] **Order of court for sale of property.**—Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of such sale. [Id. p. 112, sec. 79.]

Art. 3502. [2135] [2081] **Any person interested in estate may apply for an order of sale.**—When any executor or administrator shall neglect to apply for an order to sell sufficient property of the estate he represents to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon application in writing, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate as required in article 3464, and show cause why a sale of the property of the estate should not be ordered; and, upon the hearing of such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered as in other cases. [Id. p. 111, sec. 73.]

Art. 3503. [2136] [2082] **Any person interested in estate may oppose the application for sale.**—When an application is made to the county judge for an order to sell any property belonging to the estate of a deceased person, any person interested in such estate may, at any time before an order is made thereon, file his opposition in writing to such sale, or may make application in writing for sale of other property of the estate; and, upon hearing of the matter in controversy, the county judge shall make such order thereon as the circumstances of the case may require, having due regard to the provisions of this title. [Id. p. 112, sec. 78.]

Art. 3504. [2137] [2083] **Executor or administrator shall not purchase property of the estate.**—It shall not be lawful for any executor or administrator to take the estate of his testator or intestate, or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and, if any executor or administrator should either, directly or indirectly, become the purchaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the complaint in writing of any person interested in such estate, and service of citation upon such executor or administrator, and, upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes of the court. [Id. p. 114, sec. 86.]

Art. 3505. [2138] [2084] **Bidder failing to comply with his bid shall be liable, etc.**—When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be readvertised and sold, rented or hired without any further order of the court for that purpose; and the person so failing to comply shall be liable to pay such executor or administrator for the use of the estate ten per cent on the amount of his bid, and also the deficiency in price on the second sale, renting or hiring, if any such deficiency there be; to be recovered by such executor or administrator by suit in any court of the county where such sale, hiring or renting was made, having jurisdiction of the amount claimed. [Id. p. 113, sec. 84.]

Art. 3506. [2139] [2085] **Public sale may be continued from day to day.**—Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. [Id. sec. 83.]

Art. 3507. [2140] [2086] **Notice of private sale need not be given, unless, etc.**—When property is ordered by the court to be sold at private sale, no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER TWENTY-THREE.

REPORT OF SALES, ETC.

Article.	Article.
Sales shall be reported in thirty days.....3508	Conveyance of real estate.....3514
Requisites of report of sale.....3509	Conveyance of real estate shall not be delivered, until, etc.....3515
Report may be made, when.....3510	Penalty for neglect to take note and mortgage.....3516
Action of court on report of sale.....3511	Note holds vendor's lien.....3517
Sale shall be set aside, when.....3512	
Conveyance of property sold.....3513	

Article 3508. [2141] [2087] **Sales shall be reported in thirty days.**—All sales of property of an estate shall be reported to the court ordering the same within thirty days after the same are made. [Act Aug. 9, 1876, p. 113, sec. 85.]

Art. 3509. [2142] [2088] **Requisites of report of sale.**—The report of sale shall be in writing, and shall be subscribed and sworn to by the executor or administrator before some officer authorized to administer oaths, and shall show—

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.
6. The terms of the sale, and whether at public auction or made privately.

Art. 3510. [2143] [2089] **Report may be made, when, etc.**—The report of sale may be made in term time or in vacation, and, when returned, shall be filed by the clerk, and the filing thereof noted upon the judge's docket.

Art. 3511. [2144] [2090] **Action of court on report of sale.**—At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the county judge, at a regular term of his court, to inquire into the manner in which the sale was made, and to hear evidence in support of or against such report: and, if satisfied that such sale was fairly made, and in

conformity with law, he shall enter upon the minutes of the court a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property to be made by the executor or administrator to the purchaser upon compliance by such purchaser with the terms of sale. [Act Aug. 9, 1876, p. 113, sec. 85.]

Art. 3512. [2145] [2091] **Sale shall be set aside, when.**—If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary. [Id.]

Art. 3513. [2146] [2091a] **Conveyance of property sold.**—After a sale has been confirmed by a decree of the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of personal property, no conveyance shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate to the property sold in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making the sale. [Id. p. 113, sec. 85.]

Art. 3514. [2147] [2092] **Conveyance of real estate.**—If the property sold be real estate, the conveyance shall be by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made; and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. [Id.]

Art. 3515. [2148] [2093] **Conveyance of real estate shall not be delivered until, etc.**—No conveyance of real estate sold shall be executed and delivered by the executor or administrator to the purchaser until the terms of sale have been complied with by such purchaser; and, when such sale has been made on a credit, it shall be the duty of the executor or administrator, before delivering a conveyance of the property to the purchaser, to take from such purchaser a note with good personal security, together with a mortgage containing power of sale upon the property sold to secure the payment of the purchase money, and to file such mortgage for record in the county where such real estate is situated. [Id. p. 114, sec. 87.]

Art. 3516. [2149] [2094] **Penalty for neglect to take note and mortgage.**—Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of such deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale. [Id.]

Art. 3517. [2150] [2095] **Note holds vendor's lien.**—All notes executed for the purchase money of real estate purchased under the provisions of this chapter shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived. [Id.]

CHAPTER TWENTY-FOUR.

ENFORCING SPECIFIC PERFORMANCE OF CONTRACTS.

	Article.		Article.
Proceedings to enforce specific perform-		Action of the court on complaint.....	3519
ance of bond, etc.....	3518	Conveyance under this chapter.....	3520

Article 3518. [2151] [2096] **Proceeding to enforce specific performance of bond, etc.**—When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement, or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted, and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed; and such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same can not be so filed; and, in case it can not be so filed, the same or the substance thereof shall be set forth in the complaint. [Act Aug. 9, 1876, p. 108, sec. 65.]

Art. 3519. [2152] [2097] **Action of the court on complaint.**—When the citation has been returned served, the court shall hear such complaint and the evidence in support thereof, or against the same, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand a specific performance thereof, a decree shall be entered upon the minutes ordering the executor or administrator to make title to the property so sold by his testator or intestate according to the tenor of the bond or other written agreement; and such property shall be fully described in such decree. [Id.]

Art. 3520. [2153] [2098] **Conveyance under provisions of this chapter.**—When a conveyance is made under the provisions of this chapter, it shall recite the decree of the court authorizing it, and, when delivered, shall have the effect to vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all the requirements of the law have been complied with in obtaining the same.

CHAPTER TWENTY-FIVE.

HEIRSHIP, ETC.—ADJUDICATION OF.

	Article.		Article.
County court may determine and declare heirship, etc., when; venue.....	3521	Hearing and procedure on; judgment to declare and contain what; effect of...	3524
Who may maintain action, and how; requisites of petition; parties.....	3522	Certified copy of judgment to be filed for record, etc., where, etc.; constructive notice	3525
Notice, citation, etc., cause to be transferred when, and to what court.....	3523	Provisions of chapter cumulative.....	3526

Article 3521. County court may determine and declare heirship, etc., when; venue.—Whenever any person has died, or shall hereafter die, intestate, owning or being entitled to any real or personal property in this state, or any share or interest therein, and there shall have been no administration in this state upon the estate of such decedent, and whenever there has been a will probated in this state or elsewhere, or an administration in this state upon the estate of such decedent, and any real or personal property in this state has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county of this state in which such proceedings were last pending, or, in the event no will of such decedent has been admitted to probate in this state, and no administration has been granted in this state upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is situated, or, if there be no such real property, then of the county in which any personal property belonging to such estate may be found, may determine and declare in the manner hereinafter provided in this chapter, who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this state, in the estate of such decedent, and actions therefor shall be known as actions to declare heirship. [Acts 1907, p. 230, sec. 1.]

Art. 3522. Who may maintain action, and how; requisites of petitions; parties.—Such action may be instituted and maintained in any of the instances enumerated in article 3521 by any person or persons claiming to be the owner or owners of the estates of such decedent, or of any share or interest therein. Such action shall be instituted by the filing in the proper court of a petition which shall give the name and also the time and place of the death and the names and places of residence of the heirs of such decedent, if known to the petitioners or any of them, and, if the time and place of the death or the names and places of residence of all the heirs of such decedent be not definitely known to such petitioners or any of them, then such petition shall set forth, in at least general terms, any and all of such material facts and circumstances within the knowledge or information of such petitioners, or any of them, as may reasonably tend to show the time and place of the death and the names and places of residence of the heirs of such decedent, and the true share and interest of each such petitioner, and of each such heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, also contain such a description of all the real property of such decedent as would be sufficient in a conveyance thereof, and also a description, in at least general terms of all the personal property belonging to the estate of such decedent. Such petition shall be supported by the written personal affidavit of each such petitioners to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and in fact and that no such material fact or circumstance has, within such affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, and, excepting only the plaintiffs, all persons who may be named in such petition as heirs of such decedent, and all persons who may, at the date of the filing of such petition, be shown by the deed records of the

county in which any of the real property described in such petition may be situated, to own any share or interest in any such real property, shall be made parties defendant in such action. [Id. sec. 2.]

Art. 3523. Notice, citation, etc., cause to be transferred when, and to what court.—Due notice of the filing of such petition shall be given in the manner and for the length of time and in accordance with the provisions of law now in force in this state concerning the issuance and service of citations upon resident defendants, and notice to non-resident defendants, and citation by publication for unknown heirs, respectively; and, in so far as they are applicable thereto, all provisions of laws now in force in this state, relative to or concerning suits wherein citation by publication is provided for by law, shall apply to and govern in all suits provided for in this chapter. In the event an administration upon the estate of any such decedent shall be granted in any county in this state, after the institution of any such action, and in the event the will of such decedent shall be admitted to probate in any county in this state after the institution of such action, then, and in either such event, the court in which such action may then be pending, shall, by an order to be entered of record therein, transfer such cause to the county court of the county in which such administration shall have been granted or such will shall have been probated, and, thereupon, the clerk of the court in which such action was originally filed shall transmit to the clerk of the court named in such order, a certified transcript of all docket entries and orders of the court in such cause. The clerk of the court to which such cause shall be so transferred shall file such transcript, and record the same in the minutes of the court, and shall duly docket such cause, and same shall thereafter proceed as though originally filed in that court. [Id. sec. 3.]

Art. 3524. Hearing and procedure on; judgment to declare and contain what; effect of.—Upon the hearing of such cause, the trial court may require the issues involved to be duly framed and submitted, and shall confine the proof to such issues; and all the evidence shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court. The judgment of the court in such cause shall declare the names and places of residence of the heirs of such decedent, and their respective shares and interests in the real and personal property of such decedent, in so far as such facts shall be ascertainable from the evidence under the laws of this state and the rules of evidence, and shall state in what respects, if any, the evidence presented upon such hearing fails to develop such issues, or any of them; and all issues in the cause which may be framed by the court, or under its direction, shall be embodied in the judgment of the court. As between and as among all parties to such cause who may have been personally so duly served with citation or notice, as to a non-resident in such cause, and as between any and all of them, and any and all bona fide purchasers for value from them, or any of them, of any of the real or personal property of such decedent, which is described in such judgment, or any interest therein, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and that their respective interests in the real and personal property described in such judgment are as therein stated; but such judgment shall not preclude any suit or suits against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegation that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is now, or may hereafter be, provided by law in other cases arising under the probate laws of this state. [Id. sec. 4.]

Art. 3525. **Certified copy of judgment to be filed for record, etc., where, etc., constructive notice.**—A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment may be situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth in such judgment. [Id. sec. 5.]

Art. 3526. **Provisions of chapter cumulative.**—The provisions of this chapter shall be deemed and held to be cumulative of all existing laws, and shall not be held to repeal any existing law. [Id. sec. 6.]

CHAPTER TWENTY-SIX.

PARTITION AND DISTRIBUTION.

	Article.
Application for partition and distribu-	
tion	3527
Citation in such cases.....	3528
Service of citation.....	3529
Executor, etc., shall also be cited.....	3530
Application may be made, when.....	3531
Upon return of citation served, court	
shall proceed, etc.....	3532
Court shall ascertain what facts.....	3533
Shall appoint guardians for minors, etc.	3534
Decree of partition.....	3535
Where estate consists of money or debts	
only	3536
Court shall appoint commissioners, when	3537
Writ of partition shall issue.....	3538
Service of writ.....	3539
Manner of making partition by com-	
missioners	3540
Report of commissioners when division	
is made	3541
Action of court upon report of commis-	
sioners	3542
Court to make special finding as to prop-	
erty incapable of division, and value	
of same	3543
Distributee may pay appraised value and	
take property incapable of division.....	3544
May take it on credit, when.....	3545

	Article.
Decree of court in such cases vesting	
title	3546
New appraisal of property, when.....	3547
If no distributee take property it shall	
be sold, etc.....	3548
Distributee purchasing at sale shall pay	
only the excess of his share.....	3549
Court may order sale, when.....	3550
If property is not sold, commissioners in	
county where it is situated shall be ap-	
pointed, etc.....	3551
Majority of commissioners may act.....	3552
Court shall order executor or adminis-	
trator to deliver property, when.....	3553
To whom property shall be delivered.....	3554
Damages for neglect to deliver property,	
etc.....	3555
Surviving husband or wife may have par-	
tion of common property.....	3556
Action of court, and bond in such case.....	3557
Lien upon property delivered, etc.....	3558
Common property shall be held by ex-	
ecutor, etc., until, etc.....	3559
Joint owners with estate may have par-	
tion	3560
Expenses of partition to be paid by	
whom	3561
Court may appoint another guardian,	
etc., when, etc.....	3562

Article 3527. [2154] [2099] **Application for partition and distribution.**—All applications for the partition and distribution of an estate shall be in writing, and shall be filed with the clerk of the court in which the administration of the estate is pending. Such application shall state:

1. The name of the person whose estate is sought to be partitioned and distributed.
2. The names and residences of all persons entitled to a share of such estate, and whether such persons are adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application, such application may be filed by any person interested in the estate. [Act Aug. 9, 1876, p. 120, sec. 102.]

Art. 3528. [2155] [2100] **Citation in such cases.**—Upon the filing of any such application, it shall be the duty of the clerk to issue a citation returnable to some regular term of the court; which citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all

persons interested in the estate to appear and show cause why such partition and distribution should not be made. [Id.]

Art. 3529. [2156] [2101] **Service of citation.**—Such citation shall be personally served by leaving a copy thereof with each person entitled to a share of the estate, who is known and is a resident of this state; and, if there be any persons so entitled who are not known, or who are not residents of this state, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one, if not, then it shall be published in like manner in one of the nearest newspapers published in the state. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation. [Id.]

Art. 3530. [2157] [2102] **Executor, etc., shall also be cited, etc.**—When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall be cited to appear and answer such application, and to file in court a full and complete exhibit and account of the condition of the estate, verified by affidavit, as in case of final settlement of such estate.

Art. 3531. [2158] [2103] **Application may be made, when.**—At any time after the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by their application in writing, filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court and show cause why a partition and distribution of the residue of such estate should not be made. [Id. p. 117, sec. 94.]

Art. 3532. [2159] [2104] **Upon return of citation served, court shall proceed, etc.**—Upon the return of any such citation, served at the return term thereof, or at some succeeding term, to which the application may be continued, if it shall appear that such citation has been served or published as required by law, the court shall ascertain whether the whole, or any part, of such property is susceptible of partition, also the value of the property, and that there is a residue of the estate on hand subject to partition and distribution, the court shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided. [Acts 1876, p. 120. Acts 1905, p. 108.]

Art. 3533. [2160] [2105] **Court shall ascertain what facts.**—In the proceeding to partition an estate, the court shall ascertain:

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions. [Act Aug. 9, 1876, p. 120, sec. 102.]

Art. 3534. [2161] [2106] **Shall appoint guardians for minors, etc.**—If there are any persons entitled to any portion of the estate who are known, and are minors, and have no guardian in this state, or whose guardians are also entitled to a portion of such estate, the court shall appoint a guardian ad litem to represent such minors in the partition of the estate; and, if there be any persons so entitled who are not known or are not residents of the

state, and no person appears who is authorized to represent them, the court shall appoint an attorney to represent such persons in the partition. [Id.]

Art. 3535. [2162] [2107] **Decree of partition.**—The court shall then proceed to enter a decree, which shall state:

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors and the name of their guardian, or guardian ad litem, and the name of the attorney appointed to represent those who are unknown or are not residents of the state.

2. The proportional part of the estate to which each is entitled.

3. It shall contain a full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained. [Id.]

Art. 3536. [2163] [2108] **Where estate consists of money or debts only.**—If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator. [Id.]

Art. 3537. [2164] [2109] **Court shall appoint commissioners, when.**—If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition. [Acts 1876, p. 120. Acts 1905, p. 108.]

Art. 3538. [2165] [2110] **Writ of partition shall issue.**—When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it, at some term of the court to be named in the writ. [Act August 9, 1876, p. 120. sec. 102.]

Art. 3539. [2166] [2111] **Service of writ.**—Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Art. 3540. [2167] [2112] **Manner of making partition by commissioners.**—It shall be the duty of the commissioners of partition under this chapter to make a fair, just and impartial partition and distribution of the estate in the following order:

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels, either with or without the addition of a part or parts of other parcels, as shall be most for the interest of the distributees; provided, the said real estate is capable of being so divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by

lot among equal shares to whom each particular share shall belong. [Id. p. 121, sec. 104.]

Art. 3541. [2168] [2113] **Report of commissioners when division is made.**—Said commissioners having divided the whole, or any part of the estate, shall make to the court a report in writing, subscribed and sworn to by them, containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee and its value. And, if it be real estate that has been divided, said report shall contain a general plat of said land with the division lines plainly set down and the number of acres in each share. [Id. p. 122, sec. 106.]

Art. 3542. [2169] [2114] **Action of court upon report of commissioners.**—Upon the return of such report, it shall be the duty of the court, at some regular term, to examine the same carefully and to hear all exceptions and objections made thereto, and to hear evidence in favor of or against the same, and, if it be merely informal, to cause said informality to be corrected; and, if such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; but, if said division shall not appear to have been fairly made according to law, or any valid exceptions are taken to it, the court shall set aside said report and division and order a new partition to be made. [Id.]

Art. 3543. [2170] [2115] **Court to make special finding as to property incapable of division, and value of same.**—When, in the opinion of the court, the whole or any portion of the estate is not capable of fair and equal division among the distributees, the court shall make a special finding in writing, specifying therein the property that is so incapable of division and the value of the same as found by it. [Acts 1876, p. 120. Acts 1905, p. 109.]

Art. 3544. [2171] [2116] **Distributees may pay appraised value and take property incapable of division, when.**—Upon such special finding of the court, and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court, any one or more of the distributees, at a regular term of the court, by the payment to the executor or the administrator of the value of the property found by the court, that is incapable of division, shall have the right to take such property. [Id.]

Art. 3545. [2172] [2117] **May take it on credit, when.**—Should the court think it for the interest of the distributees to allow a credit, any one or more of such distributees shall have the right to take said property by executing his or their obligations with two or more good and sufficient sureties in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; and, when such obligations are executed, a lien shall exist upon such property by operation of law to secure the payment of the same. [Act Aug. 9, 1876, p. 120, sec. 102.]

Art. 3546. [2173] [2118] **Decree of court in such cases vesting title.**—Should any one or more of the distributees take the said property as aforesaid, it shall be the duty of the court to enter upon the minutes a decree stating the facts; and, on the entry of such decree, the property shall vest as fully and absolutely in the person or persons taking the same as the deceased was vested therewith, subject to the lien for the purchase money thereof, as provided in the preceding article. [Id.]

Art. 3547. [2174] [2119] **New appraisalment of property, when.**—Any distributee shall have the right to file his exception to said finding within twenty days after the finding of the court. The court shall hear proof of same; and, if satisfied that its finding is erroneous, it may make such additional or

amendatory finding so as to conform to the proof. [Acts 1876, p. 120, Acts 1905, p. 109.]

Art. 3548. [2175] [2120] **If no distributee take property, it shall be sold, etc.**—If no distributee take the said property as aforesaid, the court shall order the sale of the same, either for cash or on a credit, as may be most for the interest of the distributees, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto. [Act August 9, 1876, p. 120, sec. 102.]

Art. 3549. [2176] [2121] **Distributee purchasing at sale shall pay only the excess of his share.**—At any such sale, if any distributee shall bid off any of the said property, he shall be required to pay, or secure, as the case may be, only such amount of his bid as may exceed the amount of his share of such property. [Id.]

Art. 3550. [2177] [2122] **Court may order sale, when.**—When any portion of the estate to be partitioned lies in another county and can not be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing; whereupon he may, at some regular term of the court, if satisfied that the said property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, order a sale thereof for cash, or on a credit of not more than twelve months, at his discretion; and, when the proceeds of such sale have been collected, they shall be distributed by him among those entitled thereto. [Id. p. 122, sec. 107.]

Art. 3551. [2178] [2123] **If property is not sold, commissioners in county where it is situated shall be appointed, etc.**—If the court is not satisfied that such property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition. [Id.]

Art. 3552. [2179] [2124] **Majority of commissioners may act.**—In all cases where commissioners to make partition are appointed under this chapter, the report of a majority of them shall be sufficient. [Id. p. 123, sec. 109.]

Art. 3553. [2180] [2125] **Court shall order executor or administrator to deliver property, when.**—When the report of any commissioners to make partition shall have been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same. [Id. sec. 113.]

Art. 3554. [2181] [2126] **To whom property shall be delivered.**—If any distributee be a minor, his share shall be delivered to his guardian, and, if such minor has no guardian, and is a resident of this state, the executor or administrator shall retain his share until a guardian of such minor shall be appointed and qualified; and, if any distributee be a minor and reside in any other than this state, and the guardianship of such minor or minors may be, or has been, granted in the state where such minor or minors reside, it shall be lawful for the executor or administrator in this state to settle with, and pay or deliver over to, such guardian any and all estate in his hands, which shall be as good and valid as if the guardianship had been granted in this state; provided, said guardian, before he receives such estate, shall make and enter into a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and provided, further, that he shall produce to the court of the county wherein administration has been, or may be, granted in this state a certified copy of the bond so given and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in

which said guardianship is pending that said appointment and bond are in due and legal form under the laws of the said state; also a copy of his bond as guardian; and, if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order to be recorded in the clerk's office of the county court, which, when recorded, shall entitle the guardian to settle for the amount due his ward. [Id. amend. 1895, p. 150.]

Art. 3555. [2182] [2127] **Damages for neglect to deliver property, etc.**—

If any executor or administrator shall neglect to deliver to the person entitled thereto, his agent or attorney, when demanded, any portion of an estate so ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled damages on the amount or value of the share so withheld, at the rate of ten per cent per month for each and every month he shall so neglect to deliver such share after such demand, which damages may be recovered by suit before any court having competent jurisdiction. [Id.]

Art. 3556. [2183] [2128] **Surviving husband or wife may have partition of common property.**—When any husband or wife shall die leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court. [Id. p. 122, sec. 108.]

Art. 3557. [2184] [2129] **Action of court and bond in such case.**—If, upon the hearing of such application, there appear to be any such common property, and such surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by the said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of all debts existing against such common property, then the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased; and all the provisions of this chapter respecting the partition and distribution of estates shall apply to any partition made under the provisions of this article, so far as the same may be applicable. [Id.]

Art. 3558. [2185] [2130] **Lien upon property delivered, etc.**—Whenever any such partition shall be made, a lien shall exist upon the property delivered to such survivor to secure the payment of the aforesaid obligation; and such obligation shall be filed with the clerk and recorded in the minutes of the court; and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased. [Id.]

Art. 3559. [2186] [2131] **Common property shall be held by executor, etc., until, etc.**—Until any such partition of common property is applied for and made as herein provided, the executor or administrator of the deceased shall have the right, and it shall be his duty, to recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto under the provisions of this title. [Id.]

Art. 3560. [2187] [2132] **Joint owners with estate may have partition.**—Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the county court from which letters testamentary or of administration have been granted on said estate, to have a partition thereof; whereupon the court shall proceed to make a

partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article so far as the same are applicable. [Id. p. 123, sec. 112.]

Art. 3561. [2188] [2133] **Expenses of partition to be paid by whom.**—All expenses incurred in the partition of estates shall be paid by the parties interested in the partition, each party paying in proportion to the share he may receive. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto. [Id. sec. 111.]

Art. 3562. [2189] [2134] **Court may appoint another guardian, etc., when.**—In any case where the county judge shall appoint a guardian ad litem for minors, or an attorney to represent a distributee who is absent from the state or unknown, under the provisions of this title, if such guardian ad litem, or attorney, shall neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court; and such guardian ad litem and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person they represent, and an order to that effect shall be entered upon the minutes, and if such allowance is not paid an execution may issue therefor in the name of the person entitled thereto. [Id. sec. 110.]

CHAPTER TWENTY-SEVEN.

FINAL SETTLEMENT, ETC.

[See Article 3241.]

<p>Article. Duty of executor, etc., to present account for final settlement, when.....3563 What the account shall show.....3564 What shall be sufficient under the pre- ceding article3565 Executor, etc., may be cited to present such account3566 Citation shall issue.....3567 Service and return of citation.....3568</p>	<p>Article. County judge may order other notice to be given.....3569 Action of court upon account.....3570 Partition of estate on hand shall be made3571 Executor, etc., shall be discharged, when.....3572 Order for discharge of executor, etc., when, etc.....3573</p>
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Article 3563. [2190] [2135] **Duty of executor, etc., to present account for final settlement, when.**—When all the debts known to exist of every kind against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator will permit, it shall be the duty of the executor or administrator of such estate to present to the court his account for final settlement of such estate verified by affidavit. [Act Aug. 9, 1876, p. 117, sec. 95.]

Art. 3564. [2191] [2136] **What the account shall show.**—Such accounts shall show:

1. The property that has come into the hands of such executor or administrator belonging to the estate.
2. The disposition that has been made of any such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors, the names of their guardians.

7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.

8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk, either in term time or in vacation.

Art. 3565. [2192] [2137] **What shall be sufficient under the preceding article.**—It shall be sufficient, under the preceding article, to refer to the inventory without giving each item in detail; also to refer to and adopt report of sales, exhibits and accounts of the executor or administrator, including vouchers which had previously been approved and filed according to law, without re-stating the items thereof.

Art. 3566. [2193] [2138] **Executor, etc., may be cited to present such account.**—Should the executor or administrator neglect to present such account, it shall be the duty of the county judge, either of his own motion or upon the complaint of any person interested in the estate, to cause such executor or administrator to be cited to present such account within a time specified in such citation. [Id.]

Art. 3567. [2194] [2139] **Citation shall issue.**—Upon the presentation of an account for final settlement, it shall be the duty of the clerk to issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper. [Id.]

Art. 3568. [2195] [2140] **Service on return of such citation.**—Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not then by posting such notice at the court house and at two other public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof, that the same has been published for at least twenty days, shall accompany the return of the officer who executes such citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

Art. 3569. [2196] [2141] **County judge may order other notice to be given.**—In addition to the citation required in the two preceding articles, the county judge may order such other notice to be given as he shall deem expedient, by an order entered upon the minutes of the court. [Id.]

Art. 3570. [2197] [2142] **Action of court upon account.**—At the term of court named in such citation, or at some subsequent term to which the same has been continued, upon return being made that citation has been served in the manner required, it shall be the duty of the court to examine said account and the vouchers accompanying the same, and after hearing all exceptions and objections thereto, and the evidence that may be offered in support of or against such account, to re-state said account, if necessary, and audit and settle the same. [Id.]

Art. 3571. [2198] [2143] **Partition of estate on hand shall be made.**—Upon a settlement of an estate, if there is any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either of them, are present or represented in court, it shall be the duty of the county judge to order a partition and distribution of the estate to be made among them, upon satisfactory proof being made that they are entitled to receive it. [Id.]

Art. 3572. [2199] [2144] **Executor, etc., shall be discharged, when.**—If, upon such settlement, there be none of the estate remaining in the hands

of the executor or administrator, he shall be discharged from his trust by an order of the court entered upon the minutes, and such order shall declare said estate closed. [Id.]

Art. 3573. [2200] [2145] **Order for discharge of executor, etc., when, etc.**—Whenever in any case the executor or administrator has fully administered the estate in accordance with the provisions of this title, and in accordance with the order of the court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed.

CHAPTER TWENTY-EIGHT.

PAYMENT OF ESTATES INTO THE TREASURY.

Article.	Article.
If distributee does not demand his portion in six months after the partition, same shall be paid to state treasurer. 3574 When those entitled to estate do not appear and claim, shall be paid to state treasurer. 3575 Property uncalled for shall be sold, etc. 3576 Executor, etc., shall make report. 3577 While property remains under control of executor, etc., distributees may have partition. 3578 Certified copy of order for payment to treasurer shall be sent by the clerk to the treasurer. 3579 Clerk shall take certificate of postmaster, etc. 3580 Penalty for neglect of such duty. 3581	Executor, etc., shall take receipt of treasurer, etc. 3582 Distributees shall recover funds paid into treasury. 3583 Mode of recovery. 3584 Citation to county or district attorney. 3585 Proceedings in suit to recover funds. 3586 Costs shall be paid by plaintiff. 3587 Penalty when executor, etc., fails to pay funds to treasurer. 3588 Treasurer may apply to county court to enforce payment, and duty of court in such case. 3589 Treasurer may also sue upon bond. 3590 Duty of county or district attorney to represent state. 3591

Article 3574. [2201] [2146] **If distributee does not demand his portion in six months after partition, same shall be paid to state treasurer.**—If any person entitled to a portion of an estate, except a minor who resides in this state and has no guardian, shall not demand the portion to which he is entitled from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge, by an order entered upon the minutes, shall require the executor or administrator to pay so much of said portion as may be in money to the state treasurer; and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and, when the proceeds of such sale are collected, he shall order the same to be paid to the treasurer of the state, in all such cases allowing to the executor or administrator reasonable compensation for his services. [Act Aug. 9, 1876, p. 124, sec. 114.]

Art. 3575. [2202] [2147] **When those entitled to estate do not appear and claim, shall be paid to state treasurer.**—Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of such estate remaining in the hands of the executor or administrator, it shall be the duty of the county judge to enter an order upon the minutes requiring such executor or administrator to pay such funds to the treasurer of the state. [Id. sec. 96.]

Art. 3576. [2203] [2148] **Property uncalled for shall be sold, etc.**—If in such case there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, it shall be the duty of the

county judge, by an order entered upon the minutes, to require the executor or administrator to sell such property on such terms as the county judge may think best, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the state treasurer as soon as received, in all such cases allowing to the executor or administrator reasonable compensation for his services. [Id. p. 118, sec. 96.]

Art. 3577. [2204] [2149] **Executor, etc., shall make report, etc.**—The executor or administrator, while he has any of such estate under his control, shall from time to time, as he receives money, report the same to the court in writing under oath, and, should he neglect to report to the court the condition of the estate at reasonable periods of time, it shall be the duty of the court to cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make such order as the circumstances of the case may require.

Art. 3578. [2205] [2150] **While the property remains under control of executor, etc., distributees may have partition.**—While such estate, or any portion thereof, remains under the control of the executor or administrator, the heirs, devisees, legatees or their assignees, or any of them, may obtain from the county judge, at a regular term of the court, an order to have the same partitioned and distributed among them, according to their respective interests in the same, upon causing the executor or administrator to be cited, and upon making satisfactory proof of their right to the same. [Id.]

Art. 3579. [2206] [2151] **Certified copy of order for payment to treasurer shall be sent by the clerk to treasurer.**—Whenever an order shall be made by the county judge for an executor or administrator to pay over any funds to the treasurer of the state, under the provisions of this chapter, it shall be the duty of the clerk of the court, in which such order may be made, to transmit to said treasurer, by mail, a certified copy of such order within thirty days after said order shall have been made. [Id. p. 118, sec. 97.]

Art. 3580. [2207] [2152] **Clerk shall take certificate of postmaster, etc.**—Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the treasurer of the state, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court. [Id.]

Art. 3581. [2208] [2153] **Penalty for neglect of such duty.**—Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered by an action in the name of the state, before any court of the county having jurisdiction of the amount, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the state. [Id.]

Art. 3582. [2209] [2154] **Executor, etc., shall take receipt of treasurer, etc.**—Whenever an executor or administrator shall pay over to the treasurer of the state any funds of the estate he represents, under the provisions of this chapter, he shall take from such treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment; and such receipt shall be recorded on the minutes of such court, and a certified copy of the same, or of such record, shall be evidence of such payment. [Id. p. 119, sec. 98.]

Art. 3583. [2210] [2155] **Distributees may recover funds paid into the treasury.**—Whenever any funds of an estate shall have been paid to the treasurer of the state, under the provisions of this chapter, any heir, devisee or legatee of such estate, or their assignees, or any of them, may recover the

portion of such funds to which he or they would have been entitled, as if the same had not been so paid to the treasurer. [Id. sec. 99.]

Art. 3584. [2211] [2156] **Mode of recovery.**—In such case, the person claiming such funds, or any portion thereof, shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the treasurer of the state, setting forth the petitioner's right to such funds, and the amount claimed by him. [Id.]

Art. 3585. [2212] [2157] **Citation to county or district attorney.**—Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county, or the district attorney of the district, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

Art. 3586. [2213] [2158] **Proceedings in suit to recover funds.**—The proceedings in such suit shall be governed by the same rules as are provided for civil suits in the county court; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the treasurer to pay the same.

Art. 3587. [2214] [2159] **Costs shall be paid by plaintiff.**—The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required, as in other cases, to secure the costs. [Id.]

Art. 3588. [2215] [2160] **Penalty when executor, etc., fails to pay funds to treasurer.**—Whenever any executor or administrator shall fail to pay to the treasurer of the state any funds of the estate that he represents which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the state treasurer damages thereon at the rate of five per cent per month for each month he may neglect to make such payment after the three months from such order. [Id. sec. 100.]

Art. 3589. [2216] [2161] **Treasurer may apply to county court to enforce payment, and duty of court in such case.**—The treasurer of the state shall have the right in the name of the state to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article; and it shall be the duty of the court to enforce such payment in like manner as other orders of payment are required to be enforced. [Id.]

Art. 3590. [2217] [2162] **Treasurer may also sue upon bond.**—The treasurer shall also have the right to institute suit in the name of the state against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid and damages, if any have accrued, which suit may be instituted in any court of competent jurisdiction in the county where the order of payment was made. [Id.]

Art. 3591. [2218] [2163] **Duty of county or district attorney to represent state.**—It shall be the duty of the county or district attorney, as the case may be, to attend to and represent the interests of the state in all matters arising under any of the provisions of this chapter, and for which services he shall receive such compensation as may be provided by law.

CHAPTER TWENTY-NINE.

ADMINISTRATION OF COMMUNITY PROPERTY.

Article.	Article.
Community property liable for community debts, etc.....3592	Creditor may have survivor to make exhibit, when.....3604
Where there is no child administration is not required.....3593	Action of the court upon exhibit.....3605
Where there is a child survivor holds subject, etc.....3594	Sureties on survivor's bond shall be cited, when.....3606
Application for community administration.....3595	Creditor may sue upon bond, when.....3607
Court shall appoint appraisers.....3596	Action of court when survivor fails to make exhibit.....3608
Inventory, appraisement, and list of indebtedness, sworn to and returned, etc.....3597	Surviving wife shall have same rights, etc.....3609
Bond of survivor.....3598	"Survivor" applies alike to sane and insane persons.....3610
Action of court upon inventory, etc.....3599	Rights of wife cease when she marries again.....3611
After order of court, survivor has control, etc.....3600	Persons entitled to estate may have partition, when.....3612
Survivor shall keep account, etc.....3601	Recovery of insane spouse stops action hereunder.....3613
New appraisalment and bond may be required.....3602	Duty of guardians in such cases.....3614
Duty of survivor to pay debts.....3603	

Article 3592. [2219] [2164] **Community property liable for community debts, etc.**—The community property of the husband and wife, except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And, in the settlement of such community estates, it shall be the duty of the survivor, executor or administrator to keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates. [Act Aug. 9, 1876, p. 124, sec. 115.]

Art. 3593. [2220] [2165] **When there is no child, administration not required.**—Where the husband or wife dies intestate, or becomes insane, having no child or children, and no separate property, the common property passes to the survivor, charged with the debts of the community; and no administration thereon or guardianship of the estate of the insane wife or husband shall be necessary. [Amend. 1893, p. 89. P. D. 5498.]

Art. 3594. [2221] [2166] **Where there is child, survivor holds subject, etc.**—Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have the exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity; and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment be taken to such conveyances, subject, however, to the provisions of this chapter. [Amend. 1893, p. 89. Id. p. 127, sec. 116.]

Art. 3595. [2222] [2167] **Application for community administration.**—The husband shall, within four years after the death of the wife, or her being declared insane, as provided by law, when there is a child, or children, file a written application in the county court of the proper county, stating:

1. The death of his wife, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.
2. That she left a child or children, giving the names, sex, residence, and age of each child.
3. That there is a community estate between the deceased or insane wife and himself.
4. Such facts as show the jurisdiction of the court over the estate.
5. Asking for the appointment of appraisers, to appraise such estate. [Id.]

Art. 3596. [2223] [2168] **Court shall appoint appraisers.**—Upon the filing of such application, the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court, ap-

point appraisers to appraise such estate as in other administrations. [Act 1876, p. 124.]

Art. 3597. [2224] [2169] **Inventory, appraisement, and list of indebtedness, sworn to and returned, etc.**—It shall be the duty of the surviving husband or wife (of community estates) with the assistance of any two of the appraisers, to make out a full, fair and complete inventory and appraisement of such community estate; and the survivor shall attach thereto a list of all community debts due the estate, and shall also attach thereto a list of all indebtedness due by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is due, and his or their postoffice address; and such inventory, list of claims, and list of indebtedness, of said community estate, shall be sworn to by said survivor; and the inventory, appraisement and list of claims due said community estate shall be sworn to by said appraisers; and said inventory, appraisement, list of claims due said estate, and list of indebtedness due by said estate, shall be returned to the court within twenty days from the date of the order appointing appraisers in like manner as other administrations. [Acts 1876, p. 124. Acts 1905, p. 336.]

Art. 3598. [2225] [2170] **Bond of survivor.**—The surviving husband shall, at the same time he returns the inventory, appraisement and list of claims, present to the court his bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisement, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which the whole of such property is properly chargeable, to such person or persons as shall be entitled to receive the same. [Acts 1876, p. 124.]

Art. 3599. [2226] [2171] **Action of court upon inventory, etc.**—When any such inventory, appraisement, list of claims and bond are returned to the county judge, he shall, either in term time or in vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and, when approved, the same shall be recorded upon the minutes of the court, and the order approving the same shall also authorize such survivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

Art. 3600. [2227] [2172] **After order of court, survivor has control, etc.**—When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property, real or personal, in such manner as may seem best for the interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased; and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor. [P. D. 4648.]

Art. 3601. [2228] [2173] **Survivor shall keep an account, etc.**—The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property; and, upon final partition of said estate, shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. [P. D. 4648.]

Art. 3602. [2229] [2174] **New appraisement and bond may be required.**—Any person interested in such community estate may cause a new appraisement to be made of the same, or a new bond may be required of the survivor for the same causes and in like manner as provided in other administrations.

Art. 3603. [2230] [2175] **Duty of survivor to pay debts.**—It shall be the duty of the survivor to pay all just and legal community debts as soon as practicable, and according to the classification and in the order prescribed for the payment of debts in other administrations.

Art. 3604. [2231] [2176] **Creditor may have survivor to make exhibit, when.**—Any creditor of the estate whose claim has not been paid in full may, after the lapse of one year from the filing of the inventory, appraisal, list of claims and bond by the survivor, cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically—

1. The debts that have been presented to him against such community estate and their class.

2. The debts that have been paid by him and those that remain unpaid, and the class of each.

3. The property that has been disposed of by him and the amount received therefor.

4. The property remaining on hand.

5. An account of losses, expenses and commissions.

Art. 3605. [2232] [2177] **Action of court upon exhibit.**—When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto, and evidence in support of or against the same; and, if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order upon the minutes approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

Art. 3606. [2233] [2178] **Sureties on survivor's bond shall be cited, when.**—But should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

Art. 3607. [2234] [2179] **Creditor may sue upon bond, when.**—Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed, against such survivor and the sureties upon his bond; and, in such case, a certified copy of such bond or the record thereof, and of the proceedings and orders of the county court in the estate, shall be evidence in any other court.

Art. 3608. [2235] [2180] **Action of court when survivor fails to make exhibit.**—Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Art. 3609. [2236] [2181] **Surviving wife shall have same rights, etc.**—The wife may retain the exclusive management, control and disposition of

the community property of herself and deceased or insane husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of the husband, and until she shall, in the event of the death of the husband, marry again. [Id.; amend. 1893, p. 89. P. D. 4652.]

Art. 3610. [2236a] **“Survivor,” etc., applies alike to sane and insane persons.**—The use of the words, “survivor,” or, “surviving,” in the above and foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person. [Acts 1893, p. 89.]

Art. 3611. [2237] [2182] **Rights of wife cease when she marries again.**—Upon the marriage of the surviving wife, she shall cease to have such control and management of said estate or the right to dispose of the same; and said estate shall be subject to administration as in other cases of deceased persons' estates.

Art. 3612. [2238] [2183] **Persons entitled to estate may have partition, when.**—After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to demand and have a partition and distribution thereof in the same manner as in other administrations.

Art. 3613. [2238a] **Recovery of insane spouse stops action hereunder.**—Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings; and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case. [Acts 1893, p. 89.]

Art. 3614. [2238b] **Duty of guardians in such cases.**—Persons now acting as guardians of the estate of persons of unsound mind shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the sane spouse, as provided in this chapter. [Id.]

CHAPTER THIRTY.

TRANSFER OF ADMINISTRATION.

Article.	Article.
Court shall transfer administration on application, when.....3615 Applicant shall pay fees due.....3616 Order of court for transfer.....3617 Duty of clerk to record all papers not recorded .....3618	Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made .....3619 Administration in district court shall be transferred to county court.....3620

Article 3615. [2239] [2184] **Court shall transfer administration on application, when.**—It shall be the duty of the county judge of any county from which any county, or part thereof, has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, to transmit all original papers relating to the settlement of a deceased person's estate who was at the time of his decease a resident of that part of the territory of the county which has been, or may hereafter be, taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with such original papers a transcript, certified by the clerk under the seal of the court, of the records of all orders, judgments and

decrees of the court had in relation to such estate. [Act Aug. 9, 1876, p. 125, sec. 118.]

Art. 3616. [2240] [2185] **Applicant shall pay fees due.**—At the time of filing such application, the applicant shall pay all fees due on account of such estate; and the order for the transfer of such estate shall not be made until such fees have been paid. [Id.]

Art. 3617. [2241] [2186] **Order of court for transfer.**—When the fees due have been paid, the county judge shall, either in term time or in vacation, hear such application; and, if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer.

Art. 3618. [2242] [2187] **Duty of clerk to record all papers not recorded.**—Upon the entry of such order, it shall be the duty of the clerk to record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording; which fees shall be paid by the applicant before any such transfer shall be made. [Id. p. 125, sec. 119.]

Art. 3619. [2243] [2188] **Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made.**—In all cases where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter, such papers and proceedings shall be filed in such court; and such estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county; and the transcript of the record transmitted in the manner provided herein shall have the same force and effect in evidence as the record itself might or could have. [Id. sec. 120.]

Art. 3620. [2244] [2189] **Administration in district court shall be transferred to county court.**—All proceedings in relation to the settlement, partition and distribution of estates of deceased persons, remaining unsettled in the district courts of this state, shall be transferred to the county court of the county having jurisdiction thereof, and shall be conducted and concluded in such county court under the provisions of this title. [Id. p. 130, sec. 144.]

CHAPTER THIRTY-ONE.

COSTS.

Commissions allowed executors and administrators	Article. 3621	When costs shall be adjudged against executor, etc.	Article 3627
Commissions not allowed on certain moneys	3622	Same subject	3628
Shall be allowed expenses, etc.	3623	When application, etc., is defeated, costs shall be adjudged against applicant, etc.	3629
Account for expenses shall be filed and acted upon by the court.	3624	Security for costs may be required, when	3630
Costs of appraisers	3625		
Costs of commissioners	3626		

Article 3621. [2245] [2190] **Commission allowed executors and administrators.**—Executors and administrators shall be entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay away in cash in the course of their administration. [Act Aug. 9, 1876, p. 126, sec. 121.]

Art. 3622. [2246] [2191] **Commissions not allowed on certain moneys.**—The commission allowed by the preceding article shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs or legatees as such. [Id.]

Art. 3623. [2247] [2192] **Shall be allowed expenses, etc.**—Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe keeping and management of the estate, and all reasonable attorney's fees that may be necessarily incurred by them in the course of the administration. [Id.]

Art. 3624. [2248] [2193] **Account for expenses shall be filed and acted upon by the court.**—All such charges as are provided for in the preceding article shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by the affidavit of the executor or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

Art. 3625. [2249] [2194] **Costs of appraisers.**—Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Art. 3626. [2250] [2195] **Costs of commissioners.**—Commissioners appointed under the provisions of this title to partition and distribute an estate, or any part thereof, shall be entitled to receive two dollars each for every day that they may be necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

Art. 3627. [2251] [2196] **When costs shall be adjudged against executor, etc.**—In all cases where an executor or administrator shall neglect the performance of any duty required by this title, and any costs are incurred on account thereof, he and his sureties on his bond shall be liable for all such costs, and the same shall be adjudged against him and his sureties, and execution issue therefor as in other cases. [Id. p. 129, sec. 133.]

Art. 3628. [2252] [2197] **Same subject.**—Whenever an executor or administrator shall be removed for any of the causes set forth in this title, the costs of such proceeding shall likewise be adjudged against him and the sureties upon his bond. [Id.]

Art. 3629. [2253] [2198] **When application, etc., is defeated costs shall be adjudged against applicant, etc.**—In all cases where a party shall file any application, complaint or opposition in the court, under the provisions of this

title, and on the trial thereof he shall be defeated, or fail in the object for which his application, complaint or opposition was filed, all costs occasioned by the filing of the same shall be adjudged against him. [Id. p. 129, sec. 134.]

Art. 3630. [2254] [2199] **Security for costs may be required, when.**—When any person, except the executor or administrator of an estate, files any application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceeding before filing the same; or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

CHAPTER THIRTY-TWO.

APPEALS TO THE DISTRICT COURT.

Article.	Article.		
Right of appeal.....	3631	Transcript to be transmitted, when, etc.....	3636
Appeal bond, requisites of.....	3632	Duty of district clerk who receives transcript, etc.	3637
Bond not required of executors, etc., unless, etc.	3633	Appeals shall be tried de novo in regular order upon the docket.....	3638
Affidavit that party is too poor to give bond.....	3634	Certified copy of judgment of district court to be transmitted to county court.....	3639
Duty of county clerk to make and transmit transcript, etc.....	3635		

Article 3631. [2255] [2200] **Right of appeal.**—Any person who may consider himself aggrieved by any decision, order, decree or judgment, of the county court shall have the right to appeal therefrom to the district court of the county, upon complying with the provisions of this chapter. [Act Aug. 9, 1876, p. 128, sec. 130.]

Art. 3632. [2256] [2201] **Appeal bond; requisites of.**—He shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with two or more good and sufficient sureties, payable to the county judge, in any amount to be fixed by the county judge, and to be approved by the clerk, conditioned that the appellant shall prosecute said appeal to effect and perform the decision, order, decree or judgment which the district court shall make thereon, in case the cause shall be decided against him. [Acts 1876, p. 128. Acts 1909, S. S. p. 282.]

Art. 3633. [2257] [2202] **Bond not required of executor, etc., unless, etc.**—When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concern him, in which case he must give the bond.

Art. 3634. [2258] [2203] **Affidavit that party is too poor to give bond.**—Where the party who desires to appeal is unable to give the appeal bond, it shall be sufficient if he file with the county clerk, within the time prescribed for giving such bond, an affidavit in writing that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit shall operate a perfection of the appeal in respect to the matter of costs. [P. D. 6180.]

Art. 3635. [2259] [2204] **Duty of county clerk to make and transmit transcript, etc.**—Upon such appeal bond or affidavit being filed in the county clerk's office, it shall be his duty immediately to make out a certified transcript of the papers and proceedings relating to the decision, order, judgment or decree appealed from, together with such decision, order, judgment or decree, and transmit the same to the clerk of the district court, together with the appeal bond or affidavit that has been made in lieu of such bond, on or before the first day of the next term of such court. [Id. sec. 131.]

Art. 3636. [2260] [2205] **Transcript to be transmitted, when, etc.**—In case the county clerk shall be unable for want of time to make out such transcript before the first day of the next term of the district court of the county, after such appeal is taken, then such transcript shall be transmitted to the next succeeding term of such district court. [Id. sec. 132.]

Art. 3637. [2261] [2206] **Duty of district clerk who receives transcript, etc.**—When the transcript and appeal bond or affidavit have been received by the clerk of the district court, he shall file and number the same, and enter the case upon the civil docket of such court, to be called and disposed of in its regular order.

Art. 3638. [2262] [2207] **Appeals shall be tried de novo in regular order upon the docket.**—All causes removed by appeal to the district court shall be tried anew, as if originally brought in such court; and, if no appearance is entered upon the docket for the appellee, the cause shall proceed to trial in its regular order upon the docket as if both parties were present. [P. D. 480. 10 Texas, 471.]

Art. 3639. [2263] [2208] **Certified copy of judgment of district court to be transmitted to county court.**—When the judgment of the district court has been rendered, a certified copy thereof shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court; and the clerk of the county court, upon receiving such certified copy of judgment, shall file the same and record it upon the minutes of the court and note it upon the docket; and the county judge shall make such order as may be necessary to the enforcement of such judgment.

TITLE 53.

EVIDENCE.

Chapter.	Chapter.
1. Personal Attendance of Witnesses.	3. Depositions of Parties.
2. Depositions of Witnesses.	4. General Provisions.

CHAPTER ONE.

PERSONAL ATTENDANCE OF WITNESSES.

Witness subpoenaed.....	Article. 3640	Witness refusing to testify.....	Article. 3645
Form of subpoena.....	3641	Privileged from arrest.....	3646
Service of.....	3642	Party may be examined as a witness.....	3647
Witness shall attend, etc.....	3643	Interpreter may be summoned and ap- pointed	3648
Fees of witnesses.....	3644		

Article 3640. [2264] [2209] **Witnesses subpoenaed.**—The clerk of the district or county court, or justice of the peace, as the case may be, shall, at the request of any party to a suit pending in his court, or of his agent or attorney, issue a subpoena for any witness or witnesses who may be represented to reside within the county or be found therein at the time of the trial. [Act March 13, 1846, p. 363, sec. 1. P. D. 3719.]

Art. 3641. [2265-1448] [2210] **Form of subpoena.**—The style of the subpoena shall be, "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance he is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any day for which the trial of the cause may be set. [Id.]

Art. 3642. [2266] [2211] **Service of.**—Subpoenas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by him, attached to the subpoena. [Act May 13, 1846, p. 363, sec. 16. P. D. 1434.]

Art. 3643. [2267] [2212] **Witness shall attend, etc.**—Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him; and, if any witness, after being duly summoned, shall fail to attend, he may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel his attendance; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that his lawful fees have been paid or tendered to such witness. [Id. P. D. 3720.]

Art. 3644. [2268] [2213] **Fees of witnesses.**—Witnesses shall be allowed a fee of one dollar for each and every day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk; and such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs. [Id. P. D. 3724.]

Art. 3645. [2269] [2214] **Witness refusing to testify.**—Any witness refusing to give evidence may be committed to the county jail, there to remain without bail until he shall consent to give evidence. [Id. P. D. 3725.]

Art. 3646. [2270] [2215] **Privileged from arrest.**—Witnesses shall be privileged from arrest, except in cases of treason, felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode. [Id. P. D. 3723.]

Art. 3647. [2271] [2216] **Party may be examined as a witness.**—Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness. His examination shall be conducted and his testimony shall be received under the same rules applicable to other witnesses. [Act Feb. 15, 1858, p. 110, sec. 3. P. D. 3754.]

Art. 3648. [2272] [2217] **Interpreters may be summoned and appointed.**—The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience, and shall be entitled to the same fees. [Act May 13, 1846, p. 363, sec. 98. P. D. 3761.]

CHAPTER TWO.

DEPOSITIONS OF WITNESSES.

Article.	Article.
Depositions of witness may be taken, when	Service of notice, etc., noted on copy filed, etc., commission to issue after ten days
Notice and service thereof	Commission, how styled, etc.; requisites of
When notice may be given by publication	Powers of officer taking deposition
When process was served by publication	Written cross interrogatories may be filed
When suit has not been commenced	Witness to be cautioned and sworn, etc.
Cross-interrogatories	Examination, how conducted, reduced to writing, etc., and subscribed
Commission to take deposition	Objections to testimony not to be sustained, etc.; but recorded and reserved for court, etc.
Requisites of	Depositions certified and returned, how; rules as to use, etc.
Officers authorized to execute	Depositions opened
Witness to be summoned	Either party may use depositions, when
Refusing to answer, may be attached	Objections to depositions
Execution of the commission	Depositions to be read in evidence, subject, etc.
Interpreter	Matter not responsive stricken out
Return of depositions	
Depositions by oral examination and answer	
Notice of taking deposition, requisites of	
Any person may be compelled to appear and answer, proviso where deposition taken at distance over 100 miles	

Article 3649. [2273] [2218] **Depositions of witnesses may be taken, when.**—Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this state, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to secure the deposition of a male witness residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by the service of subpoena or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless he is about to leave, or has left, the state or county in which the suit is pending and will not probably be present at the trial. [Act May 13, 1846, p. 363, sec. 67. P. D. 3726. Acts of 1879, p. 126.]

Art. 3650. [2274] [2219] **Same subject; notice and service thereof.**—The party wishing to take the deposition of a witness in a suit pending in court

shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used; and a copy thereof, and of the attached interrogatories, shall be served upon the adverse party, or his attorney of record, five days before the issuance of a commission; and, whenever the adverse party is a corporation or a joint stock association, service may be made upon the president, secretary or treasurer of such corporation or association, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy of the notice and attached interrogatories at the principal office of such corporation or association during office hours. [Acts of 1879, p. 126. Acts of 1887, p. 27.]

Art. 3651. [2275] [2220] **When notice may be given by publication.**—In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he can not be found, or has deceased since the commencement of the suit, and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories can not be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper for thirty days, stating the number of the suit, the names of the original parties, in what court the suit is pending, the name and residence of the witness to whom interrogatories are propounded, and that a commission will issue on or after the thirtieth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. [Id. sec. 79. P. D. 3737.]

Art. 3652. [2276] [2221] **When process was served by publication.**—In suits where service of process has been made by publication, and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the day when the defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding article. [Act April 1, 1861, p. 26, sec. 1. P. D. 3738.]

Art. 3653. [2277] [2222] **When suit has not been commenced.**—When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted, representing the facts and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely; or, where such person, his agent or attorney, shall at the time of filing such statement, make affidavit that the names and residences of the heirs, successors or legal representative of any deceased person are unknown to the affiant, or reside beyond the jurisdiction of the state, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper, in the mode and manner designated by law for the service of original process upon non-residents or unknown parties; after which the deposi-

tions of such witnesses may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition; and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits; and, when such suits have been instituted, all such depositions so taken and returned shall be subject to the like exceptions as other depositions. [Act April 15, 1874, p. 103, sec. 1. P. D. 6829b.]

Art. 3654. [2278] [2223] **Cross-interrogatories.**—Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith. [Id. sec. 72. P. D. 3731.]

Art. 3655. [2279] [2224] **Commission to take deposition.**—After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice. [Id. sec. 67. P. D. 3736.]

Art. 3656. [2280] [2225] **Requisites of.**—The style of the commission shall be, "The State of Texas," and it shall be dated and tested as other process; it shall be addressed to the several officers named in the succeeding article, and shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross-interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories, and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and postoffice address. [Id.]

Art. 3657. [2281] [2226] **Officers authorized to execute.**—The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the state, to any clerk of the district court, any judge or clerk of the county court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the state, and within the United States, to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this state within some other state or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public or any minister, commissioner or charge d'affaires of the United States resident in, and accredited to, the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country. [P. D. 3726, 3736.]

Art. 3658. [2282] [2227] **Witness to be summoned.**—Upon the receipt of such commission by any officer to whom it is addressed, residing in this state, if the witness does not voluntarily appear, he shall issue a subpoena, directed to the sheriff or any constable of the county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpoena. [Acts 1905, p. 107. Acts 1874, p. 103. Acts 1907, p. 186. P. D. 3727.]

Art. 3659. [2283] [2228] **Refusing to answer, may be attached.**—If the witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. [Act April 15, 1874, p. 103.]

Art. 3660. [2284] [2229] **Execution of the commission.**—Upon the appearance of the witness, the officer to whom the commission is directed shall proceed to take his answers to the interrogatories. The answers shall be reduced to writing, and shall be signed and sworn to by the witness. The officer shall certify that the answers of the witness were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, and shall write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court from which the commission issued; and, if the depositions be sent by mail, the officer taking the same shall certify on the envelope enclosing the depositions that he in person deposits the same in the mail for transmission, stating the date when and the postoffice in which the same are deposited for transmission. [Acts 1905, p. 107. Acts 1874, p. 103. Acts 1907, p. 187. P. D. 3728.]

Art. 3661. [2285] [2230] **Interpreter.**—The officer executing such commission shall have authority, when he shall deem it expedient, to summon and swear an interpreter to facilitate the taking of the deposition. [R. S. 1879, 2230.]

Art. 3662. [2286] [2231] **Return of depositions.**—Depositions may be returned to the court either by mail, by a party interested in taking the same, or by any other person; and the clerk or justice taking them from the postoffice shall indorse on them that he received them from the postoffice, and sign his name thereto. If sent otherwise than by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration. [Act March 16, 1848, p. 106, sec. 16. P. D. 3729.]

Art. 3663. **Depositions by oral examination and answer.**—The testimony of any witness by oral examination and answer may be taken in any civil cause in any of the district and county courts of this state, in any instance where depositions are now authorized by law to be taken. [Acts 1907, p. 187.]

Art. 3664. **Notice of taking depositions, requisites of.**—Ten days' notice must be first given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party, or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition; and, in all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party until a claim shall have been put in. [Id.]

Art. 3665. **Any person may be compelled to appear and answer; proviso where deposition taken at distance over 100 miles.**—Any person may be compelled to appear and depose, as provided by this chapter, in the same manner as witnesses may be compelled to appear and testify in court; provided, that, when such depositions are to be taken at a point more than one hundred miles distant from the court where the suit is pending, the party to whom such notice is given may, by notice to the adverse party or his attorney, require the deposition to be taken upon commission and written interrogatories, unless the judge or court before whom said suit is pending shall, upon proper application, after notice, made either in term time or vacation, otherwise direct. [Id.]

Art. 3666. **Service of notice, etc., noted on copy filed, etc.; commission to issue after ten days.**—After the notice of taking depositions by oral examination and answer, provided for in the last preceding article, shall have been served, the party serving the same shall note on a true copy thereof the date and hour of such service, and upon whom served, the manner of service, and sign the same; and the party desiring such deposition shall file such true copy with the clerk of the court in which such cause is pending, with request

for the issuance of a commission to take such deposition, whereupon said clerk shall, after the expiration of ten days from the date of the service of such notice, as noted on said true copy, issue a commission to take such deposition. [Id.]

Art. 3667. **Commission, how styled, etc.; requisites of.**—Such commission shall be styled, addressed, dated and tested as provided by articles 3656 and 3657 of this chapter, and shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date named in the notice and commission and to take his answers under oath to such questions as may be propounded to him by the respective parties, or their attorneys, to the suit or proceeding; and such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed. [Id.]

Art. 3668. **Powers of officer taking depositions.**—Said officer shall have the power and authority conferred by article 3658 as amended by this act, and article 3659, to enforce the attendance of the witness, and to compel him to testify. [Id.]

Art. 3669. **Written cross-interrogatories may be filed.**—If the party upon whom the notice is served shall desire to do so, he may file with the clerk of the court written interrogatories to the witness, a certified copy of which interrogatories shall be attached to the commission and answers thereto taken at the time of taking the oral testimony. [Id.]

Art. 3670. **Witness to be cautioned and sworn, etc.**—Every person deposing, as provided in this act, shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth. [Id.]

Art. 3671. **Examination, how conducted, reduced to writing, etc., and subscribed.**—The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [Id.]

Art. 3672. **Objections to testimony not to be sustained, etc., but recorded and reserved for court, etc.**—The officer taking such deposition shall not sustain objections or exceptions to any of the testimony taken, nor exclude same: but any of the parties or attorneys engaged in taking the testimony may have such objections as they may make recorded with the testimony and reserved for the action of the court in which the cause is pending, and any such court shall not be confined to the objections made at the taking of the testimony. [Id.]

Art. 3673. **Depositions certified and returned how; rules as to use, etc.**—Such depositions shall be certified and returned by the officer taking the same, and opened as is provided in articles 3660, 3662 and 3674; and the same rules shall apply to the use of such deposition as are provided by articles 3675 to 3678, inclusive. [Acts 1907, p. 188.]

Art. 3674. [2287] [2232] **Depositions opened.**—Depositions, after being filed, may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party. [Act May 13, 1846, p. 363, sec. 77. P. D. 3741.]

Art. 3675. [2288] [2233] **Either party may use depositions, when.**—When cross-interrogatories have been filed and answered, either party has the right to use the depositions on the trial. [Id. sec. 76. P. D. 3740.]

Art. 3676. [2289] [2235] **Objections to depositions.**—When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection to the form thereof, or to the

manner of taking the same, shall be heard, unless such objections are in writing and notice thereof is given to the opposite counsel before the trial commences; provided, however, that such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter. [Act May 13, 1846, p. 363, sec. 78; amend. 1893, p. 5. P. D. 3742.]

Art. 3677. [2290] [2236] **Depositions to be read in evidence, subject, etc.**—Depositions may be read in evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might be made to the interrogatories and answers, were the witness personally present before the court giving evidence. [Act March 16, 1848, p. 106, sec. 17. P. D. 3733.]

Art. 3678. [2291] [2237] **Matter not responsive stricken out.**—If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto. [Act May 13, 1846, p. 363, sec. 73. P. D. 3732.]

CHAPTER THREE.

DEPOSITIONS OF PARTIES.

Article.	Article.
Party may take his own deposition.....3673	Taken and returned as other depositions.3683
May take deposition of adverse party...3680	Answer may embrace what—contradiction of.....3684
Where either party is a corporation no ex parte depositions.....3681	Refusal to answer, etc.....3685
Not necessary to give notice, etc.....3682	Objection to interrogatories, etc.....3686

Article 3679. [2292] [2238] **Party may take his own deposition.**—The deposition of either party to a suit, who is a competent witness therein, may be taken in his own behalf in the same manner and with like effect with the depositions of other witnesses.

Art. 3680. [2293] [2239] **May take deposition of adverse party.**—Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness; and his examination shall be conducted and his testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of the succeeding articles of this chapter. [Act Feb. 15, 1858, p. 110, sec. 3. P. D. 3754.]

Art. 3681. **Where either party is a corporation, no ex parte depositions.**—Where either party to any suit is a corporation, neither party thereto shall be permitted to take ex parte depositions. [Acts 1897, p. 117.]

Art. 3682. [2294] [2240] **Not necessary to give notice.**—It shall not be necessary to give notice of the filing of the interrogatories or to serve a copy thereof on the adverse party before a commission shall issue to take the answer thereto, nor shall it be any objection to the interrogatories that they are leading in their character. [Acts Feb. 15, 1858, p. 110, sec. 3.]

Art. 3683. [2295] [2241] **Taken and returned as other depositions.**—A commission to take the answers of the party to the interrogatories filed shall be issued by the clerk or justice, and be executed and returned by any authorized officer as in other cases. [Id.]

Art. 3684. [2296] [2242] **Answer may embrace, what; contradiction of.**—The party interrogated may, in answer to questions propounded, state any

matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony in the same manner as he might contradict the testimony of any other witness. [Id. sec. 4. P. D. 3755.]

Art. 3685. [2297] [2243] **Refusal to answer, etc.**—If the party interrogated refuses to answer, the officer executing the commission shall certify such refusal; and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed. [Id. sec. 5. P. D. 3756.]

Art. 3686. [2298] [2244] **Objections to interrogatories, etc.**—The party interrogated may, upon the trial of the case, take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

CHAPTER FOUR.

GENERAL PROVISIONS.

Article.	Article.
Common law rules of evidence.....3687	Record books, certain, declared valid records, etc.; certified copies, effect of.....3701
Color or interest does not disqualify....3688	Certified copies of deeds, etc., to land in Archer county, recorded in Jack county, when, etc., evidence when.....3702
Husband or wife not disqualified, except, etc. ....3689	Transcribed records, certified copies of, evidence, etc. ....3703
In actions by or against executors, etc., certain testimony not allowed.....3690	Transcribed records, effect of.....3704
Religious opinions, etc., do not disqualify .....3691	Certain abstracts of title evidence, when .....3705
Printed statutes evidence, when.....3692	Certified copy of instrument sued on is evidence, when.....3706
Certified copies of acts, etc., evidence....3693	Certified copies from heads of departments, evidence .....3707
Copies of records of public officers and courts to be prima facie evidence.....3694	Assessment or payment of taxes may be proven, how.....3708
Record of surveys as evidence.....3695	Rate of interest in this state presumed, unless, etc.....3709
Copies and certificates from certain officers are evidence.....3696	Execution of notes and other instruments presumed, unless, etc.....3710
Notarial acts and copies thereof are evidence .....3697	Evidence of appointment and qualification of executor, etc.....3711
In suits against delinquent officers, transcript from comptroller's office is evidence .....3698	Suit on sworn account.....3712
Copies of certain instruments prior to 1837 are evidence.....3699	Records of corporation are evidence.....3713
Recorded instruments admitted in evidence without proof, when.....3700	

Article 3687. [2299] [2245] **Common law rules of evidence.**—The common law of England as now practiced and understood shall, in its application to evidence, be followed and practiced by the courts of this state, so far as the same may not be inconsistent with this title or any other law. [Act Dec. 20, 1836. P. D. 3706.]

Art. 3688. [2300] [2246] **Color or interest does not disqualify.**—No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried. [Act May 19, 1871, p. 108. P. D. 6826.]

Art. 3689. [2301] [2247] **Husband or wife not disqualified, except, etc.**—The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

Art. 3690. [2302] [2248] **In actions by or against executors, etc., certain testimony not allowed.**—In actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transac-

tion with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent. [Id. P. D. 6827.]

Art. 3691. [2303] [2249] **Religious opinions, etc., do not disqualify.**—No person shall be incompetent to testify on account of his religious opinions, or for want of any religious belief. [Const., art. 1, sec. 5.]

Art. 3692. [2304] [2250] **Printed statutes evidence, when.**—The printed statute books of this state, of the United States, of the District of Columbia, or of any state or territory of the United States, or of any foreign government purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained. [Act May 13, 1846. P. D. 3712.]

Art. 3693. [2305] [2251] **Certified copies of acts, etc., evidence.**—A certified copy under the hand and seal of the secretary of state of this state, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof. [Id.]

Art. 3694. [2306] [2252] **Copies of records of public officers and courts to be prima facie evidence.**—Copies of the records of all public officers and courts of this state, certified to under the hand, and seal of there be one, of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible; translated copies of all records in the land office, certified to under the hand of the translator, and the commissioner of the general land office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence. [Id. P. D. 3715.]

Art. 3695. [2307] [2252a] **Record of surveys, evidence.**—The county surveyor of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with plats thereof that he may make, whether private or official; and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any of the courts of this state. [Acts 1880, p. 70.]

Art. 3696. [2308] [2253] **Copies and certificates from certain officers are evidence.**—It shall be the duty of the secretary of state, attorney general, commissioner of the general land office, comptroller, treasurer, adjutant general, commissioner of agriculture, commissioner of insurance and banking, and state librarian, to furnish any person who may apply for the same with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seal of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same; and the same shall be received in evidence in all cases in which the originals would be evidence. [Act March 20, 1848. P. D. 3806.]

Art. 3697. [2309] [2254] **Notarial acts and copies thereof are evidence.**—All declarations and protests made, and acknowledgments taken, by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in all the courts of this state. [Act June 24, 1876, p. 30, sec. 9. P. D. 4697.]

Art. 3698. [2310] [2255] **In suits against delinquent officers, transcript from comptroller's office is evidence.**—In suits by the state against any officer or agent thereof, on account of any delinquency or failure to pay to the state any money, a transcript from the papers, books, records and proceedings of the office of comptroller of public accounts, purporting to contain a true statement of accounts between the state and such party, authenticated under the

seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly; and all copies of bonds, contracts or other papers relating to, or connected with, any account between the state and an individual, sued as aforesaid, when certified by the comptroller of public accounts to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof. [Act Feb. 8, 1861, p. 14. P. D. 3704.]

Art. 3699. [2311] [2256] Copies of certain instruments prior to 1837 are evidence.—Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited. [Act May 13, 1846, p. 363, sec. 91. P. D. 3717.]

Art. 3700. [2312] [2257] Recorded instruments admitted in evidence without proof, when.—Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this state in force at the time of its registration, or at the time it was proved or acknowledged, or every instrument which has been, or hereafter may be, actually recorded for a period of ten years in the book used by said clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this state without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And, whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he can not procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer, who took such proof or acknowledgment, is not in form or substance such as required by the laws of this state; and said instrument shall be given the same effect as if it were not so defective. [Acts 1846, p. 387. Acts 1907, p. 308. P. D. 3716.]

Art. 3701. Record books, certain declared valid records, etc.; certified copies, effect of.—All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be, and the same are hereby declared to be, in all respects lawful and valid records of such

counties respectively, for all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties. [Acts 1905, p. 36.]

Art. 3702. **Certified copies of deeds, etc., to land in Archer county recorded in Jack county, when, etc.; evidence, when.**—Certified copies of deeds, mortgages, trust deeds and all other instruments in any manner affecting titles to lands in Archer county, which were recorded in Jack county from the tenth day of August, 1866, to the tenth day of August, 1870, said certified copies being made under the hand and seal of the clerk of the county court of Shackelford county, shall be admitted in evidence in all suits where secondary evidence is admissible. [Acts 1897, p. 143.]

Art. 3703. [2319] [2263] **Transcribed records, certified copies of, evidence, etc.**—Where a county has been heretofore, or may hereafter be, created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records. [Acts 1879, ch. 99, p. 106, sec. 3.]

Art. 3704. [2320] **Transcribed records, effect of.**—Transcribed records for new counties or for newly attached territory, as provided for by law, when properly verified and certified, shall have all the force and effect in judicial proceedings in courts of this state as the original records. [Acts 1879, p. 105.]

Art. 3705. [2313] [2257a] **Certain abstracts of title evidence, when.**—All abstracts of land titles, or land abstract books to lands in this state, compiled from the records of any county in this state, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the month of May, 1874, March, 1876, and January, 1889, shall hereafter be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this state; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit before some officer authorized, at the time of making such affidavit, to take acknowledgments to deeds in this state, and to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate; and provided, also, that it shall be admissible to offer in evidence any testimony tending to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tending to show the compiler thereof to have been incompetent or unreliable, or competent and reliable; and provided, further, that a copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before the trial, and the same defense may be made as if copies of the original record had been filed; provided, further, that the party offering such abstracts of land titles, or land title abstract books, in evidence shall himself, or by his agent or attorney, have made affidavit that the original instrument

to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners' court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this state; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns, to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good cause, to produce said abstracts of land titles, or land title abstract books, data or memoranda, when demanded, as herein provided. And said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain; provided, that nothing herein contained shall ever be construed to in any way affect or apply to any suit or suits pending in any of the courts in this state on the twelfth day of July, 1891; provided, further, that the provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded; provided, that, whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof. [Acts 1897, p. 146. Acts 1891, p. 136. Acts 1901, p. 44.]

Art. 3706. [2314] [2258] Certified copy of instrument sued on is evidence, when.—If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this state, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but, if the defendant shall plead and file an affidavit under oath that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being subpoenaed as a witness, attend with the same on trial of the cause. [Acts 1891, p. 136. P. D. 3718.]

Art. 3707. [2315] [2259] Certified copies from heads of departments evidence.—Certified copies, under the hands and official seals of the heads of

departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any of the departments of this state, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this state, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence. [Act Aug. 11, 1870, p. 62. P. D. 6825.]

Art. 3708. [2316] [2260] **Assessment or payment of taxes may be proven, how.**—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [Act Feb. 15, 1858. P. D. 3708.]

Art. 3709. [2317] [2261] **Rate of interest in this state presumed, unless, etc.**—The rate of interest in any other state, territory or country is presumed to be the same as that established by law in this state, and may be recovered accordingly without allegation or proof of the rate of interest in such other state, territory or country, unless the rate of interest in such other country be alleged and proved. [Id.]

Art. 3710. [2318] [2262] **Execution of notes and other instruments presumed, unless, etc.**—When any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing, charged to have been executed by the other party or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as evidence without the necessity of proving its execution, unless the party by whom or by whose authority such instrument or note in writing is charged to have been executed, shall file his affidavit in writing denying the execution thereof; and the like rule shall prevail in all suits against indorsers and sureties upon any note or instrument in writing. When any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by the affidavit of the executor or administrator of such testator or intestate. [Act May 13, 1846. P. D. 1443.]

Art. 3711. [2321] [2264] **Evidence of appointment and qualification of executor, etc.**—Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian. [Act Feb. 25, 1863, p. 5. P. D. 1286.]

Art. 3712. [2323] [2266] **Suit on sworn account.**—When any action or defense is founded upon an open account, supported by the affidavit of the party, his agent or attorney, taken before some officer authorized to administer oaths, to the effect that such account is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party resisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that, when such counter affidavit shall be filed on the day of the trial, the party claiming under such verified account shall have the right to continue such cause until the next term of court; when he fails to file such affidavit, he shall not be permitted to deny the account, or any item therein as the case may be. [Acts of 1883, p. 110.]

Art. 3713. [677] [601] **Records of corporation are evidence.**—The records of any company incorporated under the provisions of any statute of

this state, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party. [P. D. 5967.]

TITLE 54.

EXECUTION.

Article.	Article.
Execution on judgment of district and county court issued, when.....	Defendant may give delivery bond and keep property
3714	3748
Execution before adjournment, when.....	Property may be sold by defendant.....
3715	3749
Execution issued before adjournment, superseded, when	Forfeited delivery bond.....
3716	3750
When judgment shall become dormant.....	Real property sold, how.....
3717	3751
Execution from justice's court.....	Sale of land elsewhere than at court house door
3718	3752
Execution issued on removal of property, etc.	Lots in city or town, how sold.....
3719	3753
On death of plaintiff, execution issued how	Lands not in a city, etc., sold in lots, when
3720	3754
On death of executor, etc.....	Sale of lots shall cease, when.....
3721	3755
On death of nominal plaintiff.....	Expenses of selling lots, how paid.....
3722	3756
On death of defendant, no execution for money	Notice of sale of real estate.....
3723	3757
On death of defendant, execution for property	"Court house door" defined.....
3724	3758
Terms "plaintiff" and "defendant" defined	Real estate sales under deeds of trust, how made
3725	3759
County to which execution for money shall issue	Sale of personal property.....
3726	3760
Execution for property shall issue.....	Notice of sale of personal property.....
3727	3761
To different counties.....	Personal property present at sale, except
3728	3762
Requisites of an execution.....	Sale of stock running in range.....
3729	3763
Returnable, when	When execution not satisfied.....
3730	3764
Indorsements by officer.....	Conveyance to purchaser.....
3731	3765
Execution levied on property of surety, when	Deeds to the state in usual form.....
3732	3766
On death, etc., of officers enforced by successor	Conveyance made after the death of purchaser
3733	3767
Enforced without delay.....	Purchaser deemed innocent.....
3734	3768
Levy of execution.....	Penalty for making sale otherwise than as authorized by law.....
3735	3769
Failure of defendant to designate property	Officer or deputy shall not purchase.....
3736	3770
Property not to be designated.....	Purchaser failing to comply.....
3737	3771
Property sold, etc., can not be levied on, when	Re-sale of property.....
3738	3772
Levy on real estate.....	Return of execution by mail.....
3739	3773
On personal property.....	Money to be paid over.....
3740	3774
On stock running at large.....	Failure to pay over money.....
3741	3775
On shares of stock, etc.....	Failure to levy or sell, penalty for.....
3742	3776
Interest of partner.....	Failure to return execution.....
3743	3777
Goods pledged or mortgaged.....	Surplus to be paid to defendant.....
3744	3778
Shares of stock may be sold.....	Return of execution.....
3745	3779
Duty of officer as to property in his hands	Death of defendant operates as supersedeas, when.....
3746	3780
Expenses for keeping property.....	Death of plaintiff does not abate writ.....
3747	3781
	Execution docket.....
	Index to execution docket.....
	Penalty for failing to keep docket and index
	3782
	3783
	3784

Article 3714. [2324] [2267] **Execution on judgment of district and county court, issued when.**—From and after the adjournment of every district or county court, it shall be the duty of the clerk thereof to tax the costs in every case in which a final judgment has been rendered against the party liable therefor under such judgment, and which have not been paid by him, and to issue execution for the enforcement of such judgment and the collection of such costs: [Act June 4, 1873, p. 209, sec. 1. P. D. 3772.]

Art. 3715. [2325] [2268] **Execution before adjournment, when.**—After the expiration of twenty days from and after the rendition of a final judgment in the district or county court, and after the overruling of any motion therein for a new trial or in arrest of judgment, if no supersedeas bond on appeal or writ of error has been filed and approved, the clerk shall issue execution upon such judgment upon the application of the successful party. [Id.]

Art. 3716. [2326] [2269] **Execution issued before adjournment, superseded, when.**—When an execution has been issued under the preceding article, and a supersedeas bond is afterward filed and approved within the time prescribed by law, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under such execution.

Art. 3717. [2326a] **When judgment shall become dormant.**—If no execution is issued within twelve months after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall

issue thereon, unless such judgment be revived; but, where the first execution has issued within the twelve months, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Acts 1895, p. 2.]

Art. 3718. [2327] [2270] **Execution from justice's court.**—Executions from the justices' courts shall issue as provided in the title relating to said courts.

Art. 3719. [2328] [2271] **Execution issued on removal of property, etc.**—Upon the filing of an affidavit that the party against whom a judgment for money, other than a judgment for costs only, has been rendered, is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors, the clerk may issue execution immediately. [Act Jan. 27, 1842, p. 66, sec. 3. P. D. 3774.]

Art. 3720. [2329] [2272] **On death of plaintiff, execution issued how.**—Where a sole plaintiff, or one of the several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with a certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made. [Act Feb. 5, 1853. P. D. 13.]

Art. 3721. [2330] [2273] **On death of executor, etc.**—When an executor, administrator, guardian or trustee of an express trust dies or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such successor, under the hand and seal of the clerk of the court wherein such appointment was made. [Id.]

Art. 3722. [2331] [2274] **On death of nominal plaintiff.**—When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought, upon an affidavit of such death being filed with the clerk.

Art. 3723. [2332] [2275] **On death of defendant, no execution for money.**—Where a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration. [Act Feb. 5, 1853. P. D. 14.]

Art. 3724. [2333] [2276] **On death of defendant, execution for property.**—In all cases of judgments other than money judgments, where the sole defendant, or one or more of several joint defendants, shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent, under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative. [Id.]

Art. 3725. [2334] [2277] **Terms "plaintiff" and "defendant" defined.**—By the term, "plaintiff," as used in this title, is meant the party in whose favor judgment is rendered, and by the term, "defendant," is meant the party against whom judgment was rendered.

Art. 3726. [2335] [2278] **County to which execution for money shall issue.**—Where the execution requires that the judgment shall be made out of the property of the debtor, it shall be issued in the first instance to the county in which the judgment is rendered, and upon the return thereof that no property can be found, or not sufficient to satisfy the same, execution may be issued to any other county in the state. [Act Jan. 27, 1842. P. D. 3784.]

Art. 3727. [2336] [2279] **Execution for property shall issue.**—Where the execution, or any writ in the nature thereof, requires the sale or delivery of specific real or personal property, it may be issued to the county where the property, or some part thereof, is situated.

Art. 3728. [2337] [2280] **To different counties.**—Process in the nature of an execution which requires only the delivery of real or personal property may be issued at the same time to different counties.

Art. 3729. [2338] [2281] **Requisites of an execution.**—The style of the execution shall be, "The State of Texas." It shall be directed to the sheriff or any constable of the proper county, and shall be signed by the clerk or justice officially, and sealed with the seal of the court, if issued out of the district or county court. It shall correctly describe the judgment, stating the court wherein and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, if less than the original amount, the rate of interest, if other than six per cent, and shall have the following requisites:

1. The several items of the bill of costs to be collected under the execution shall be indorsed thereon in intelligible words and figures.

2. If the judgment be for money simply, it shall require the officer to satisfy the judgment out of the property of the debtor, subject to execution.

3. If the judgment commands the sale of particular property for the satisfaction thereof, the writ shall be framed accordingly.

4. If the judgment be for the delivery of the possession of real or personal property, the writ shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages or rents and profits recovered by the same judgment, out of any property subject to execution of the party against whom it is rendered.

5. If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof can not be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein out of any property of the party against whom the judgment was rendered, liable to execution.

6. It shall require the officer to satisfy the costs adjudged against the party, and the further costs of executing the writ, out of any property liable to execution of the party against whom the judgment was rendered.

7. When an alias or pluries execution is issued, it shall show upon its face the number of previous executions which have been issued on the judgment. [Const., art. 5, sec. 12. Act June 4, 1873, p. 209, secs. 1, 2. P. D. 3772.]

Art. 3730. [2339] [2282] **Returnable, when.**—The execution shall be returnable to the first day of the next term of the court, or in thirty, sixty or ninety days, if so directed by the plaintiff, his agent or attorney. [Act June 4, 1873. P. D. 3775.]

Art. 3731. [2340] [2283] **Indorsements by officer.**—The officer receiving an execution shall indorse thereon the exact hour and day when he received it, and, if he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do, or in case of false indorsement, he and his sureties shall be liable, on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement. [Act Jan. 27, 1842. P. D. 3780.]

Art. 3732. [2341] [2284] **Execution levied on property of surety, when.**—If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another.

the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. But, if property of the principal can not be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution. [Act Feb. 5, 1858. P. D. 4786.]

Art. 3733. [2342] [2285] **On death, etc., of officers, enforced by successor.**—If the officer receiving an execution die or go out of office before the return of any execution, his successor or other officer authorized to discharge the duties of the office in such case shall proceed therein in the same manner that such officer should have done.

Art. 3734. [2343] [2286] **Enforced without delay.**—When an execution against the property of any person is issued to an officer, he shall proceed without delay to levy the same upon the property of the defendant not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. [R. S. 1879, 2286.]

Art. 3735. [2344] [2287] **Levy of execution.**—The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon; and a levy shall first be made upon the property designated by the defendant or his agent; provided, that if it be personal property, the defendant or his agent deliver the same into the officer's possession; or, if it be real estate, that he deliver to the officer a description thereof by metes and bounds, and that it be situated in whole or in part within the county. If, in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall notify the defendant or his agent thereof; whereupon the latter may make an additional designation. [Act June 4, 1873, p. 209, sec. 2. P. D. 3775.]

Art. 3736. [2345] [2288] **Failure of defendant to designate property.**—If no property be thus designated, or if an insufficient amount of property be designated, it shall be the duty of the officer to levy the execution upon the property of the debtor, subject to execution in the following order:

1. On personal or movable property.
2. On uncultivated lands; and,
3. Upon cultivated lands. [Id. sec. 3.]

Art. 3737. [2346] [2289] **Property not to be designated.**—A defendant in execution can not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

Art. 3738. [2347] [2290] **Property sold, etc., can not be levied on, when.**—Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

Art. 3739. [2348] [2291] **Levy on real estate.**—In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to indorse such levy on the writ.

Art. 3740. [2349] [2292] **On personal property.**—A levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession; where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them when there are several.

Art. 3741. [2250] [2293] **On stock running at large.**—A levy upon horses, mules, jacks, jennets, horned cattle or hogs running at large in a range, and which can not be herded and penned without great inconvenience

and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

Art. 3742. [2351] [2294] **Levy on shares of stock, etc.**—A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company. [Act March 13, 1875, p. 102.]

Art. 3743. [2352] [2295] **Interest of partner.**—A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners, or with a clerk of the partnership.

Art. 3744. [2353] [2296] **Goods pledged or mortgaged.**—Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage. [R. S. 1879, 2296.]

Art. 3745. [2354] [2297] **Shares of stock may be sold.**—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. [Act March 13, 1875, p. 102.]

Art. 3746. [2355] [2298] **Duty of officer as to property in his hands.**—The officer shall keep securely all personal property levied on by him for which no delivery bond has been given; and, if any injury or loss should result to any party interested by his negligence, he and his sureties shall be liable to pay the value of the property so lost or the amount of injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days' notice being given in the court from which the execution issued. [Act Jan. 27, 1842. P. D. 3782.]

Art. 3747. [2356] [2299] **Expenses for keeping property.**—The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property. [Id.]

Art. 3748. [2357] [2300] **Defendant may give delivery bond and keep property.**—Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, to the effect that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond. [Act Jan. 27, 1842. P. D. 3778.]

Art. 3749. [2358] [2301] **Property may be sold by defendant.**—Where property has been replevied, as provided in the preceding article, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Art. 3750. [2359] [2302] **Forfeited delivery bond.**—In case of the non-delivery of the property according to the terms of the bond, and non-payment of the value thereof, the officer shall forthwith return the bond, indorsed, "forfeited," to the clerk of the court from which execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which fact shall be indorsed by the clerk on the execution. [Id. P. D. 3779.]

Art. 3751. [2360] [2303] **Real property sold, how.**—Real property taken by virtue of any execution shall be sold at public auction, at the court house

door of the county, on the first Tuesday of the month, between the hours of ten o'clock, a. m. and four o'clock p. m. [Id. P. D. 3776.]

Art. 3752. [2361] [2304] **Sale of lands, etc., elsewhere than at court house door.**—Where by law the public sales of lands in any county are directed to be made at any other place than the court house door, the sales herein provided to be made at the court house door shall be made at the place designated by such law.

Art. 3753. [2362] [2305] **Lots in a city or town, how sold.**—If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

Art. 3754. [2363] [2306] **Lands not in a city, etc., sold in lots, when.**—When lands not situated in any town or city are taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field-notes of each lot as numbered, with the certificate of the county surveyor, that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. [Act Feb. 22, 1875, p. 50.]

Art. 3755. [2364] [2307] **Sale of lots shall cease, when.**—When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease at the request of the defendant. [Id.]

Art. 3756. [2365] [2308] **Expenses of selling lots, how paid.**—The expenses of the survey and all other expenses attending the sale of said land in lots, as hereinbefore provided, shall be paid by the defendant, and shall in no case constitute any additional cost in said case. [Id.]

Art. 3757. [2366] [2309] **Notice of sale of real estate.**—The time and place of making sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field-notes. Publishers of newspapers shall receive for publishing said sales fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; for such publication, ten lines shall constitute a square, and the body of no such advertisements shall be printed in larger type than brier; provided, that no fee for advertising any property in a newspaper under the provisions of this article shall exceed the sum of five dollars. If there be no newspapers published in the county, or none the publisher of which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the court house door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. But nothing herein shall affect the method of advertising land under

the powers conferred by any deed of trust or other contract lien. [Acts 1895, p. 168. Acts 1842, p. 66. Acts 1903, p. 104.]

[Note.—Article 2367, R. S. 1895, from Acts 1879, p. 152, repealed by Act 1903, p. 105.]

Art. 3758. [2368] [2310] **“Court house door” defined.**—By the “court house door” of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court; and where, from any cause, there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the court house door. Where the court house, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the court house door.

Art. 3759. [2369] [2310a] **Real estate sales under deeds of trust, how made.**—All sales of real estate made in this state under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Notice shall be given as now required in judicial sales; and such sales shall be made at public vendue, between the hours of ten o'clock a. m. and four o'clock p. m. of the first Tuesday in any month; provided, that, when such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes, and, where such real estate is situated in two or more counties, the sale may be made in any county where any part of the real estate is situated, after notice as required in judicial sales has been given in every county in which any part of such real estate is situated. [Acts of 1889, p. 143.]

Art. 3760. [2370] [2311] **Sale of personal property.**—Personal property taken in execution shall be sold on the premises where it is taken in execution, or at the court house door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. [Act Jan. 27, 1842. P. D. 3776.]

Art. 3761. [2371] [2312] **Notice of sale of personal property.**—Previous notice of the time and place of the sale of any personal property on execution shall be given for ten days successively, by posting up written or printed notices thereof in at least three public places in the county, one of which shall be at the court house door of the county and one at the place where the sale is to be made. [Id.]

Art. 3762. [2372] [2313] **Personal property present at sale, except.**—Personal property shall not be sold, unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession, in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

Art. 3763. [2373] [2314] **Sale of stock running in range.**—When a levy is made upon horses, mules, jacks, jennets, horned cattle or hogs running at large in the range, under article 3741 of this title, it is not necessary that such stock, or any part thereof, should be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Art. 3764. [2374] [2315] **When execution not satisfied.**—When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

Art. 3765. [2375] [2316] **Conveyance to purchaser.**—When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim

which the defendant in execution had in and to the property sold. [Id. P. D. 3795.]

Art. 3766. [2376] [2316a] **Deeds to the state in usual form.**—In all cases where property is purchased by the state, under article 357, the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases. [Acts of 1879, p. 9.]

Art. 3767. [2377] [2317] **Conveyance made after death of purchaser.**—In case the purchaser, having complied with the terms of the sale, shall die before a conveyance shall have been executed to him, the officer shall convey the property sold to the purchaser, nevertheless, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

Art. 3768. [2378] [2318] **Purchaser deemed innocent.**—A purchaser at sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

Art. 3769. [2379] [2319] **Penalty for making sale otherwise than as authorized by law.**—Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner herein prescribed, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered, on motion, five days' notice thereof being given, from such officer and his sureties.

Art. 3770. [2380] [2320] **Officer or deputy shall not purchase.**—If any officer making sale of property on execution, or his deputy, shall, directly or indirectly, purchase the same, the sale shall be void.

Art. 3771. [2381] [2321] **Purchaser failing to comply.**—If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days' previous notice of such motion being given to the defendant; and, should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided. [Id. P. D. 3786.]

Art. 3772. [2382] [2322] **Re-sale of property.**—When the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time; but, if not, he shall readvertise and sell the same as in the first instance. [Id. P. D. 3787.]

Art. 3773. [2383] [2323] **Return of execution by mail.**—When an execution is issued to any county other than the one in which the judgment is rendered, return may be made by mail; but money can not be thus sent except by direction of the party entitled to receive the same or his attorney of record.

Art. 3774. [2384] [2324] **Money to be paid over.**—When an officer has collected money on execution, he shall pay over the same to the party entitled thereto at the earliest opportunity.

Art. 3775. [2385] [2325] **Failure to pay over money.**—Should an officer fail or refuse to pay over money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interests and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties. [Id. P. D. 3781.]

Art. 3776. [2386] [2326] **Failure to levy or sell, penalty for.**—Should an officer fail or refuse to levy upon or sell any property justly liable to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties. [Id. P. D. 3796.]

Art. 3777. [2387] [2327] **Failure to return execution.**—Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interests and costs, to be recovered as provided in the preceding article. [Id. P. D. 3796.]

Art. 3778. [2388] [2328] **Surplus to be paid to defendant.**—If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney. [Id. P. D. 3777.]

Art. 3779. [2389] [2329] **Return of execution.**—Every execution shall be returned forthwith, upon being satisfied by the collection of the money, or upon order of the plaintiff or his attorney indorsed thereon.

Art. 3780. [2390] [2330] **Death of defendant operates as supersedeas, when.**—The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien of the execution, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

Art. 3781. [2391] [2331] **Death of plaintiff does not abate writ.**—An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but the same shall be executed and returned in the same manner as if the plaintiff was still living.

Art. 3782. [2392] [2332] **Execution docket.**—The clerk of each of the several courts shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds eight per cent, the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return; and such docket entries shall be taken and deemed to be a record. [Id. P. D. 3773. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 3783. [2393] [2333] **Index to execution docket.**—The clerk shall keep an index and cross-index to the execution docket; and, when execution is in favor of or against several persons, it shall be indexed in the name of each person.

Art. 3784. [2394] [2334] **Penalty for failing to keep docket and index.**—Any clerk who shall fail to keep an execution docket and index thereto, as hereinbefore directed, or shall neglect to make the entries therein, shall, besides being punished as provided in the penal law, be liable to any person injured for the amount of damages sustained by such neglect, to be recovered in a suit against him and his sureties on his official bond.

TITLE 55.

EXEMPTIONS.

Chapter. 1. Property Exempt from Forced Sale.		Chapter. 2. Excess Over Homestead, etc., How Set Apart and Subjected to Execution.
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CHAPTER ONE.

PROPERTY EXEMPT FROM FORCED SALE.

Article. Property exempt from, to every family...3785 "Homestead" defined 3786 Proceeds of sale of homestead exempt for six months.....3787 Property otherwise exempt.....3788 Ferryboat, etc.....3789		Article. Public property exempt.....3790 Public libraries 3791 Homestead exemption does not apply, when 3792 Other exemptions not applying.....3793
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Article 3785. [2395] [2335] **Property exempt from, to every family.**—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library and all family portraits and pictures.
7. Five milch cows and their calves.
8. Two yoke of work oxen, with necessary yokes and chains.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles, and harness necessary for the use of the family.
15. All provisions and forage on hand for home consumption; and,
16. All current wages for personal services. [Const., art. 16, secs. 28, 50. Acts Aug. 15, 1870, p. 127, sec. 2; April 24, 1874, p. 137, sec. 70. P. D. 6834, 6003.]

Art. 3786. [2396] [2336] **"Homestead" defined.**—The homestead of a family, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, consisting of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired. [Acts 1897, p. 131.]

Art. 3787. **Proceeds of sale of homestead exempt for six months.**—The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale. [Id.]

Art. 3788. [2397] [2337] **Property exempt to others than families.**—The following property shall be reserved to persons who are not constituents of

a family, exempt from attachment, execution and every other species of forced sale:

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.
3. All tools, apparatus and books belonging to any trade or profession.
4. One horse, saddle and bridle.
5. Current wages for personal services. [Act Aug. 15, 1887, p. 127, sec. 2. P. D. 6834. Const., art. 16, sec. 28.]

Art. 3789. [2398] [2338] **Ferryboat, etc.**—There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel or flatboat, used as a ferryboat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars; but such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman. [Act Feb. 13, 1858, p. 21, sec. 1. P. D. 3802.]

Art. 3790. [2399] [2339] **Public property of counties, cities and towns exempt.**—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall also be exempt from forced sale; provided, that nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens existing on the eighteenth day of April, 1876, when the existing constitution went into effect. [Const., art. 9, sec. 9.]

Art. 3791. [2400] [2340] **Public libraries.**—All public libraries shall be exempt from attachment, execution and every other species of forced sale. [Act Aug. 15, 1870, p. 127, sec. 2. P. D. 6834.]

Art. 3792. [2401] [2341] **Homestead exemption does not apply, when.**—The exemption of the homestead provided for in this chapter shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.
2. For taxes due thereon.
3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. [Const., art. 16, sec. 50.]

Art. 3793. [2402] [2342] **Exemptions not to override claims for rent, etc.**—The exemption of personal property provided for in this chapter shall not apply when the debt is due for rents and advances made by a landlord to his tenant, under the provisions of title eighty, or to other debts which are secured by a lien on such property. [Act April 2, 1874, p. 56, sec. 1.]

CHAPTER TWO.

EXCESS OVER HOMESTEAD, ETC., HOW SET APART AND SUBJECTED TO EXECUTION.

Article.	Article.
Voluntary designation of, and who may set aside homestead.....	3794
Mode of setting it apart.....	3795
Instrument to be recorded.....	3796
Excess subject to execution, etc.....	3797
Owner to be notified to set apart.....	3798
Notice, what.....	3799
Service of notice.....	3800
Return of service.....	3801
Return prima facie evidence.....	3802
Defendant may designate homestead.....	3803
Mode of making designation by defendant.....	3804
Designation to be recorded.....	3805
Effect of, when made by defendant.....	3806
Proceeding when defendant fails.....	3807
Commissioners to designate.....	3808
Requisites of such designation.....	3809
To be returned and recorded; effect of.....	3810
Sheriff's return.....	3811
Compensation of commissioners and surveyor.....	3812
Fees of clerk, etc.....	3813
Fees taxed as costs.....	3814
Excess to be sold.....	3815
Defendant may change, but, etc.....	3816
Provisions cumulative.....	3817
Personal property may be designated.....	3818

Article 3794. [2403] [2343] **Voluntary designation of, and who may set aside, homestead in the country.**—When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this state. [Act May 7, 1873, p. 64, sec. 1, et seq. P. D. 6994a, et seq.]

Art. 3795. [2404] [2344] **Mode of setting it apart.**—The party desiring so to designate and set apart the homestead shall file for record with the clerk of the county court of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes or bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and, if more than one survey, the number of acres in each.

Art. 3796. [2405] [2345] **Instrument to be recorded, etc.**—Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded by the clerk in the record of deeds of said county.

Art. 3797. [2406] [2346] **Excess over homestead subject to execution.**—Where the owner of such a homestead, part of a larger tract, as is described in article 3794, has failed to designate and set apart his homestead as provided in the three preceding articles, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed. [Id.]

Art. 3798. [2407] [2347] **Owner to be notified to set apart, etc.**—The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may, on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on his failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. [Id.]

Art. 3799. [2408] [2348] **Notice, what.**—The notice mentioned in the preceding article shall be written or printed, and shall be signed by the sheriff or constable. [Id.]

Art. 3800. [2409] [2349] **Service of notice.**—Such notice may be served on the defendant by the sheriff or constable by reading the same to him, or

by leaving a copy of the same at his place of residence, with some person over fourteen years of age. [Id.]

Art. 3801. [2410] [2350] **Return of service.**—The sheriff or constable shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. [Id.]

Art. 3802. [2411] [2351] **Return prima facie evidence.**—The notice and return indorsed thereon shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated. [Id.]

Art. 3803. [2412] [2352] **Defendant may designate his homestead.**—On the service of such notice, the defendant in execution shall have the right, within ten days thereafter, to designate and set apart his homestead from any excess of land owned by him, and deliver the same to the sheriff or constable. [Id.]

Art. 3804. [2413] [2353] **Mode of making designation by defendant.**—The designation and setting apart so made by the defendant shall be such as is required by articles 3795 and 3796. [Id.]

Art. 3805. [2414] [2354] **Designation to be recorded.**—The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the clerk of the county court of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county. [Id.]

Art. 3806. [2415] [2355] **Effect of, when made by defendant.**—Such designation and setting apart of the homestead made by the defendant under any of the preceding articles shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a certified copy of the record thereof, shall be admitted in evidence of the facts stated therein. [Id.]

Art. 3807. [2416] [2356] **Defendant failing, officer to appoint commissioners.**—If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the sheriff or constable holding such execution shall, at the earliest practicable time, summon either verbally or in writing three disinterested freeholders of the county, neighbors of the defendant in execution, as commissioners to designate for the defendant his homestead. [Id.]

Art. 3808. [2417] [2357] **Commissioners to designate homestead.**—The commissioners shall, as soon as practicable, proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them, and shall be sworn to before some officer authorized to administer oaths, which shall be sufficient to admit the same to record. [Id.]

Art. 3809. [2418] [2358] **Requisites of designation by commissioners.**—The designation of the homestead by such commissioners shall contain all the requisites prescribed for a designation and setting apart by the defendant, and, in addition thereto, shall state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief. [Id.]

Art. 3810. [2419] [2359] **To be returned and recorded; effect of.**—The commissioners shall return their said designation to the sheriff or constable, who shall deliver the same to the clerk of the county court to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this chapter. [Id.]

Art. 3811. [2420] [2360] **Sheriff's return.**—Whenever a homestead is designated under the provisions of this chapter, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed by him with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the clerk of the county court, stating the times when said acts were done; and such return shall be prima facie evidence of the facts therein stated. [Id.]

Art. 3812. [2421] [2361] **Compensation of commissioners and surveyor.**—The commissioners shall be entitled to receive for their services the sum of two dollars per day, and the surveyor the sum of five dollars per day, to include pay for chain carriers. [Id.]

Art. 3813. [2422] [2362] **Fees of clerk, etc.**—The sheriff or constable and clerk shall, for their services, be entitled to such fees as are, or may be, allowed by law. [Id.]

Art. 3814. [2423] [2363] **Fees, etc., taxed as costs.**—Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs. [Id.]

Art. 3815. [2424] [2364] **Excess to be sold.**—Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this chapter, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution. [Id.]

Art. 3816. [2425] [2365] **Defendant may change, etc., but, etc.**—The defendant may, at any time after his homestead has been designated and set apart in either of the modes pointed out in this chapter, change the boundaries of his said homestead by an instrument executed and recorded in the manner provided for in articles 3795 and 3796, but such change shall not impair the rights of parties acquired prior to such change.

Art. 3817. [2426] [2366] **Provisions of this chapter cumulative.**—The provisions of this chapter in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate, any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for producing partition by the purchaser at such execution sale, between himself and the owner of the homestead. [Id.]

Art. 3818. [2427] [2367] **Personal property may be designated, etc.**—Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on; but, if he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

TITLE 56.

EXPRESS COMPANIES.

[For duties of railroads to and remedies for failure to perform, see "Railroads." See also Anti-pass Law "Railroads."]

Article.	Article.
Express companies declared common carriers, and duties defined.....	Powers of commission over, same as over railroads.....
3819	3822
Railroad commission to regulate rates, etc.	To keep general office in this state, etc.
3820	3823
Penalties against, and railroad commission to enforce.....	To furnish information to railroad commission
3821	3824
	To give notice of place of general office
	3825

Article 3819. [2428] **Express companies declared common carriers and duties defined.**—Every person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this state, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged; provided, that no such company shall be compelled to carry any gunpowder, dynamite, kerosene, naphtha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the railroad commission. It shall be unlawful for any person, firm or corporation so engaged to demand or receive for such services other than reasonable compensation. [Acts of 1891, p. 48.]

Art. 3820. [2429] **Railroad commission to regulate rates, etc.**—The railroad commission of the state of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things to be charged for and received by each express company on all such property, money, papers, packages and things which, by the contract of carriage, are to be transported by such express company between points wholly within this state, which rates or charges may be made to apply to all such companies, and may be changed or modified by said commission from time to time in such manner as may become necessary. Said commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said commission for the regulation of railroads.

Art. 3821. [2430] **Penalties against, and railroad commission to enforce.**—Every express company doing business in this state which shall demand or receive a greater compensation than that which may be prescribed and fixed by the said railroad commission for the transportation of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not to exceed five hundred dollars for each offense; provided, that, if it shall appear that such violation was not wilful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. And the said commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies.

Art. 3822. [2431] **Powers of commission over, same as over railroads.**—The said commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad com-

panies, and the said commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, in so far as they are applicable, shall be of equal force and effect against all express companies.

Art. 3823. To keep general office in this state, etc.—Every incorporated express company shall keep a general office in this state, at some place on the line of its transportation, in which it shall keep its books, accounts and contracts, relating to express business, or copies thereof, embracing all books, papers and contracts, or copies thereof, showing the value of its property of all kinds, and the amount of all its receipts and disbursements on account of the express business done in this state. The books, papers and contracts required to be kept in said general office shall at all times be subject to inspection and examination by the officers of the state of Texas, and by any member or members of the railroad commission of Texas, or by its authorized agent, officer or employe. A failure to comply with any of the foregoing provisions of this article shall subject the offending company, and any officer, agent or employe of such company so offending, to a penalty of not less than one hundred nor more than five hundred dollars. And a failure to comply with the foregoing provision shall subject the company so offending to forfeit its charter and privileges of doing business as an express company in this state. The railroad commission of Texas shall report to the attorney general of the state the name of any company, and the officers, agents or employes thereof, violating any of the provisions of this and of articles 3824 and 3825, and any suits to recover the penalties herein prescribed, or to forfeit the charter of such express company doing business in this state, shall be instituted and prosecuted in a court having jurisdiction, in the county of Travis, in the state of Texas, by the attorney general of the state. [Acts 1897, p. 14, sec. 1.]

Art. 3824. To furnish information to railroad commission.—Any incorporated express company with its principal office in another state, and doing business as such express company in this state, is hereby required to provide and keep, in its general office in this state, a copy of its charter, and to make full annual statements of the value of all its property, including a like statement of all its indebtedness, and of all its annual receipts and expenditures as such express company, to the railroad commission of Texas, at such time or times as may be prescribed by it; which statement shall be certified to be correct, and shall be sworn to by the president and secretary, or general manager in Texas, of such company; and such company shall permit any member or members of the railroad commission of Texas, or its authorized agent, to freely examine any and all books, papers and contracts, in said office; and, should any such company, or any person in charge of said office, refuse to permit such examination, this shall be sufficient ground for the withdrawal, by this state, of its privilege of doing business as such express company in this state; and it shall be the duty of the attorney general of the state to institute and conduct suits for that purpose in a court having jurisdiction in Travis county, in the state of Texas. [Id. sec. 2.]

Art. 3825. To give notice of place of general office.—Every express company doing business as such in this state shall, within ninety days after the passage of this act, establish the general office provided for in this act, at some point on their line of transportation in this state, and shall immediately give notice in writing to the railroad commission of Texas of the place at which such general office is located, and shall, at the same time, give notice in writing to the said commission of the name and official designation of the person or persons, officer or officers, charged with the management of such general office, and shall, from time to time, give like notices in writing of any change

of location of such general office, or of the person or persons, officer or officers, charged with the management. A failure to comply with any of the provisions of this article shall be sufficient cause for withdrawing from such express company the privilege of doing business as such in this state. [Id. sec. 3.]

TITLE 57.

FACTORS AND COMMISSION MERCHANTS.

Commission merchant defined.....	Article. 3826	Factor to render account of sales and give particulars under penalty.....	Article. 3830
Bond of	3827	No charge allowed for mending, etc., unless the same has been actually done	3831
Bond made where suit in same county..	3828	Drawbacks, rebates, etc., prohibited.....	3832
Factors, etc., prohibited from being in- terested in their own sales.....	3829		

Article. 3826. **Commission merchant defined.**—Any person, firm or corporation pursuing, or who shall pursue, the business of selling produce, or goods, wares or merchandise of any kind upon consignment for a commission, shall be deemed to be a commission merchant. [Acts 1907, p. 61, sec. 1.]

Art. 3827. **Bond of.**—Every commission merchant is hereby required to make bond, in the sum of two thousand dollars, entered into with two or more good and sufficient sureties, who are residents of this state, payable to the county judge of the county in which such commission merchant resides or has his principal office, and to the successors in office of such county judge, as trustees for all persons who may become entitled to the benefits of this act, conditioned that such commission merchant will faithfully and truly perform all agreements entered into with consignors with respect to receiving, handling, selling, and making remittances and payments for consignments made to him, which bond shall be approved by the county clerk of the county in which such commission merchant resides, or has his principal office, and by him be filed and recorded. [Id. sec. 2.]

Art. 3828. **Bond made where; suit in same county.**—Such bond shall be made in at least one county in which such commission merchant does business; in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its conditions; provided, that said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. That upon the exhaustion of said bond by recoveries thereon, said commission merchant shall be required to make and file a new bond conditioned as provided in article 3827. [Id. sec. 3.]

Art. 3829. [2432] **Factors, etc., prohibited from being interested in their own sales.**—No factor or commission merchant, to whom any cotton, sugar, produce or merchandise of any kind is consigned, for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of the same, either directly or indirectly, in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as factor or agent of any other person, without express license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, given in writing so to do, under a penalty of forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit before any court of competent jurisdiction in the county where the sale took place, or wherein the offending party resides. [Act Feb. 11, 1860. P. D. 3803.]

Art. 3830. [2433] **Factor to render account of sales and give particulars under penalty.**—Upon the sale of any cotton, sugar, produce or merchandise consigned for sale to any factor or commission merchant, it shall be his duty, within a reasonable time thereafter, to render to the owner or consignor thereof a complete account of sales thereof, which shall state the date of the sale, the nature of the purchase, the terms of sale, and, if cotton, sugar or other produce sold by weight, the weight of the same in gross, and the tare allowed, and be accompanied by the certificate or memorandum signed by the weigher

who weighed the same, of the weight and condition, as required by law, under a penalty of not more than five hundred nor less than one hundred dollars, to be recovered as in the preceding article [Id. P. D. 3804.]

Art. 3831. [2434] **No charge allowed for mending, etc., unless same has been actually done.**—No commission merchant or factor shall be permitted to make any charge for mending, or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking or weighing, unless the same has been actually done; and, in case of any such charge, a bill of particulars shall be rendered, notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against the provisions of this chapter shall be liable to a penalty of not more than five hundred nor less than one hundred dollars, to be recovered by the owner or consignor, as in the two preceding articles. [Id. P. D. 3805.]

Art. 3832. [2435] **Drawbacks, rebates, etc., prohibited.**—All drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service, of or to any cotton, grain or any other produce or article of commerce, paid or allowed, or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent or middleman of any kind, not the true and absolute owner thereof, are forever prohibited. [Const., art. 16, sec. 25.]

TITLE 58.

FEES OF OFFICE.

Chapter.

1. Certain State Officers.
2. Clerks of the Supreme Court and Courts of Civil Appeals.

Chapter.

3. County Officers.
4. General Provisions.

CHAPTER ONE.

CERTAIN STATE OFFICERS.

1. General Provisions.	Article.
Certain state officers to furnish copies and certificates	3833
Fees of such officers therefor	3834
Shall not charge certain officers therefor	3835
Shall keep fee book and render account of fees quarterly	3836
2. Secretary of State.	
Fees of state department	3837
Minimum fees in certain cases	3838
Pending suit not affected	3839
Fees paid in advance to secretary and by him to treasury monthly	3840

3. Attorney General.	Article.
Fees of attorney general	3841
4. Commissioner of General Land Office.	
Fees of commissioner of general land office	3842
5. Comptroller.	
Fees of comptroller	3843
6. Commissioner of Insurance and Banking.	
Fees of commissioner of insurance and banking	3844
7. Railroad Commission.	
Fees of railroad commission	3845

1. GENERAL PROVISIONS.

Article. 3833. [2436] [2372] **Secretary of state, commissioner general land office, and other officers to furnish copies and certificates.**—It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, commissioner of insurance and banking, state librarian, adjutant general, and attorney general, to furnish any person who may apply for the same with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same. [Act March 20, 1848. P. D. 3806.]

Art. 3834. [2437] [2373] **Fees of such officers for copies and certificates.**—It shall be lawful for the officers named in the preceding article to demand and receive the following fees for the services mentioned therein, except as otherwise specially provided in this chapter: [Acts 1907, p. 283. P. D. 3807.]

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words.	\$.15
For copies of any paper, document, or record in their offices, in any other language than the English, including certificate and seal, for each hundred words .....	.25
For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words.....	.30
For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.....	.50
For each certificate not otherwise provided for.....	.50

Art. 3835. [2438] [2374] **Shall not charge officers of state for copies.**—Nothing contained in the two preceding articles shall authorize either of the officers therein named to demand or receive fees from any officer of the state for copies of any papers, documents, or records in their offices, or for any certificate in relation to any matter in their offices when such copies or certificates are required in the performance of any of the official duties of such officer. [Id. P. D. 3810.]

Art. 3836. [2444] [2379] **Shall keep fee book and render account of fees quarterly.**—It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, commissioner of insurance and banking, state librarian, adjutant general and attorney general, respectively, to keep fee books in their several offices in which they shall enter all the fees received for any of the services named in this chapter; and they shall quarterly file with the comptroller an account of all fees so received by them respectively; which account shall be verified by the affidavit of the officer rendering the same; and such officers shall also, at the end of each quarter, pay over to the treasurer of the state all money received by them respectively under the provisions of this chapter. [Act March 20, 1848. P. D. 3808.]

2. SECRETARY OF STATE.

Art. 3837. [2439] **Fees of state department.**—The secretary of state, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the state the following fees:

For each and every charter, amendment or supplement thereto, of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway or express company, authorized or required by law to be recorded in said department, a fee of two hundred dollars to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars authorized capital stock, or fractional part thereof, after the first.

For each and every charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of ten dollars to be paid when the charter is filed.

For each and every charter, amendment or supplement thereto, of a private corporation created for any other purpose, intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed; provided, that, if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock, or fractional part thereof, after the first.

For each commission to every officer elected or appointed in this state, a fee of one dollar; and each and every state, district, county and precinct officer elected or appointed in this state is required to apply for and receive his commission; provided, that the secretary of state shall not be required to forward copies of laws to nor attest the authority of any officer in this state who fails or refuses to take out his commission as required herein.

For each official certificate, a fee of one dollar.

For each warrant of requisition, a fee of two dollars.

For every remission of fine or forfeiture, one dollar.

For copies of any paper, document or record in his office, for each one hundred words, fifteen cents.

For each and every charter, amendment or supplement thereto, taken out under chapter 16, title 25, Revised Statutes, (channel and dock corporations), a fee of two hundred dollars shall be paid to the secretary of state for the use and benefit of the state, which shall be paid when the charter, amendment or supplement thereto is filed for record.

For each foreign corporation obtaining permit to do business in this state shall pay fees as follows: fifty dollars for the first ten thousand dollars of its authorized capital stock, and ten dollars for each additional ten thousand dollars, or fractional part thereof; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph lines in this state, shall in no event exceed ten thousand dollars; provided, however, that mutual building and loan companies, so called, whose stock is not permanent, but withdrawable, shall pay a fee of fifty dollars for the first one hundred thousand dollars, or a fractional part thereof, of its authorized capital stock, and ten dollars for each additional one hundred thousand dollars, or a fractional part thereof; and where the company is a foreign one, then the fee shall be based upon the capital invested in the state of Texas. [Acts 1907, S. S., p. 500. Acts 1905, p. 135. Acts 1889, p. 93. Acts 1889, p. 87. Acts 1883, p. 72. Acts 1909, S. S., p. 267.]

Art. 3838. **Minimum fees in certain cases.**—The minimum fee for any foreign building and loan company shall be two hundred and fifty dollars; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this state shall in no event exceed one thousand dollars. [Id.]

Art. 3839. **Pending suit not affected.**—Nothing in this chapter, nor in articles 1315 and 1316, shall in anywise affect any suit now pending in the name, or in behalf of, the state of Texas, as against any foreign corporation. [Id.]

Art. 3840. **Fees paid in advance to secretary and by him to treasury monthly.**—All fees mentioned in articles 3837 and 3838 shall be paid in advance into the office of the secretary of state, and shall be by him paid into the state treasury monthly. [Id.]

3. ATTORNEY GENERAL.

Art. 3841. [2440] [2375] **Fees of attorney general.**—The attorney general shall be entitled to the following fees:

For each affirmance of judgment in cases to which the state may be a party involving pecuniary liabilities to the state, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the supreme court or court of appeals, twenty-five dollars.

But the whole amount of fees allowed the attorney general shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the state treasury. [Act Aug. 23, 1876, p. 284, sec. 2.]

4. COMMISSIONER OF GENERAL LAND OFFICE.

Art. 3842. [2441] [2376] **Fees of commissioner of general land office.**—The commissioner of the general land office is authorized and required to

charge for the use of the state the following fees for issuing certificates and patents for land, to-wit:

For certificates for three hundred and twenty acres of land or less....	\$2 00
For certificates for over three hundred and twenty and up to and including six hundred and forty acres of land.....	4 00
For certificates for over six hundred and forty and up to and including one thousand two hundred and eighty acres of land.....	5 00
For certificates for over one thousand two hundred and eighty acres of land	7 00
For filing each deed transferring one tract of land.....	50
For each additional tract in each deed.....	25
For filing affidavit of non-settlement and affidavit in rebuttal.....	50
For filing protests, decrees and affidavit of ownership.....	50
For issuing certificate of facts covering one survey.....	1 00
For each additional tract contained in said certificate.....	25
For issuing certificate of occupancy on the home section.....	1 00
For each additional tract shown in said certificate, when called for by the owner	50
For copy of any paper, document or record, in the English language, for each 100 words.....	20
For copy of any paper, document or record in any other language than the English, for each 100 words.....	30
For each translated copy of any paper, document or record, for each 100 words	35
For copy of any plat or map, fee to be determined with reference to amount of labor required, per hour.....	1 00
For each certificate not otherwise provided for.....	50
For patent for 320 acres of land or less.....	5 00
For patent for over 320 acres, up to and including 640.....	6 00
For patent for over 640 up to and including 1280 acres.....	10 00
For patent for over 1280 up to and including 1476 acres, or one-third league	12 50
For patent for over 1476 and containing less than 4605 acres, or one league and labor.....	15 00
For patent for one league and labor (4605 acres).....	20 00
For patent for each additional league, or fraction thereof.....	20 00
For filing original field-notes.....	1 00
Where an examination of the records of the land office is demanded in person or by letter, by any person other than the owner of the survey, his agent or attorney, which ownership shall be disclosed by the records of the land office, and the agent's or attorney's authority must be in writing and filed in the land office, shall be charged a fee of	50
If such examination is extended beyond fifteen minutes, the charge shall be made in proportion to the time consumed at the rate, each hour	1 00
Fee for certified copy of certificate of the class of Toby scrip.....	2 50
For headright certificate.....	1 00
For railroad certificate.....	1 00
For field-notes	1 00
For pre-emption application	75
For application to buy the school land with obligation for deferred payment	1 25
For obligation for deferred payment for school land.....	75
For proof of occupancy.....	1 00
For deed of transfer or bond for title, or power of attorney.....	1 50

For patent	\$ 1 25
For application for surveyor, Act of February 23, 1900.....	75
For affidavit of settlement or non-settlement on school land.....	1 00
For filing affidavit of non-settlement and affidavit in reition.....	50
For lease application or contract, not exceeding six tracts.....	75
For each additional six tracts add.....	25
For letters and impressions of letters.....	50
For extract copy of muster roll, traveling land boards reports, clerk's returns relating to headright certificates, patent delivery books, school land sales record books, etc., each.....	2 00
For lithograph map of Brewster, El Paso, Pecos and Val Verde and Webb counties, two parts, each part \$1.....	2 00
For maps of such other counties as are lithographed.....	50
For blue print copies of maps \$3.00 to \$8.00, copy of map, or part thereof, depends upon each order and estimates will be furnished upon receipt at request. [Acts June 2, 1876, p. 176. P. D. 6844a. See Acts 1879, ch. 55 for penalty for not paying fees and taking out patents. Acts 1907, p. 283.]	

5. COMPTROLLER.

Art. 3843. [2442] [2377] **Fees of comptroller.**—The comptroller of public accounts shall charge the following fees:

For examinations in which the state, or any county, has no interest, for each hour or fraction of an hour spent in such examination.....	\$ 50
For each sealed certificate issued.....	50

[Acts 1875, p. 182, sec. 2.]

6. COMMISSIONER OF INSURANCE AND BANKING.

Art. 3844. [2443] [2378] **Fees of commissioner of insurance and banking.**—The commissioner of insurance and banking shall charge and receive for the use of the state the following fees, to-wit:

For filing each declaration or certified copy of charter of insurance company	\$ 25 00
For filing the annual statement of an insurance company, or certificate in lieu thereof.....	20 00
For certificate of authority and certified copy thereof.....	1 00
For every copy of any paper filed in his department, for each folio..	20
For affixing his official seal and certifying to the same.....	1 00
For valuing policies of life insurance companies, for each one million of insurance or fraction thereof.....	10 00
For official examination of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed.....	250 00

[Acts 1876, p. 223, sec. 12. Acts 1907, p. 127, sec. 16.]

7. RAILROAD COMMISSION.

Art. 3845. **Fees of railroad commission.**—The railroad commission of Texas shall be, and it is hereby, authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the state government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be so construed as to authorize the

charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by the secretary of the railroad commission and paid into the treasury as provided for in article 3836. [Acts 1899, p. 297.]

CHAPTER TWO.

CLERKS OF THE SUPREME COURT AND COURTS OF CIVIL APPEALS.

Article. Fees of clerk of supreme court.....3846 Fees of clerks of courts of civil ap- peals3847	}	Article. Compensation for services not provided for3848
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Article 3846. [2445] [2380] **Fees of clerk of supreme court.**—The clerk of the supreme court shall receive the following fees:

Entering appearance of either party, in person or by attorney, to be charged but once.....	\$ 50
Docketing each cause, to be charged but once.....	50
Filing the record in each cause.....	50
Entering each rule or motion.....	25
Entering the order of the court upon any rule or motion, or entering any interlocutory judgment	50
Administering an oath or affirmation without a certificate.....	15
Administering an oath or affirmation and giving certificate thereof, with seal	25
Entering each continuance.....	20
Entering each final judgment or decree.....	1 00
Each writ issued.....	1 00
Making out and transmitting the mandate and judgment of the supreme court to any inferior court.....	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each one hundred words.....	15
Recording the opinions of the judges, for each one hundred words.....	20
Taxing the bill of costs in each case with copy thereof.....	50
Issuing attorney's license.....	5 00

[Acts 1876, p. 285, sec. 4, modified by Acts 1893, p. 165.]

[Note.—For fees of deputy clerks, see article 1536.]

Art. 3847 [1011] **Fees of clerks of courts of civil appeals.**—The clerks of the courts of civil appeals shall receive as compensation for their services the following fees:

Entering appearances of either party, in person or by attorney, to be charged but once.....	\$ 50
Docketing each cause, to be charged but once.....	50
Filing the record in each cause.....	50
Entering each rule or motion.....	25
Entering the order of court upon any rule or motion, or entering any interlocutory judgment	50
Administering an oath or affirmation, without a certificate.....	15
Administering an oath or affirmation and giving a certificate thereof with seal	25

Entering each continuance.....	20
Entering each final judgment or decree.....	1 00
Each writ issued	1 00
Making out and transmitting the mandate and judgment of the court to any inferior court.....	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words.....	10
Recording the opinions of the judges, for each 100 words.....	15
Taxing the bill of costs in each case.....	50
Filing each brief, or other paper necessary to be filed.....	10
For certificate and seal, where same is necessary.....	50
Recording sheriff's return on execution.....	50
For issuing copies of each notice ordered by court.....	50

[Acts 1893, p. 8. Acts 1892, p. 33. Acts 1893, p. 165.]

Art. 3848. [2446] [2382] **Compensation for services not provided for.**—The clerks of the supreme court and courts of civil appeals for every service not herein provided for shall receive such fees as may be allowed by the court, not to exceed the fees herein allowed for services requiring a like amount of labor. [Act Aug. 23, 1876, p. 285, sec. 4.]

Note.—For provisions as to office rent, stationery, etc., of the clerks of the supreme court, courts of civil appeals and court of criminal appeals, see art. 3904.]

CHAPTER THREE.

COUNTY OFFICERS.

Article.		Article.	
1. County Judge.		6. Constables.	
Fees of county judge in probate.....	3849	Constables' fees	3868
Commissions to county judge.....	3850	Fees for services in district or county courts	3869
Fees in lunacy cases.....	3851	7. County Commissioners.	
Compensation for ex officio services....	3852	Per diem pay of county commissioners.....	3870
Fees for testing weights and measures, etc.	3853	8. Assessor of Taxes.	
Fees for hiring out county convicts....	3854	Assessors' compensation	3871
2. Clerks of the District Court.		9. Collector of Taxes.	
Fees of clerks of the district court.....	3855	Collectors' compensation.....	3872
Clerk shall compare and certify copies, etc.; fees	3856	10. County Treasurer.	
Fees in probate matters.....	3857	County treasurers' commissions.....	3873
Compensation for ex officio services....	3858	Commissions on school fund.....	3874
No compensation for assessing damages.....	3859	Commissions shall not exceed \$2,000 annually	3875
3. Clerks of the County Court.		11. District and County Surveyors.	
Fees of clerks of county court.....	3860	District and county surveyors' fees....	3876
Compensation for preserving records, etc.	3861	12. Inspectors of Hides and Animals.	
Compensation for ex officio services....	3862	Fees of inspector of hides and animals..	3877
No compensation for assessing damages.....	3863	13. Notaries Public.	
4. Sheriffs.		Fees of notaries public	3878
Sheriffs' fees	3864	14. Public Weighers.	
Sheriffs' fees for serving process from supreme court, etc.....	3865	Fees of public weighers.....	3879
Compensation for ex officio services....	3866		
5. Justices of the Peace.			
Justices' fees	3867		

1. COUNTY JUDGE.

Article 3849. [2447] [2383] **Fees of county judge in probate matters.**—The county judge shall receive the following fees in probate matters:

Probating a will.....	\$2 00
Granting letters testamentary, of administration or of guarandianship.	50
Each order of sale.....	50
Each approval and confirmation of sale.....	50
Each decree refusing order of sale, or refusing confirmation of sale....	50
Each decree of partition and distribution.....	2 00
Each decree approving or setting aside the report of commissioner of partition and distribution.....	2 00
Each decree removing an executor, administrator or guardian, to be paid by such executor, administrator or guardian.....	1 00
Each fiat or certificate.....	50
Each continuance	10
Each order, not otherwise provided for.....	50
Administering oath or affirmation with certificate and seal.....	50
Administering oath or affirmation without certificate and seal.....	25

[Act Aug. 23, 1876, p. 284, sec. 6.]

Art. 3850. [2448] [2384] **Commission allowed county judge.**—There shall also be allowed the county judge a commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such ex-

ecutor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian. [Id.]

Art. 3851. [2449] [2385] **Fees in lunacy cases, etc.**—For every case of lunacy disposed of by the county judge, he shall receive three dollars, to be paid out of the county treasury. For each civil cause finally disposed of by the county judge, by trial or otherwise, he shall receive a fee of three dollars, to be taxed against the party cast in the suit; provided, that, if the party cast in the suit has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the county commissioners' court such compensation as they may deem proper, not to exceed three dollars for each state case. [Id. Acts of 1879, ch. 81, p. 91.]

Art. 3852. [2450] [2386] **Compensation for ex officio services.**—For presiding over the commissioners' court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for, the county judge shall receive such salary from the county treasury as may be allowed him by order of the commissioners' court. [Id.]

Art. 3853. [2451] [2387] **Fees for testing weights and measures, etc.**—For testing any steelyard, balance or beam, the county judge shall receive from the applicant a fee of fifty cents, and, for every weight or measure, ten cents. [P. D. 5358.]

Art. 3854. [2452] [2388] **Fees for hiring out county convicts.**—The county judge shall receive the following fees for hiring out county convicts, in all cases to be paid in advance by the party hiring a convict, the same to be repaid to the contractor or employer when demanded, out of the wages of such convict, viz.:

For every bond required to be taken.....	\$1 00
For the examination and approval of each bond.....	50
[Act Aug. 21, p. 230, sec. 14.]	

2. CLERKS OF THE DISTRICT COURT.

Art. 3855. [2453] [2389] **Fees of clerks of the district courts.**—The clerks of the district courts shall receive for the following services in civil cases the following fees, to-wit:

For copy of petition, including certificate and seal, each one hundred words	\$ 20
Each writ of citation.....	75
Each copy of citation.....	50
Docketing each cause, to be charged but once.....	20
Every other order, judgment or decree, not otherwise provided for....	75
Docketing each rule or motion, including rule for cost.....	15
Filing each paper.....	15
Entering appearance of each party to a suit, to be charged but once....	15
Each continuance	20
Swearing each witness.....	10
Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of the court.....	50
Each subpoena issued.....	25
Each additional name inserted in subpoena.....	15

Approving bond (except for cost).....	1 50
Swearing and impaneling a jury.....	35
Receiving and recording a verdict of a jury.....	35
Assessing damages in each case not tried by a jury.....	50
Each commission to take depositions.....	75
Taking depositions, each one hundred words.....	15
Issuing copies of interrogatories with certificate and seal, per one hundred words.....	15
Each final judgment.....	1 00
Where judgment exceeds three hundred words, the additional fee for each one hundred words in excess of three hundred words shall be.....	15
For each order of sale.....	1 00
For each execution.....	75
For each writ of possession or restitution.....	75
For each injunction writ.....	75
Each copy of injunction writ.....	75
For every other writ not otherwise provided for.....	75
For each copy of writ not otherwise provided for.....	50
Recording returns of any writ, where such return is required by law to be recorded, including the return on all writs, except subpoenas.....	50
Each certificate to any facts contained in his office.....	75
Making out and transmitting the records and proceedings in a cause to any inferior court, for each one hundred words.....	10
Making out and transmitting mandate or judgment of the district court upon appeal from the county court.....	1 00
Filing a record in a cause appealed to the district court.....	50
Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of commissioners' court, each one hundred words.....	15
Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, each one hundred words.....	15
Making copy of all records of judgments or papers on file in his office, for any party applying for same, with certificate and seal, each one hundred words.....	15
Taxing the bill of costs in any case with copy of same.....	25
Filing and recording the declaration of intention to be a citizen of the United States.....	2 00
Issuing certificate of naturalization.....	2 50

[Acts 1901, p. 24.]

Art. 3856. **Clerk shall compare and certify copies, etc.; fees.**—Whenever, in any suit, a certified copy of any petition or any other instrument is necessary in the district court, it shall be lawful for the plaintiff or defendant to prepare such true and correct copy thereof, and submit the same to the clerk of the district court, whose duty it shall be to compare the same with the original instrument, and, if found to be correct, he shall attach his certificate of true copy. For such services he shall receive fifty cents for each certificate and seal, and, in addition thereto, the sum of ten cents per page, three hundred words to the page, for each page of each copy. But nothing in this or the preceding article shall be construed as repealing the maximum fixed by existing law upon the total compensation allowed to district clerks. [Acts 1901, p. 24. Acts 1897, S. S. p. 44. Acts 1897, S. S. p. 12. Acts 1895, p. 170.]

Art. 3857. [2454] [2390] **Fees in probate matters.**—In matters relating to estates of deceased persons and minors, when the same are transacted in the district court, the clerk of such court shall receive the same fees that are allowed therefor to clerks of the county court.

Art. 3858. [2456] [2392] **Compensation for ex officio services.**—The clerk of the district court shall receive, in addition to the fees herein allowed, for the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like class, to be paid out of the county treasury on the order of the commissioners' court, such sum as said commissioners' court shall determine. [Act Aug. 23, 1876, p. 287, sec. 8. Acts of 1879, ch. 81, p. 92.]

Art. 3859. **No compensation for assessing damages.**—No district clerk shall receive any compensation for assessing damages in any case. [Acts 1897, S. S. p. 13.]

3. CLERKS OF THE COUNTY COURT.

Art. 3860. [2457] [2393] **Fees of clerks of county court.**—Clerks of the county court shall receive the following fees:

Filing each paper.....	\$ 05
Issuing notices, including copies for posting or publication.....	75
Docketing each application, complaint, petition or proceeding, to be charged but once.....	10
Each writ or citation, including copy thereof.....	50
Each copy of any paper that is required to accompany any writ or citation, with certificate and seal, for each one hundred words.....	10
Issuing letters testamentary, of administration or guardianship.....	50
Each final judgment or decree.....	50
Every other order or decree, not exceeding 100 words.....	15
Where such other order or decree contains 100 words and not more than 200 words.....	25
When any final judgment or decree, or any other order or decree, exceeds 200 words, an additional fee for each 100 words in excess of 200 words.....	10
Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each one hundred words.....	10
Administering oath to executor, administrator or guardian.....	10
Administering oath or affirmation in other cases, without certificate and seal.....	15
Administering oath or affirmation with a certificate and seal.....	25
Entering each order of the court approving or disapproving a claim against an estate.....	25
Filing each paper, except subpoenas.....	05
Each appearance, to be charged but once.....	05
Entering each continuance, except in estates.....	10
Each subpoena.....	25
Each additional name inserted in a subpoena.....	05
Approving bond, except bond for costs and notarial bond.....	1 00
Approving notarial bond.....	50
Swearing each witness.....	10
Swearing and impaneling a jury.....	25
Receiving and recording a verdict.....	25
Assessing damages in each case not tried by a jury.....	50
Each commission to take depositions.....	50
Taking depositions, each 100 words.....	15
Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for.....	50
For recording return of any writ, when any such return is required by law to be recorded.....	50
Where the return exceeds 300 words, for each 100 words in excess of 300 words.....	10

Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, where the copy does not exceed 200 words, for each 100 words.....	15
Where the copy exceeds 200 words, for each additional 100 words in excess of 200 words.....	10
Transcript in any case where appeal or writ of error is taken, with certificate and seal, each 100 words.....	10
Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for.....	50
Taxing the bill of costs in each cause, with a copy thereof.....	25
For recording attachments and returns, the same fees allowed for recording deeds.	
For filing and recording chattel mortgage deposited.....	25
For entering satisfaction of chattel mortgages.....	25
Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words	10
Transcribing records for new counties and added territory, for each one hundred words	15
Transcribing, comparing and verifying record books of his office, payable out of the county treasury upon warrant issued under the order of the commissioners' court, for each one hundred words.....	10
Issuing and recording marriage license.....	1 00
Recording each mark and brand, or either.....	25
Issuing each license, other than a marriage license, where the law provides for him to issue such license.....	1 00
Recording and certifying bills of sale under the stock laws, for each one hundred words.....	15
Recording each mark and brand and giving certificate thereof.....	75
Revising the list of marks and brands, such compensation as the county commissioners' court may allow.	
Qualifying a notary public.....	50

[Id. sec. 9. Act Aug. 23, 1876, p. 301, sec. 26. Acts 1897, S. S. p. 13. Acts 1897, p. 44. Acts 1897, S. S. p. 13. Acts 1899, p. 81. Acts 1879, p. 134. Acts 1897, S. S. p. 13. Acts 1879, p. 105. Acts 1897, S. S. p. 13.]

Art. 3861. [2458] [2394] **Compensation for preserving the records, etc.**—It shall be the duty of the county judge at each term of his court to inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court, in the care and preservation of the records of his office, in the making and keeping of the necessary indexes thereto, and other labor of a like class, and to allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge. [Act Aug. 23, 1876, p. 287, sec. 9.]

Art. 3862. [2459] [2395] **Compensation for ex officio services.**—For all ex officio services in relation to roads, bridges and ferries, issuing jury scrip, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping county convict book, keeping record of trust funds, filing and docketing all papers for commissioners' court, keeping road overseer's book and list of hands, recording all collection returns of delinquent insolvents, and list of lands sold to individuals for taxes, recording county treasurers' reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for, to be paid upon the order of the commissioners' court out of the treasury, the clerk shall receive

the sum of not less than ten dollars nor more than twenty-five dollars per annum for each one thousand inhabitants of his county; provided, that the total amount paid the clerk in any one year shall not be less than fifty nor more than five hundred dollars, said amount to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until after payment or tender of payment of all legal fees for such filing or recording has been made; provided, that nothing herein shall be construed to include papers or instruments filed or recorded in suits pending in the county court. [Acts of 1881, p. 99.]

Art. 3863. **No compensation for assessing damages.**—No county clerk shall receive any compensation for assessing damages in any case. [Acts 1897, S. S. p. 13.]

[Note.—For fees of county clerk in lunacy cases, see Article 165.]

4. SHERIFFS.

Article 3864. [2460] [2396] **Sheriff's fees.**—Sheriffs shall receive the following fees:

Serving each original citation in a civil suit.....	\$ 75
Summoning each witness.....	50
Levying and returning each writ of attachment or sequestration.....	2 00
Copy of attachment writ and return for recording.....	1 00
Levying each execution.....	1 00
Return of execution.....	50
Serving each writ of garnishment or other process not otherwise provided for	75
Serving each writ of injunction.....	1 00
Collecting money on execution or order of a sale, when the same is made by a sale, for the first \$100 or less, 4 per cent; for the second \$100, 3 per cent; for all sums over \$200 and not exceeding \$1000, two per cent; for all sums over \$1000 and not exceeding \$5000, one per cent; for all sums over \$5000, one-half of one per cent.	
Taking and approving each bond, and returning the same to the proper court when necessary.....	1 00
Endorsing the forfeitures of any bond required to be endorsed by him..	50
Executing and returning each writ of possession or restitution.....	3 00
Posting the advertisements for sale under execution, or any order of sale	1 00
Posting any other notices required by law not otherwise provided for..	1 00
Executing a deed to each purchaser of real estate under execution or order of sale.....	2 00
Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by the purchaser.....	1 00
For each case tried in the district or county court, a jury fee shall be taxed for the sheriff of.....	50
For services in designating a homestead.....	2 00

For traveling in the service of any civil process, sheriffs and constables shall receive five cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of the same.

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first one hundred dollars or less, four per cent; for the second one hundred dollars, three per cent; for all sums over two hundred dollars, two per cent. When the money is collected by the sheriff without a sale, one-half of the above rates shall be allowed him.

For every day the sheriff or his deputy shall attend the district or county court, he shall receive two dollars a day, to be paid by the county, for each day that the sheriff by himself or a deputy shall attend said court. [Acts 1876, p. 289. Acts 1897, S. S. p. 13. Acts 1879, p. 92. Acts 1889, p. 80.]

Art. 3865. [2461] [2397] **Sheriffs' fees for serving process from supreme court, etc.**—Sheriffs shall be allowed for all process issued from the supreme court or courts of civil appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court. [Act March 9, 1875, p. 70, sec. 3.]

Art. 3866. [2462] [2398] **Compensation for ex officio services.**—For summoning jurors in district and county courts, serving all election notices, notices to overseers of roads and doing all other public business not otherwise provided for, the sheriff may receive annually not exceeding five hundred dollars, to be fixed by the commissioners' court at the same time other ex officio salaries are fixed; provided, that, in counties exceeding twenty-five thousand population at last decennial census, sheriffs may receive an additional amount not exceeding fifty dollars for each five thousand population in excess of twenty-five thousand up to fifty thousand population, to be paid out of the general funds of the county on the order of the commissioners' court. Provided, that the total amount of compensation which may be paid annually under the provisions of this act shall not exceed the sum of eight hundred dollars. [Acts 1905, p. 91.]

[Note.—For fees of sheriff in lunacy cases, see art. 165.]

5. JUSTICES OF THE PEACE.

Art. 3867. [2463] [2399] **Justices' fees.**—Justices of the peace shall receive the following fees: [Acts 1875, p. 291, sec. 12. Acts 1897, S. S. p. 13.]

Each citation	\$ 50
Each subpoena for one witness.....	25
Each additional name inserted in a subpoena.....	05
Docketing each cause.....	10
Filing each paper.....	05
Each continuance	10
Each bond not otherwise provided for.....	50
Swearing each witness in court.....	10
Administering an oath or affirmation without a certificate.....	10
Administering an oath or affirmation with a certificate.....	25
Administering the oath, approving bond and issuing a writ of attachment or sequestration.....	1 50
Issuing any other writ or process not otherwise provided for.....	50
Causing a jury to be summoned and swearing them.....	25
Receiving and recording verdict of jury.....	25
Each order in a cause not otherwise provided for.....	25
Each final judgment.....	50
Each application to set aside a judgment or for a new trial, with the final judgment thereon	50
Each appeal bond	25
Each commission to take depositions.....	50
Copy of interrogatories or cross-interrogatories, for each one hundred words, including certificate.....	10
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper court, in each case of appeal or certiorari.....	1 50

Each execution or order of sale.....	60
Each writ of possession or restitution.....	75
Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed	30
If no levy is returned or the writ not executed.....	10
Making copies of any papers or records in his office for any person ap- plying for the same, for each one hundred words including certificate.	10
Taxing costs, including copy thereof, in each case.....	10
Each certificate not otherwise provided for.....	25
Taking acknowledgment for stay of judgment.....	50

[Note.—For fees of justice of the peace in lunacy cases, see art. 165.]

6. CONSTABLES.

Art. 3868. [2464] [2400] **Constables' fees.**—Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace: [Id. p. 291, sec. 13.]

Serving each citation in civil suit.....	\$ 70
Serving each garnishment.....	70
Serving each notice for the taking of depositions and copy of inter- rogatories	70
Serving each subpoena.....	50
Levying and returning each writ of attachment or sequestration.....	1 50
Copy of attachment writ and return for recording.....	1 00
Levying each execution.....	70
Executing order of sale, writ of possession or restitution.....	1 00
Returning each execution, order of sale, writ of possession or restitu- tion	40
Taking and approving each bond.....	1 00
Summoning a jury in justice's court.....	1 00
Advertising sale under execution or order of sale.....	70
Making title to purchaser of real estate under execution or order of sale	2 00
Making title to purchaser of personal property under execution or order of sale, when demanded by purchaser.....	50

Taking care of property levied upon by virtue of any legal process, all reasonable and necessary expenses, to be taxed and allowed by the court to which such process is returnable. Collecting money under an execution or order of sale, when a sale is made, four per cent on the amount actually collected by him. When the money is collected by him without a sale, two per cent on the amount actually collected by him. [Id. p. 291, sec. 13. Acts of 1889, p. 80.]

Art. 3869. [2465] [2401] **Fees for services in district or county courts.**—For all services performed by constables in business connected with the district and county courts, they shall receive the same fees allowed sheriffs for the same services. [Id.]

7. COUNTY COMMISSIONERS.

Art. 3870. [2466] [2402] **Per diem pay of county commissioners.**—Each county commissioner, and the county judge when acting as such, shall receive from the county treasury, to be paid on the order of the commissioners' court, the sum of three dollars for each day he is engaged in holding a term of the

commissioners' court, but such commissioners shall receive no pay for holding more than one special term of their court per month. [Act Aug. 23, 1876, p. 292, sec. 14.]

8. ASSESSOR OF TAXES.

Art. 3871. **Assessors' compensation.**—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the state and county tax, on all sums for the first two million dollars or less, five cents for each one hundred dollars of property assessed; and on all sums in excess of two million dollars and less than five million dollars, two and one-fourth cents on each one hundred dollars; and on all sums in excess of five million dollars, one and seven-tenths cents on each one hundred dollars; one-half of the above fees shall be paid by the state, and one-half by the county; and for assessing the poll tax five cents for each poll, which shall be paid by the state. The commissioners' court may allow to the assessor of taxes such sums of money, to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by the county to him for assessing. [Acts 1897, S. S. p. 8, sec. 8.]

9. COLLECTOR OF TAXES.

Art. 3872. **Collector's compensation.**—There shall be paid for the collection of taxes, as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the state, and four per cent on the next ten thousand dollars collected for the state, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum; and, in counties owing subsidies to railroads, the collectors shall receive only one per cent for collecting such railroad tax; and, in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales; and, on all occupation and license taxes collected, five per cent. [Id. p. 8, sec. 9.]

10. COUNTY TREASURER.

Art. 3873. [2467] [2403] **County treasurers' commissions.**—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners' court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, however, he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [Id. sec. 15.]

Art. 3874. [2468] **Commissions on school fund.**—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for

receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, further, that he shall receive no commissions on money transferred. [Acts of 1891, p. 147.]

Art. 3875. [2469] [2405] **Commissions shall not exceed \$2,000 annually.**—The commissions allowed to any county treasurer shall not exceed two thousand dollars annually. [Id. Acts of 1879, ch. 69, p. 79.]

11. DISTRICT AND COUNTY SURVEYORS.

Art. 3876. [2470] [2406] **District and county surveyors' fees.**—District and county surveyors shall receive the following fees: [Id. sec. 16.]

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league.....	\$ 3 00
One-third of a league.....	2 00
Less than one-third of a league.....	1 00
For recording surveys and plats required in article 5319, for each one hundred words.....	20
Examination of papers and records in his office at the request of any person	25
Copies of all field-notes and plats, or any other papers or records in his office, for each one hundred words, including certificate.....	20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field-notes of the survey, for each English lineal mile actually run	3 00
Surveying any tract of land, including all expenses of making the survey, and returning the plat and field-notes, when the distance actually run is less than one English lineal mile.....	2 50
For services in designating a homestead, to include pay for chain carriers, for each day's service.....	5 00

[Act 1881, p. 71.]

12. INSPECTOR OF HIDES AND ANIMALS.

Art. 3877. [2471] [2407] **Fees of inspector of hides and animals.**—Inspectors of hides and animals for each county or district shall receive the following fees:

For each hide or animal inspected.....	\$ 10
If more than fifty hides or animals are inspected in the same lot at the same time for the same person, for each hide or animal in excess of fifty	03
For each certificate of acknowledgment.....	50

[Act Aug. 23, 1876, p. 301, sec. 25. Id. sec. 17, p. 302, sec. 30.]

13. NOTARIES PUBLIC.

Art. 3878. [2472] [2408] **Fees of notaries public.**—Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, registering and seal	\$ 2 50
Each notice of protest.....	50
Protest in all other cases, for each one hundred words.....	20
Certificate and seal to such protest.....	50
Taking the acknowledgment or proof of any deed or other instrument of writing for registration, including certificate and seal.....	50

Taking the acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal.....	1 00
Administering an oath or affirmation with certificate and seal.....	25
All certificates under seal not otherwise provided for.....	50
Copies of all records and papers in their office, including certificate and seal, if less than two hundred words.....	50
If more than two hundred words, for each one hundred words in excess of two hundred, in addition to the fee of fifty cents.....	15
All notarial acts not otherwise provided for.....	50
Taking the depositions of a witness, for each one hundred words.....	15
Swearing a witness to depositions, making certificate thereof with seal, and all other business connected with taking such deposition.....	50
[Act Aug. 23, 1876, p. 293, sec. 18.]	

14. PUBLIC WEIGHERS.

Art. 3879. [2473] [2409] **Fees of public weighers.**—Public weighers shall receive the following fees:

For each bale of cotton weighed, not exceeding.....	\$ 10
When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale.....	15
Thereafter per bale per month, not exceeding.....	10
For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain.....	10
For each part of a wagon load of hay, grain or pecans, not exceeding.	05
For each barrel weighed.....	10
For each bale of hides weighed.....	10
For each loose hide weighed.....	02

And he shall not be obliged to deliver any such articles so weighed until his fee therefor shall have been paid. [Acts 1875, p. 162, sec. 7. Acts 1879, p. 117, sec. 6. Acts 1903, p. 217.]

CHAPTER FOUR.

GENERAL PROVISIONS.

	Article.
Official failing to take out commission shall not receive fees or compensation.....	3880
Maximum amount of fees allowed.....	3881
Maximum fees in certain counties.....	3882
Maximum fees in certain counties.....	3883
County attorney, compensation in certain counties.....	3884
District attorney, compensation of.....	3885
County judge compensation as superintendent of public instruction.....	3886
Last U. S. census to govern as to population of cities.....	3887
Amounts allowed to be retained out of fees collected; state not responsible.....	3888
Excess fees to be paid to county treasurer.....	3889
Officer not collecting maximum fees, etc., may retain out of delinquent fees collected, remainder paid to treasurer.....	3890
Fees of district clerks in counties having more than one district.....	3891
Delinquent fees, collection of, commissions on, remainder paid to treasurer.....	3892
Compensation for ex officio services, etc. may be allowed by commissioners' court, proviso.....	3893
Officials named in arts. 3881-3886 to keep accounts; duties of grand jury and district judge as to.....	3894
Officers to make sworn statement, etc., to show what.....	3895
Fiscal year defined, and regulation of reports.....	3896
Sheriff not required to include in reports and statement certain expenses.....	3897
Certain officers not required to report fees or keep accounts, proviso as to district attorney.....	3898
Collector and assessor to file with comptroller copies of sworn statements.....	3899
Officer recovering money or fees belonging to another shall inform him and pay over on demand.....	3900
Officers to report fees collected, etc., requisites of report.....	3901

	Article.
Officers to pay over fees, etc., to treasurer after four years, etc.; statements; disposition.....	3902
Officer may appoint deputies how; county judge not to attempt to influence appointment, etc.; compensation, how paid.....	3903
Office rent, stationery, etc., to clerks of supreme court and courts of appeals.....	3904
Stationery, etc., allowed certain county officers.....	3905
No fees allowed on motions for security for costs, etc.....	3906
Judgment containing several orders, one fee only shall be charged.....	3907
Fees of officers for taking acknowledgments, etc.....	3908
Clerks are prohibited from acting as conveyancers, etc.....	3909
Fees in suits to be taxed against party cast, etc.....	3910
No charge for copies of papers, when.....	3911
No fees for examination.....	3912
Officers shall keep fee books.....	3913
Fee bill shall be produced, etc., before fees are collectible.....	3914
Penalty for demanding, etc., fees unlawfully.....	3915
Certain officers shall keep list of fees posted, etc.....	3916
Fees shall not be demanded in advance, etc.....	3917
Execution for costs.....	3918
Bill of costs shall accompany execution.....	3919
Execution shall issue on demand of person entitled to costs.....	3920
Preceding articles, etc., do not apply to executors, etc.....	3921
Execution for costs shall not issue, until, etc.....	3922
No fee allowed for filing certain papers.....	3923
Any other fees of office.....	3924
State's attorney fees in school land litigation.....	3925
Defense attorney fees in such cases.....	3926

Article 3880. **Official failing to take out commission shall not receive fees or compensation, etc.**—Any official who refuses or fails to take out a commission shall not be entitled to receive or collect, either from the state or from individuals, any fee or fees, or any sum or sums of money, as fees of office, or compensation for official services; and it shall be unlawful for the comptroller of public accounts, any county commissioners' court, any county auditor or any other person whose duty it is to approve claims or accounts of public officials, to approve or to pay any claim or account in favor of any and all such officers who have failed or refused to take out and pay for their commission as officials as required by this article; and the secretary of state shall, from time to time, as such commissions are issued by him, furnish a list thereof to the comptroller of public accounts and the county commissioners' court and the county auditor, with the name of the county in which such officers reside, and of the district judge. [Acts 1907, p. 501.]

Art. 3881. **Maximum amount of fees allowed.**—Hereafter, the maximum amount of fees of all kinds that may be retained by any officer mentioned in this section [article] as compensation for services shall be as follows: County judge, an amount not exceeding two thousand dollars per annum; clerk of the county court, an amount not exceeding two thousand dollars per annum; county attorney, an amount not exceeding two thousand dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the constitution and paid by the

state; clerk of the district court, an amount not exceeding two thousand dollars per annum; collector of taxes, an amount not exceeding two thousand dollars per annum; assessor of taxes, an amount not exceeding two thousand dollars per annum; justices of the peace, an amount not exceeding fifteen hundred dollars per annum; constables, an amount not exceeding twelve hundred dollars per annum; and, in addition thereto, one-fourth of the excess of fees collected by the said officers, respectively; provided, that this act shall not apply to justices of the peace and constables, except those holding office in cities of more than fifteen thousand inhabitants, to be determined by the next preceding city election on the basis of five inhabitants for each vote cast at such election. [Acts 1897, S. S. pp. 9, 43.]

Art. 3882. **Maximum fees in certain counties.**—In any counties shown by the national census of 1910 to contain as many as twenty-five thousand inhabitants, the following amounts shall be allowed, viz.: County judge, an amount not exceeding twenty-two hundred and fifty dollars per annum; clerk of the county court, an amount not exceeding twenty-two hundred and fifty dollars per annum; county attorney, an amount not exceeding twenty-two hundred and fifty dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the constitution and paid by the state; clerk of the district court, an amount not exceeding twenty-two hundred and fifty dollars per annum; collector of taxes, an amount not exceeding twenty-two hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding twenty-two hundred and fifty dollars per annum; and in addition thereto one-fourth of the excess of the fees collected by the said officers, respectively. [Id. sec. 10. Acts 1897 S. S. p. 43, sec. 10.]

Art. 3883. **Maximum fees in certain counties.**—In counties containing a city of over twenty-five thousand inhabitants, or in which there were cast at the last presidential election as many as seven thousand five hundred votes, or, by the census of 1910, shall contain as many as thirty-seven thousand five hundred inhabitants, the following amounts of fees shall be allowed, viz.: County judge, an amount not exceeding twenty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-five hundred dollars per annum; county attorney, an amount not exceeding twenty-five hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the constitution and paid by the state; clerk of the district court, an amount not exceeding twenty-five hundred per annum; collector of taxes, an amount not exceeding twenty-five hundred dollars per annum; assessor of taxes, an amount not exceeding twenty-five hundred dollars per annum; and in addition thereto one-fourth of the excess of the fees collected by the officers, respectively. [Id. sec. 10.]

Art. 3884. **County attorney, compensation in certain counties.**—The county attorney in those counties having no district attorney, where he performs the duties of district attorney, may receive the same compensation as provided for the district attorney. [Id. sec. 10.]

[Note.—For fees of county attorney in lunacy cases, see art. 165.]

Art. 3885. **District attorney, compensation of.**—The maximum fixed for the compensation of the district attorney shall be construed to be the amount which that officer is authorized to retain of fees allowed such officer in his district, whether composed of one or more counties. [Id. sec. 10.]

Art. 3886. **County judge, compensation as superintendent of public instruction.**—In counties where a county judge acts as superintendent of public instruction, he shall receive such other salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. [Id. sec. 10.]

Art. 3887. Last U. S. census to govern as to population of cities.—The last United States census shall govern as to the population of the cities. [Id. sec. 10.]

Art. 3888. Amounts allowed to be retained out of fees collected; state not responsible.—The amounts allowed to each officer mentioned in articles 3881 to 3886, inclusive, may be retained out of the fees collected by him under existing laws; but in no case shall the state or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, or be responsible for the pay of any deputy or assistant. [Acts 1897, S. S. p. 9, sec. 11. Acts 1907, p. 50.]

Art. 3889. Excess fees to be paid to county treasurer.—All fees collected by officers named in articles 3881 to 3886 during the fiscal year in excess of the maximum amount allowed, and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or assistants hereinafter provided for, shall be paid to the county treasurer of the county where the excess accrued. [Id.]

Art. 3890. Officer not collecting maximum fees, etc., may retain out of delinquent fees collected, remainder paid to treasurer.—Any officer mentioned in articles 3881 to 3886, who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected. [Id.]

Art. 3891. Fees of district clerks in counties having more than one district.—In all counties in this state having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Id.]

Art. 3892. Delinquent fees, collection of, commissions on, remainder paid to treasurer.—All fees due and not collected as shown in the report required by article 3895 shall be collected by the officer to whose office the fees accrued; and, out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of the amount collected by him, and the remainder shall be paid into the county treasury, as provided in article 3889 of this act. It shall not be legal for any officer to remit any fee that may be due under the law fixing fees. [Acts 1897, S. S. p. 10, sec. 13.]

Art. 3893. Compensation for ex officio services, etc., may be allowed by commissioners' court, proviso.—It is not intended by this chapter that the commissioners' court shall be debarred from allowing compensation for ex officio services to county officials not to be included in estimating the maximum provided for in this chapter, when, in their judgment, such compensation is necessary; provided, such compensation for ex officio services shall not exceed the amounts now allowed under the law for ex officio services; provided, further, the fees allowed by law to district and county clerks, county attorneys and tax collectors in suits to collect taxes shall be in addition to the maximum salaries fixed by this chapter. [Id. sec. 15.]

Art. 3894. Officials named in articles 3881 to 3886 to keep accounts; duty of grand jury and district judge as to.—It shall be the duty of those officials named in articles 3881 to 3886, and also the sheriffs, to keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided by them for that purpose, in which the officer at the time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next suc-

ceeding the first day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. [Id. sec. 16.]

Art. 3895. Officers to make sworn statement, etc., to show what.—Each officer mentioned in articles 3881 to 3886, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year, and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid, or to be paid each. [Acts 1897, S. S. p. 11. Acts 1907, p. 50.]

Art. 3896. Fiscal year defined, and regulation of reports.—A fiscal year, within the meaning of this chapter, shall begin on December 1 of each year; and each officer named in articles 3881 to 3886, and also the sheriff, shall file the reports and make the settlement required in this chapter on December 1 of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make a settlement for such part of a year as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to December 1 next following, shall not be required to file any report or make any settlement before December 1 of the following year; but his report and settlement shall embrace the entire period dated from his qualification. [Acts 1897, S. S. p. 11, sec. 19.]

Art. 3897. Sheriff not required to include in reports and statements certain expenses.—The sheriff shall not be required to include in his reports and statements required by articles 3894 and 3895 the following items, to-wit:

1. All actual expenses, including the per diem allowed him received from the state in conveying attached witnesses out of the county of his residence.
2. Mileage and sums allowed by law and paid by the state as expenses for removing and conveying prisoners to and from any point beyond the county of the sheriff's residence under all legal warrants issued in felony cases.
3. All sums received as rewards for making arrests of fugitives from justice.
4. All sums received from the county for the safe keeping, support and maintenance of prisoners confined in jail.

Nor shall said items be regarded as fees of office within the meaning of this chapter, to be included in making up the sheriff's maximum. [Id. sec. 20.]

Art. 3898. Certain officers not required to report fees or keep accounts, proviso as to district attorney.—The officers named in articles 3881 to 3886, in those counties having a population of fifteen thousand, or less, shall not be required to make a report of fees as provided in article 3895, or to keep a statement provided for in article 3894; the population of the county to be determined by the vote cast at the next preceding presidential election, on the basis of five inhabitants for each vote cast at such election; provided, that all district attorneys shall be required to make the reports and keep the statements required in this chapter. [Id. sec. 17.]

Art. 3899. Collector and assessor to file with comptroller copies of sworn statements.—The tax collector and tax assessor, at the time of their settlement of accounts with the comptroller, shall file with him a copy of the sworn statement required under article 3895. [Id. sec. 18.]

Art. 3900. Officer recovering money or fees belonging to another shall inform him and pay over on demand, etc.—It shall be the duty of every county and precinct officer in the state of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking

receipt therefor, which shall be entered or noted in the fee book of such officer. [Acts 1907, p. 120.]

Art. 3901. Officers to report fees collected, etc., requisites of report.—On or before the second Mondays in February, May, August and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding, and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued, and the name of the person entitled thereto; which report shall be filed with the county clerk of said county, and the same shall be by him kept and preserved for future reference and examination. [Id. sec. 2.]

Art. 3902. Officers to pay over fees, etc., to treasurer after four years, etc.; statements; disposition.—Every officer collecting or having the custody of any money or fees embraced within the provisions of this and the two preceding articles, at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person or persons entitled thereto, shall pay the same to the county treasurer of his respective county, accompanying the same by an itemized statement, as provided in article 3901, which statement shall be filed and kept by said treasurer; and said money or fees shall be by him placed to the credit of the road and bridge fund of the county; and the treasurer shall issue to the said officer his receipt for said money or fees, itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk of his respective county; provided, that any officer, upon retiring from office, having any money or fees in his hands embraced within the provisions of this and the two preceding articles, and which are not due to be turned over to the county treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same as hereinbefore provided, taking proper receipt therefor; and his successor shall report and pay over the same to the county treasurer in accordance with the provisions of this article. [Id. sec. 3.]

Art. 3903. Officer may appoint deputies; how; county judge not to attempt to influence appointment, etc.; compensation, how paid.—Whenever any officer named in articles 3881 to 3886 shall require the service of deputies or assistants in the performance of his duties, he shall apply to the county judge of his county for authority to appoint same; and the county judge shall issue an order authorizing the appointment of such a number of deputies or assistants as in his opinion may be necessary for the efficient performance of the duties of said office. The officer applying for appointment of a deputy or assistant, or deputies or assistants, shall make affidavit that they are necessary for the efficiency of the public service, and the county judge may require, in addition, a statement showing the need of such deputies or assistants; and in no case shall the county judge attempt to influence the appointment of any person as deputy or assistant in any office. The maximum amount allowed for deputies or assistants for their services shall be as follows, to-wit:

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

The county judge, in issuing his order granting authority to appoint deputies or assistants, shall state in such order the number of deputies or assistants authorized and the amount to be paid each; and the amount of compensation allowed shall be paid out of the fees of office to which said deputies or assistants may be appointed, and shall not be included in estimating the maximum salaries of officers named in articles 3881 to 3886. [Acts 1897, S. S. p. 10, sec. 12.]

Art. 3904. [2474] [2410] **Office rent, stationery, etc., to clerks of supreme court and courts of appeals.**—There shall be allowed to the clerks of the supreme court and courts of civil and criminal appeals, reasonable office rent, stationery and furniture for their offices, to be paid on the order and approval of their respective courts out of the appropriation for the contingent expenses of said courts. [Act Aug. 23, 1876, p. 285, sec. 4.]

Art. 3905. [2475] [2411] **Stationery, etc., allowed certain county officers.**—There shall be allowed to county judges, clerks of the district and county courts, sheriffs and county treasurers, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the commissioners' court out of the county treasury; and suitable offices shall also be provided by the commissioners' court for said officers at the expense of the county. And such books and stationery as are necessary in their performance of their duties shall also be furnished justices of the peace by said commissioners' court. [Acts of 1885, p. 112.]

Art. 3906. [2476] [2412] **No fees allowed on motions for security for costs, etc.**—Clerks of the district and county courts and justices of the peace shall receive no fees for motions and judgments upon motions for security for costs, nor for taking and approving a bond for costs. [Id. sec. 9.]

Art. 3907. [2477] [2413] **Judgment containing several orders, one fee only shall be charged.**—A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by the court, clerk or justice of the peace for rendering or entering the same. [Id.]

Art. 3908. [2478] [2414] **Fees of officers for taking acknowledgments, etc.**—Clerks of the district and county courts and other officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services.

Art. 3909. [2479] [2415] **Clerks are prohibited from acting as conveyancers, etc.**—All clerks and their deputies are prohibited from charging any fees or commissions for writing deeds, mortgages, bills of sale, or any other conveyance for any person, unless they pay the same tax, if any, which may be required by law to be paid by conveyancers or attorneys at law. [Id. sec. 9.]

Art. 3910. [2480] [2415] **Fees in suits to be taxed against party cast, etc.**—The fees allowed in this title pertaining to suits or actions in courts shall be allowed and taxed in the bill of costs against the party cast in the suit or action wherein any such service shall be rendered, except where it is otherwise provided by law or adjudged by the court. [Id. sec. 20.]

Art. 3911. [2481] [2417] **No charge for copies of papers, when.**—No copy of a paper not required by law to be copied shall be allowed and taxed in the bill of costs; and, if any party or attorney shall take out copies of his own pleadings, or of papers filed by him in any cause, it shall be at his own expense, and no charge for such copies shall be allowed in the bill of costs. [Id.]

Art. 3912. [2482] [2418] **No fee for examinations.**—No clerk of a court, justice of the peace or other officer shall be allowed to charge any fee for the examination of any paper or record in his office. [Id. sec. 21.]

Art. 3913. [2483] [2419] **Officers shall keep fee books.**—Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered; which fee book shall, at all times, be subject to the inspection of any person wishing to see the amount of fees therein charged. [Id. sec. 22.]

Art. 3914. [2484] [2420] **Fee bill shall be produced, etc., before fees are collectible.**—None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the

person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. [Id. sec. 23.]

Art. 3915. [2485] [2421] **Penalty for demanding, etc., fees unlawfully.**—If any of the officers named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him, to be recovered in any court of competent jurisdiction, and may also be punished criminally for extortion, as prescribed in the Penal Code. [Id. sec. 24. See Acts 1879, ch. 108, sec. 9.]

Art. 3916. [2486] [2422] **Certain officers shall keep list of fees posted, etc.**—It shall be the duty of county judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties, to keep posted up, at all times, in a conspicuous place in their respective offices a complete list of fees allowed by law to be charged by them respectively. [Id. sec. 25.]

Art. 3917. [2487] [2423] **Fees shall not be demanded in advance, etc.**—Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case.

Art. 3918. [2488] [2424] **Execution for costs.**—It shall be lawful for any clerk of a court or justice of the peace, when any suit is determined in their respective courts and the costs are not paid by the party against whom the same have been adjudged, to issue execution therefor against such party, under the same rules governing executions in other cases, to be levied and collected as in other cases. [Id. sec. 26.]

Art. 3919. [2489] [2425] **Bill of costs shall accompany execution.**—A bill of costs, showing each item thereof, for which the party against whom the execution issues is liable, shall accompany each execution or order of sale. [Id.]

Art. 3920. [2490] [2426] **Execution shall issue on demand of person entitled to costs.**—Any person to whom any costs are due in a suit or action, which has been determined, may demand that execution issue therefor; and, thereupon it shall be the duty of the clerk or justice of the peace to issue execution for all costs due by such party at once.

Art. 3921. [2492] [2428] **Preceding articles, etc., do not apply to executors, etc.**—The preceding articles in relation to executions and payment of costs do not apply to executors, administrators or guardians, but in cases where costs are adjudged against an estate of a deceased person, or of a ward, the same shall be collected as provided in the titles, "Estates of Decedents," and "Guardian and Ward." [Id. sec. 26. Acts of 1879, ch. 81, p. 93.]

Art. 3922. [2493] [2429] **Execution for costs shall not issue, until, etc.**—No execution for costs shall issue in any case until after judgment rendered therefor by the court.

[Note.—See Arts. 2030 and seq.]

Art. 3923. [2494] [2430] **No fee allowed for filing certain papers.**—No clerk or justice of the peace shall be entitled to any fee for filing any process or paper issued by him and returned into his court.

Art. 3924. [2495] **Any other fees of office.**—Any other fees of office not embraced within this title, but otherwise provided for, shall not be affected by the provisions hereof.

Art. 3925. [2495a] **State's attorney fees in school land litigation.**—District and county attorneys who have represented, or may hereafter represent, the state in suits for the recovery of interest and purchase money due the state

on account of sales of school lands, made under the laws of 1879 and 1881, or for the forfeiture of said lands on account of non-payment of said interest and purchase money, shall be allowed a fee of ten dollars for each of such cases in which the state recovers judgment; said fees to be approved by the judge who tried the case, or his successors in office, and certified by the clerk of the trial court, and when so approved and certified shall be paid out of any moneys in the treasury not otherwise appropriated; provided, that, in cases where suits are filed by one district or county attorney and judgment obtained by his successor in office, the fee shall be equally divided between them. [Act 1893, p. 29.]

Art. 3926. [2495b] **Defense attorney fees in such cases.**—A fee of five dollars for every suit heretofore or hereafter brought [shall] be allowed attorneys appointed by the court to represent the defendant in all cases where the state recovered judgment and where the costs can not be made out of the defendant; said fee to be paid by the state upon the presentation of an account allowed by the district court trying said case, stating the number and style of the suit and that the state recovered therein, that the attorney was appointed and represented the defendant therein, and that the costs can not be recovered out of said defendant. [Id.]

TITLE 59.

FENCES.

[See "Stock Laws" and Penal Code.]

	Article.		Article.
"Sufficient fence" defined	3927	Unlawful removal of dividing fence.....	3932
Complaint and proceedings thereon.....	3928	Lawful removal of same.....	3933
Stock may be impounded, when.....	3929	Adjacent owners, required to remove	
Owner not liable, when.....	3930	fence, how,	3934
Liability for injuring stock.....	3931		

Article 3927. [2496] [2431] **"Sufficient fence" defined.**—Every garden-er, farmer or planter shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs from passing through the same; but it shall be unlawful for any persons whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least eight feet wide, and shall not be locked. [Act Feb. 5, 1840, p. 179. P. D. 3838. P. C. Arts. 685-6. Acts of 1884, p. 37.]

Art. 3928. [2497] [2432] **Complaint before justice of the peace, when made.**—When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, it shall be lawful for such person to complain thereof to any justice of the peace for the county where such trespass shall have been done, and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he has sustained by such trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock, shall make full satisfaction for the trespass to the party injured, to be recovered before any tribunal having cognizance thereof.

Art. 3929. [2498] [2433] **Stock may be impounded, when.**—In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused by said stock and all costs thereon. [P. D. 6845.]

Art. 3930. [2499] [2434] **Owner of cattle, etc., not liable, when.**—If it shall appear that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages. [Id. P. D. 6845.]

Art. 3931. [2500] [2435] **Persons injuring stock, liable, when.**—If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall make full satisfaction to the person injured for all damages by such person sustained, to be recovered before any tribunal having cognizance thereof. [P. D. 3840.]

Art. 3932. [2501] **Unlawful to remove adjoining fence except, when.**—Hereafter, it shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with, any fence owned or controlled by any other person, to remove the same, except by mutual consent or as hereinafter provided. [Act March 17, 1887. Act April 6, 1889, p. 45.]

Art. 3933. [2502] **Can not separate fence, except, how.**—Any person who is the owner or part owner of any fences connected with or adjoined to any fences owned in part or in whole by any other person shall have the right to withdraw or separate his fence or part of fence from the fence of any other person or persons in this state; but such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation. [Id.]

Art. 3934. [2503] **Adjacent owners required to remove fence, how.**—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined or connected in any manner, may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. [Id.]

TITLE 60.

FISCAL YEAR.

Termination of fiscal year.....	Article. 3935	Legislators to be furnished with copies of reports.....	Article. 3938
Accounts to be closed and reports com- piled	3936	Purpose of title.....	3939
Secretary of state to have reports printed	3937		

Article 3935. [2504] [2436] **Termination of fiscal year.**—The fiscal year of the state shall terminate on the thirty-first day of August of each year, and appropriations made for the support of the state government shall conform thereto. [Acts 1901, p. 9. Acts 1857, p. 17.]

Art. 3936. [2505] [2437] **Accounts to be closed and reports compiled.**—All officers who are required by law to report annually or biennially to the legislature or governor shall close their accounts on said date, and as soon thereafter as practicable shall prepare and compile their respective reports. [Id. P. D. 3864.]

Art. 3937. [2506] [2438] **Secretary of state to have reports printed.**—All annual or biennial reports intended for the use of the legislature or governor shall be transmitted by the respective officers to the secretary of state on or before the first day of November; and the secretary of state shall cause the same to be printed in accordance with the laws regulating public printing, as soon as practicable; all biennial reports to be printed before the assembling of the legislature. [Id. P. D. 3865.]

Art. 3938. [2507] [2439] **Legislators to be furnished with copies of reports.**—Upon the organization of the legislature, the secretary of state shall transmit to the presiding officers of both houses ten copies of each printed report for the use of the members of the legislature. [Id. P. D. 3866.]

Art. 3939. **Purpose of title.**—The purpose of this chapter is to require all appropriations for the support of the state government to conform to the fiscal year as provided in article 3935; and all officers that are required by law to report annually or biennially to either the legislature or governor to close their accounts, transmit their reports at a uniform date; and all laws or parts of laws in conflict with this act are hereby repealed. [Id.]

TITLE 61.

FORCIBLE ENTRY AND DETAINER.

Article.	Article.
In what cases the action will lie.....	Jury cases, impaneling; hearing; verdict.....
3940	3953
"Forcible entry" defined.....	Judgment of the court, writ, etc.....
3941	3954
Other cases of forcible detainer.....	Writ of restitution not to issue for two
3942	days
Venue	3955
3943	May appeal, when and how.....
Citation	3956
3944	Form of appeal bond.....
Requisites of the complaint.....	3957
3945	Duty of justice in case of appeal.....
Service and return of citation.....	3958
3946	Trial de novo.....
Either party may demand a jury; precept	3959
for and service.....	Damages may be proved, when.....
3947	3960
Other jurors may be summoned, when.....	Judgment by default, when.....
3948	3961
Docketing and trial.....	Judgment of county court final, etc., ex-
3949	cept, etc.....
Right of possession only issue.....	3962
3950	Writ of restitution, etc.....
Trial may be postponed for cause.....	3963
3951	Shall not bar action for trespass, etc....
Hearing and judgment without jury.....	3964
3952	

Article 3940. [2519] [2440] **In what cases the action will lie.**—If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force, or (3) if any person shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or ~~to the person~~ under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. [Act Aug. 17, 1876, p. 155, sec. 1.]

Art. 3941. [2520] [2441] **"Forcible entry" defined.**—A "forcible entry" or an entry where entry is not given by law within the meaning of this chapter is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

Art. 3942. [2521] [2442] **Other cases of forcible detainer.**—A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the determination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made .

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first forcible entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord, upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession.

Art. 3943. [2522] [2443] **Venue.**—Any justice of the peace of the precinct where the property is situated shall have jurisdiction to hear and determine any case arising under this title. [Id. sec. 4.]

Art. 3944. [2523] [2444] **Citation.**—Whenever the party aggrieved, or his authorized agent, shall file his complaint in writing and under oath with such justice of the peace, it shall be his duty immediately to issue his citation

to the sheriff or any constable of his county, commanding him to summon the person against whom complaint is made to appear before such justice, at a time and place named in such citation, such time being for not more than ten nor less than six days from the date of the citation. [Id. sec. 4.]

Art. 3945. [2524] [2445] **Requisites of the complaint.**—The complaint named in the preceding article shall describe the lands, tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same; and it shall also state the facts which entitle the complainant to the possession and authorize the action under the first three articles of this title. [Id.]

Art. 3946. [2525] [2446] **Service and return of citation.**—The sheriff or constable receiving such citation shall execute the same by reading it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least five days before the return day thereof; and he shall return such citation, with his action written thereon, to the justice of the peace who issued the same, on the day assigned for trial. [Id.]

Art. 3947. [2526] [2447] **Either party may demand a jury; precept for and service.**—Either party to the suit shall have the right of trial by jury, by making demand for a jury to the justice of the peace on or before the day for which the case is set for trial, and paying the jury fee of three dollars; and, when a jury is demanded, the justice of the peace shall issue a precept to the sheriff or any constable of the county, commanding him to summon a jury of six men, qualified jurors of the county, to appear before him on the day set for trying the complaint, to serve as jurors, and shall be returned with the name of the jurors thereon to the said justice of the peace on the day assigned for trial. If no jury be demanded, the case shall be tried by the justice of the peace without a jury. [Acts 1876, p. 155. Acts 1897, p. 16.]

Art. 3948. [2527] [2448] **Other jurors may be summoned, when.**—If any of the jurors summoned as aforesaid shall fail or refuse to attend, or shall be excused after being challenged, a jury shall be completed by causing other qualified jurors to be summoned immediately. [Acts 1876, p. 155.]

Art. 3949. [2528] [2449] **Shall be docketed and tried as other cases, etc.**—The cause shall be docketed and tried as other cases; and the justice of the peace shall have authority to issue subpoenas for witnesses, to enforce their attendance, and to punish for contempts. [Id.]

Art. 3950. [2529] [2450] **Right of possession the only issue.**—On the trial of any case of forcible entry, or of forcible detainer, under the provisions of this title, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into.

Art. 3951. [2530] [2451] **Trial may be postponed for cause.**—For good cause shown, supported by affidavit by either party, the trial may be postponed for a time not exceeding six days. [Id.]

Art. 3952. [2531] [2452] **Hearing and judgment without jury.**—On the day named in the citation for trial, or on the day to which the case may be postponed according to the provisions of the preceding article, if no jury is demanded, the justice of the peace shall hear the evidence and render his judgment of guilty or not guilty of the charge as stated in the complaint. [Acts 1876, p. 155. Acts 1897, p. 16.]

Art. 3953. [2531] [2452] **Jury case, impaneling; hearing; verdict.**—If a jury is demanded by either party, the jury shall be impaneled and sworn as in other cases; and, after hearing the evidence, they shall return their verdict of guilty or not guilty of the charge as stated in the complaint. [Id.]

Art. 3954. [2532] [2453] **Judgment of the court, and writ, etc.**—If the justice of the peace, if no jury is demanded, or the jury, in case one is demanded, find the defendant guilty, the said justice of the peace shall give

judgment thereon for the plaintiff to have restitution of the premises and for costs; and he shall award his writ of restitution and may issue execution for the costs, but, should the defendant be found not guilty, judgment shall be given in favor of the defendant and against the plaintiff for all costs, and execution may issue therefor. [Acts 1876, p. 155. Acts 1897, p. 16.]

Art. 3955. [2533] [2454] **Writ of restitution not to issue for two days.**—No writ of restitution shall issue until the expiration of two days from the rendition of the judgment. [Acts 1876, p. 155.]

Art. 3956. [2534] [2455] **May appeal, when and how.**—Either party, his agent or attorney, may appeal from any final judgment rendered by the justice of the peace in such case, to the county court of the county in which the judgment is rendered, by giving notice thereof in open court and by filing with such justice of the peace, within five days after the rendition of said judgment, a bond with two or more good and sufficient sureties, to be approved by said justice of the peace, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal. [Id. p. 163, sec. 21.]

Art. 3957. [2535] [2456] **Form of appeal bond.**—The appeal bond made in the preceding article may be substantially as follows:

“The State of Texas,

“County of _____.

“Whereas, Upon a writ of forcible entry (or forcible detainer) in favor of A B, and against C D, tried before _____, a justice of the peace of _____ county, a judgment was rendered in favor of the said A B on the _____ day of _____, A. D. _____, and against the said C D, from which the said C D has appealed to the county court; now, therefore, the said C D and _____, his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

“Given under our hands this _____ day of _____, A. D. _____.”

Art. 3958. [2536] [2457] **Duty of justice in case of appeal.**—Whenever such appeal bond shall be executed and filed, the justice of the peace shall stay all further proceedings on the judgment, and he shall immediately make out a transcript of all the entries made on his docket of the proceedings had in the case before him; and he shall file the same, together with all the original papers, with the clerk of the county court of the county in which the trial was had, on or before the first day of the first term of said court, or, if there be insufficient time, on or before the first day of the next succeeding term thereof.

Art. 3959. [2537] [2458] **Trial de novo.**—The clerk of the county court shall docket the cause, and the same shall be tried de novo, with or without a jury, as in other cases.

Art. 3960. [2538] [2459] **Damages may be proved, when.**—On the trial of said cause in the county court the appellee shall be permitted to prove the damages for withholding the possession of the premises from the appellee during the pendency of the appeal, and for the reasonable expenses of the appellee in prosecuting or defending the cause in the county court; and, if the possession of the premises be not adjudged to the appellant, the said court shall render judgment also in favor of the appellee and against said appellant and the sureties on his bond for the damages proven and all costs.

Art. 3961. [2539] [2460] **Judgment by default, when.**—Should the defendant, by himself or his attorney, fail to enter an appearance upon the docket of the county court on appearance day, and before the case is called regularly for trial, the facts alleged in the complaint may be taken as admitted, and judgment by default may be entered accordingly. [Id.]

Art. 3962. [2540] [2461] **Judgment of county court, final, etc., except, etc.**—After a trial upon the merits, the proper judgment shall be rendered upon the law and the facts, or upon the verdict of the jury, as the case may be; and the judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

Art. 3963. [2541] [2462] **Writ of restitution, etc., by whom issued and served.**—The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended or superseded in any case by any appeal taken from such final judgment in the county court.

Art. 3964. [2542] [2463] **Shall not bar action for trespass, etc.**—The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

TITLE 62.

FRAUDS AND FRAUDULENT CONVEYANCES.

Article.	Article.
Written memorandum required to maintain certain actions.....	3965
Conveyance to defraud creditors, etc., void	3966
Voluntary conveyances	3967
Gift of goods, etc.	3968
Loan of chattels.....	3969
Mortgage of chattels void, when.....	3970
Merchandise, sales in bulk, void when, etc., unless, etc.....	3971
Purchaser conforming to provisions, not accountable	3972
Not applicable in what cases.....	3973

Article 3965. [2543] [2464] **Written memorandum required to maintain certain actions.**—No action shall be brought in any of the courts in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized:

1. To charge any executor or administrator upon any promise to answer any debt or damages due from his testator or intestate, out of his own estate; or,
2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,
3. To charge any person upon any agreement made upon consideration of marriage; or
4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,
5. Upon any agreement which is not to be performed within the space of one year from the making thereof. [Act Jan. 18, 1840. P. D. 3875.]

Art. 3966. [2544] [2465] **Conveyance to defraud creditors, etc., void.**—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, every suit commenced, or decree, judgment or execution suffered or obtained, and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. [P. D. 3876.]

Art. 3967. [2545] [2466] **Voluntary conveyances.**—Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors, unless it appears that such debtor was then possessed of property within this state subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers. [P. D. 3876-77.]

Art. 3968. [2546] [2467] **Gift of goods, etc.**—No gift of any goods or chattels shall be valid unless by deed or will, duly acknowledged or proven up and recorded, or unless actual possession shall have come to, and remained with, the donee or some one claiming under him. [P. D. 3876.]

Art. 3969. [2547] [2468] **Loan of chattels.**—Where any loan of goods or chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pretended lender; or when any reservation or limitation shall be pre-

tended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded.

Art. 3970. [2548] **Chattel mortgage void, when.**—Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of the business of such merchandise, and contemplating a continuance of the possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void. [Acts 1879, p. 60.]

[Note.—Old Art. 2549 was same as old Art. 3327, and will be found as Art. 5654.]

Art. 3971. **Merchandise, sales in bulk, void when, etc., unless, etc.**—Any sale or transfer of any portion of a stock of merchandise, otherwise than in the ordinary course of trade in the usual and regular prosecution of the seller's or transferrer's business, or a sale or transfer of an entire stock of merchandise in bulk, shall be void as against creditors of the seller or transferrer, unless the purchaser or transferee shall, at least ten days before the sale or transfer, in good faith, make full and explicit inquiry of the seller or transferrer as to the name and place of residence or place of business of each and all creditors of the seller or transferrer, and the amount owing to each such creditor by the seller or transferrer, and obtain from the seller or transferrer a written answer to such inquiries, which answers shall be sworn to by the seller or transferrer, and unless the purchaser or transferee, at least ten days before the sale or transfer, in good faith, notify or cause to be notified personally, or by registered mail, each of the seller's or transferrer's creditors, of whom the purchaser or transferee has knowledge, of said proposed sale or transfer. [Acts 1909, p. 66.]

Art. 3972. **Purchaser conforming to provisions, not accountable.**—Any purchaser or transferee who shall conform to the provisions of article 3971 shall not in any way be held accountable to any creditor of the seller or transferrer for any of the goods, wares or merchandise that have come into the possession of said purchaser or transferee by virtue of such sale or transfer. [Id. sec. 2.]

Art. 3973. **Not applicable in what cases.**—Nothing in articles 3971 and 3972 shall apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise for the payment of bona fide debts, where all creditors share equally and without preference in the sale or transfer or the proceeds thereof. [Id. sec. 3.]

TITLE 63.

GAME, FISH, OYSTERS, ETC.

Chapter. 1. Game, Fish and Oyster Commissioner.		Chapter. 2. Fish, Oysters, etc. 3. Game.
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CHAPTER ONE.

GAME, FISH AND OYSTER COMMISSIONER.

Office created	Article.	Oath and bond.....	Article.
Qualifications of	3974	Seal	3977
Office where kept.....	3975	General duties and powers.....	3978
			3979

Article 3974. [2508] **Office created.**—The office of game, fish and oyster commissioner is hereby created, and the governor is hereby authorized to appoint a competent person as game, fish and oyster commissioner for the state of Texas. [Act 1895, p. 70.]

Art. 3975. [2509] **Qualifications of.**—The person appointed to the office of game, fish and oyster commissioner shall be a citizen of the United States and a resident of the state of Texas. He must be familiar with the habits of game, fish and oysters and have some knowledge of navigation. [Acts 1899, p. 312. Acts 1895, p. 70.]

Art. 3976. [2510] **Office where kept.**—The game, fish and oyster commissioner shall have his office in some town or city on the coast of Texas during the term of his office, which term shall be for two years. [Id. Acts 1895, p. 70.]

Art. 3977. [2511] **Oath and bond.**—The game, fish and oyster commissioner shall file with the secretary of state a good and sufficient bond, to be approved by the secretary of state, in the sum of ten thousand dollars, with two or more good and sufficient sureties, conditioned that he will faithfully perform the duties of his office; and he shall take the oath prescribed for sheriffs; and, when he shall have filed said bond and taken said oath, he shall enter upon the duties of said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the state or any person injured until the whole amount has been recovered. [Acts 1895, p. 70.]

Art. 3978. [2512] **Seal.**—The said commissioner shall have a seal, consisting of a star with five points, together with the words "Game, Fish and Oyster Commissioner of Texas." [Acts 1895, p. 70.]

Art. 3979. [2513] **General duties and powers.**—The duties of the game, fish and oyster commissioner are the execution of the game, fish and oyster laws of this state. In the execution of these laws, he shall exercise the powers and authority given to sheriffs by the laws of this state. [Acts 1895, p. 70. Acts 1905, p. 128-129.]

CHAPTER TWO.

FISH, OYSTERS, ETC.

Article.	Article
Public rivers, etc., property of state, etc.; under jurisdiction of commissioner, etc.	Commissioner to keep accounts with locators
3980	4002
Private and public oyster beds defined.	Commissioner to make annual report to governor, to be printed, etc.; requisites; penalty
3981	4003
Riparian rights prescribed.	Deputies in coast counties; special deputies over entire coast; appointment, powers
3982	4004
Special tax on fish, oysters, etc., taken from public coast waters.	Deputies in interior counties; appointment, powers, duties, charges.
3983	4005
Registration of fishermen, etc., in coast waters; application; certificate; marking boats, etc.	Qualifications of deputy fish commissioner, etc.
3984	4006
Permit to sell, with receipt of seizure and sale; proceeds how disposed of.	Oath and bond of deputy commissioner, etc.
3985	4007
License to catch or take fish, oysters, etc., prerequisites to issue of.	Duties of deputy fish commissioner, etc.
3986	4008
Licenses to wholesale dealers in fish and oysters; definition	Weekly reports by deputies; with remittances; annual reports.
3987	4009
Application; requisites, agreement for inspection, record, forfeiture, etc.	Commissioner responsible for his deputies
3988	4010
Issuance of license, requirements, fee.	Fish and oyster fund
3989	4011
Commissioner may arrange with applicants; amount, etc.	Fines, etc., to go to general fund of the county
3990	4012
Location for planting oysters; who may obtain; application; fee	Fines distributed, how
3991	4013
Examination of location; survey	Disposition of funds collected by coast deputies
3992	4014
Certificate; requisites; fee	Compensation of commissioner
3993	4015
Certificate to be filed and recorded, fee, evidence	Compensation of deputy commissioners.
3994	4016
Locator protected in possession.	Fees of commissioner
3995	4017
Location limited and foreign corporations excluded	Commissioners' court may appropriate money for stocking waters with fish; deputy for, etc.
3996	4018
Owner of private location and assignee to keep stakes in place; may fence, provided	Improving, etc., the natural oyster beds in Matagorda bay; expenditure authorized, provided, etc.
3997	4019
Rents to be paid for locations; forfeitures, etc.	Drag seine in breeding grounds taken charge of, when, by, commissioner.
3998	4020
Permit to gather seed oysters, to whom and by whom granted, etc.; on what beds, etc.; fees, etc.	Commissioner may purchase patrol boats and employ deputies for same, etc., compensation
3999	4021
Duties of commissioner.	
4000	
Commissioner to keep record, to show what	
4001	

Article 3980. **Public rivers, etc., property of state, etc.; under jurisdiction of commissioner, etc.**—All of the public rivers, bayous, lagoons, lakes, bays and inlets in this state and all that part of the Gulf of Mexico within the jurisdiction of this state, together with their beds and bottoms, and all of the products thereof, shall be, continue and remain the property of the state of Texas, except so far as their use shall be permitted by the laws of this state. So far as this use shall relate to the fish and oyster industry, the state game, fish and oyster commissioner shall have jurisdiction and control thereof according to the authority vested in him by the fish and oyster laws of this state. [Acts 1905, p. 129.]

Art. 3981. [25181] **Private and public oyster beds defined.**—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this state shall be deemed public, and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the game, fish and oyster commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. [Acts 1907, p. 236. Acts 1899, p. 314. Acts 1895, p. 70.]

Art. 3982. [25180] **Riparian rights prescribed.**—Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location in this state, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters within the metes and bounds of the

official grant or patent of said land. But if said creek, bayou, lake or cove is not included in the survey of said lands, then the exclusive rights of the riparian owner shall extend to the middle of said creek, bayou, lake or cove; provided, said creek, bayou, lake or cove be not more than two hundred yards in width; but, if said creek, bayou, lake or cove be more than two hundred yards in width, then the riparian owner's right shall extend only one hundred yards from the shore. No person shall locate any water, or ground covered with water, for planting oysters along any bay shore in this state nearer than one hundred yards from the shore, which one hundred yards is declared to be the riparian right of the land owner for planting oysters. In determining such riparian right of any land owner, the starting point must be at high water mark or where the land survey ceases, and measure out into the bay one hundred yards; provided, that, should a natural oyster bed or reef be on this one hundred yards riparian reservation, the land owner shall have no exclusive right to the same. [Acts 1895, p. 70.]

Art. 3983. [2514] **Special tax on fish, oysters, etc., taken from public coast waters.**—For the purpose of protecting the fish and improving the natural oyster reefs and protecting both the natural reefs and private oyster beds, and to carry out the fish and oyster laws of the state of Texas, and as one of the conditions on which the state consents to the taking or removing of fish from her waters, or to the fishing or removal of oysters from her natural reefs, or the use or rental of her water bottoms for oyster propagating purposes, there shall be, and is hereby, levied a special tax of one-tenth of one cent per pound on all fish, turtle, terrapin and shrimp taken for market from the public coast waters within the jurisdiction of this state, and a tax of two cents per barrel on each and every barrel of oysters gathered from the said waters of this state, whether from the natural reefs or private oyster beds, for sale or shipment; provided, that oysters taken from any waters for bedding purposes shall not be subject to this tax until again taken up for sale or shipment. This special tax shall be paid to the fish and oyster commissioner or his deputy by the person bringing said fish, turtle, terrapin, shrimp or oysters to market, whether he be the person who fished said products or his agent, before he shall be allowed to sell same or consign same to any other party for sale, shipment or storage. [Acts 1905, p. 129. Acts 1903, p. 189. Acts 1899, p. 312. Acts 1895, p. 70.]

Art. 3984. **Registration of fishermen, etc., in coast waters; application; certificate; fees; marking boats, etc.**—Any person who is a citizen of the United States wishing to engage in the catching of fish, green turtle or terrapin or gathering oysters for market in any of the coast waters in this state in accordance with the provisions of the fish and oyster law of this state, shall apply to the game, fish and oyster commissioner, or his deputy, for registration. Such applicant shall furnish said officer on oath his name, place of residence, the name and kind of boat, vessel or craft to be used or employed by him, and the number of men to be employed; thereupon, the said officer shall register such applicant and his boat, and prescribe for his boat a number corresponding with his registered number, which number the applicant shall cause to be plainly marked or placed on each side of the prow of his vessel, boat or craft, for which registration he shall pay the said officer a fee of fifty cents for each vessel, boat or craft registered; and the said officer shall furnish the applicant with a certificate of such registration. [Acts 1901, p. 304.]

Art. 3985. [2514] **Permit to sell, with receipts or seizure and sale; proceeds how disposed of.**—When this special tax provided for in this chapter has been paid, it shall be the duty of the game, fish and oyster commissioner, or his deputy receiving the tax, to give a receipt for same, together with a permit authorizing the holder thereof to dispose of the products on which the special tax has been paid. A duplicate of which receipt and permit shall be

retained in the office of said commissioner issuing same. This permit shall be given by the person delivering said products to the person, firm or corporation to whom the products mentioned therein shall be sold or delivered for sale, shipment or storage. Any fish, turtle, terrapin or oysters found in the possession of any packer, buyer or commission man, for which he can not show the state's permit for the disposition of these products so found, shall continue the property of the state, and may be seized by the game, fish and oyster commissioner, or any of his deputies, and sold, the proceeds thereof to go to the fish and oyster fund of the state. [Acts 1903, p. 189. Acts 1899, p. 312. Acts 1895, p. 70. Id.]

Art. 3986. [2518k] **License to catch or take fish, oysters, etc.: prerequisites to issue of.**—Any captain, master or manager of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp or oysters from the waters of the state for market shall, before engaging in such business, secure from the game, fish and oyster commissioner, or one of his deputies, a license granting to said person permission to take from the waters of the state any fish, turtle, terrapin, shrimp or oysters; provided, that the licensee, in exercising the privilege named in his license, shall at all times be governed by the fish and oyster laws of this state. For the purpose of obtaining this license, the person desiring same must make written application to the game, fish and oyster commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath required that he is a citizen of the United States, the name, class and register number of his boat, and the names of the men working on said boat. If the application be for a license to use seines or nets, the applicant shall state the number, class and length of the seines or nets to be used by him; and, if the application be for a license to gather oysters, he must state the number of tongs to be used by him; and the applicant shall also agree that because of the privilege which he shall receive from the state of Texas of taking fish, turtle, terrapin, shrimp or oysters from her waters, all such products at all times be subject to inspection by the game, fish and oyster commissioner, or any of his deputies, and that said application shall authorize said commissioner, or any of his deputies, to enter at any time his boat, or any house where he may have such products stored, and inspect same; and he shall further agree to pay to the state the special tax provided for in article 3983, of the fish and oyster laws. This application having been duly executed and handed to the game, fish and oyster commissioner, or his deputy, accompanied by the applicant's registration certificate and the fee for the license applied for, it shall thereupon be the duty of the game, fish and oyster commissioner, or the deputy receiving same, to issue to the applicant a license to engage in the business set forth in his application. Said license must be signed by the game, fish and oyster commissioner, or his deputy, stamped with the seal of office, and state the name of the licensee, name and class of his boat, if any, and the names of the men working on same, and the date of issuance. Such license shall be for twelve months if for fishing for fish, turtle or shrimp; and from September 1 to April 1 following the date of license, if for gathering oysters; and from August 1 to May 1, if for the purpose of catching terrapin; and for said license the applicant shall pay the sum of one dollar for himself and one dollar for each man working on his boat. The license shall always be kept subject to the inspection of the game, fish and oyster commissioner, or any of his deputies, and it shall not be good for any other person or persons, nor on any other boat than the one originally named therein, without the consent of the game, fish and oyster commissioner, or one of his deputies, written across the face of said license. Any person engaged in the business of taking or catching any fish, turtle, terrapin, shrimp or oysters for market, who is not, while so engaged, directly working for a boat previously licensed under the terms of this act, shall pro-

cure a license in the same manner as the captains, masters and managers of boats so engaged; provided, that one license so issued under this article shall authorize the licensee to engage in the business of taking or catching any of the products named herein. [Acts 1905, p. 131. Acts 1903, p. 190. Acts 1899, p. 314. Acts 1895, p. 70. Acts 1907, p. 235.]

Art. 3987. Licenses to wholesale dealers in fish and oysters; definition.—For the better protection of the fish and oyster industry, any individual, firm or corporation engaged in, or who may engage in, the business of a wholesale dealer or dealers in fish and oysters shall, on or before the first day of September of each year, secure from the game, fish and oyster commissioner, or one of his deputies, a license granting such individual, firm or corporation permission to engage in said occupation. A wholesale dealer, within the meaning of this article, is one who is regularly engaged in buying fish in lots of two hundred and fifty pounds or more, and oysters in lots of five barrels or more, for the purpose of resale. [Acts 1909, S. S. p. 327.]

Art. 3988. Application; requisites; agreement for inspection, record, forfeiture, etc.—For the purpose of obtaining this license, the applicant desiring same must make written application to the game, fish and oyster commissioner, or one of his deputies, in which he (the applicant) shall set forth, under oath if required, that he is a citizen of the United States; he shall also agree that, because of the privilege which he applies for from the state of Texas, that all products bought by him shall at all times be subject to the inspection of the game, fish and oyster commissioner, or any of his deputies; and in said application he shall authorize said commissioner, or any of his deputies, to enter his place of business or any place where he may have such products stored, and inspect same. He shall also agree to keep a correct record of all purchases made by him under this chapter, in a book to be furnished by the game, fish and oyster commissioner, and, further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. [Id.]

Art. 3989. Issuance of license, requirements, fee.—This application having been duly executed and delivered to the game, fish and oyster commissioner, or any of his deputies, together with the fee for same, it shall then be the duty of the game, fish and oyster commissioner, or his deputy, to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the game, fish and oyster commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for and shall be good for twelve months following the date of issuance. For it, the applicant shall pay two dollars and fifty cents for each ten thousand pounds of fish bought by him during the year previous, as evidenced by the record book before mentioned, and, if for oysters, then he shall pay one dollar for each thousand barrels bought by him for the same period. [Id.]

Art. 3990. Commissioner may arrange with applicants, amount, etc.—The game, fish and oyster commissioner is authorized to arrange the amount with all applicants under this chapter for a license to be issued on or before September 1, 1909, said agreement to be based on the amount of business done for the twelve months ending September 1, 1909, as near as can be ascertained. [Id.]

Art. 3991. [2518m] Location for planting oysters, who may obtain; application; fee.—Any person who is a citizen of the United States, or any corporation having been chartered in this state, shall have the right of obtaining a location for planting oysters and making private oyster beds within the navigable waters of this state, by making written application to the game, fish and oyster commissioner, or his deputy, describing the location desired. A fee

of ten dollars cash must accompany such application. [Acts 1907, p. 236. Acts 1903, p. 191. Acts 1899, p. 314. Acts 1895, p. 70. Id. p. 328.]

Art. 3992. [2518m] **Examination of location; survey.**—It shall then be the duty of the game, fish and oyster commissioner, or his deputy, to examine thoroughly the location desired, as soon as practicable, with tongs, dredge or any other efficient manner; and, if the same be not a natural oyster bed or reef, and exempt from location by any section [article] of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes shall be not less than two inches in diameter and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or landmarks. All locations for private oyster beds shall be made outside the riparian limits as defined in the laws relating thereto. [Acts 1907, p. 236. Acts 1903, p. 191. Acts 1899, p. 314. Acts 1895, p. 70. Id.]

Art. 3993. [2518m] **Certificate; requisites; fee.**—The game, fish and oyster commissioner, or his deputy, shall give to the locator a certificate signed by the game, fish and oyster commissioner, and stamped with the seal of his office; such certificate shall show the date of application, date of survey, number, description by metes and bounds, with reference to the points of the compass and natural and artificial objects by which the said location can be found and verified; and the locator shall pay to the game, fish and oyster commissioner, or his deputy, a fee of ten dollars for every fifty acres or fractional part thereof, for the examination of said location, including the certificate; provided, that the ten dollars heretofore paid by the locator with his application shall be deducted from this fee. [Acts 1907, p. 236. Acts 1903, p. 191. Acts 1899, p. 314. Acts 1895, p. 70. Id.]

Art. 3994. [2518m] **Certificate to be filed and recorded, fee, evidence.**—At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well-bound book kept for the purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificates shall be admissible in evidence under the same rules governing the admission of deeds or certified copies thereof. [Acts 1907, p. 236. Acts 1903, p. 191. Acts 1899, p. 314. Acts 1895, p. 70. Id.]

Art. 3995. [2518m] **Locator protected in possession.**—Any person so locating shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their rights, so long as he complies with the conditions of this chapter. [Acts 1907, p. 236. Acts 1903, p. 191. Acts 1899, p. 314. Acts 1895, p. 70. Id.]

Art. 3996. [2518p] **Location limited and foreign corporations excluded.**—No person, firm, or corporation shall ever own, lease, or otherwise control more than six hundred and forty acres of land covered by water, the same being oyster location under this chapter, and within the navigable waters of this state; and any person, firm, or corporation that now holds six hundred and forty acres of oyster location shall not be permitted hereafter to acquire, own, lease or otherwise control more; provided, that no corporation shall own or lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this state. [Acts 1895, p. 70.]

Art. 3997. [2518n] **Owner of private location and assignee to keep stakes in place; may fence, provided.**—Any person, firm or corporation who has secured, or may hereafter secure, a location for a private oyster bed in this

state, shall keep the two iron stakes or pipes, as provided for in article 3992, in place, and shall preserve the marks so long as he is the owner of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature; and said locator or owner shall have the right to fence said location, or any part thereof; provided, that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters. [Acts 1903, p. 192. Acts 1899, p. 315. Acts 1895, p. 70. Acts 1907, p. 237.]

Art. 3998. [2518n] **Rents to be paid for locations; forfeitures, etc.**—Every locator or owner of a location for private oyster beds in this state shall pay the following amounts as rent for his location: In addition to the locating fee of ten dollars as prescribed in article 3993 of this chapter, he shall pay the sum of fifteen cents per acre to the first day of January following the date of application, to be paid to the game, fish and oyster commissioner on receipt of the certificate of location; the rent for the next four years from the first day of January above named shall be twenty-five cents per acre per annum; and the rent thereafter shall be seventy-five cents per acre per annum; the rent shall be paid to the game, fish and oyster commissioner, and shall be due on January first of each year; and, if not paid by March first of the same year, the locator shall forfeit all right to the location, and the same shall revert to the state. [Acts 1903, p. 192. Acts 1899, p. 315. Acts 1895, p. 70. Id.]

Art. 3999. **Permit to gather seed oysters, to whom and by whom granted, etc.; on what beds, etc., fees, etc.**—Any person who is a citizen of the state of Texas, or any corporation having been chartered in the state of Texas, wishing to plant oysters on location obtained from the state, or on private property in the state, must make written application to the game, fish and oyster commissioner, or his deputy, for a permit or license, which shall entitle the holder to gather seed oysters from the date of permit to the thirtieth day of April thereafter, by tongs or hand, without culling, on such reefs or beds as may be designated by the game, fish and oyster commissioner, or his deputy, in said permit; provided, that in no instance can there be designated a bed or reef on which marketable oysters are being gathered in paying quantities within two years, but the bed or reef so designated shall be an old or abandoned bed or reef, or one on which oysters do not get in marketable condition during the oyster season, and in taking oysters from such reef or bed the work shall be done with a view to reclaiming and improving such reef or bed; and in no case shall more than three-fourths of the oysters be removed from any reef or bed during any one season. For the permit above named, the applicant shall pay the game, fish and oyster commissioner, or his deputy, the sum of five dollars, and shall pay all expenses for the examining and locating such reef or bed designated. [Acts 1899, p. 315. Id. p. 238.]

Art. 4000. **Duties of commissioner.**—It shall be the duty of the game, fish and oyster commissioner to collect the special tax imposed by this chapter, and enforce its payment, to inspect all products so taxed and verify the weights and measures thereof, to collect all license fees, to collect all rents on locations for planting oysters, to examine, or have examined, all streams, lakes, or ponds, when requested so to do, for the purpose of stocking such waters with fish best suited to such location; and he shall procure and furnish such stock fish from the nearest fishery, and at the cheapest rate possible to parties applying for same. [Acts 1905, p. 131. Acts 1903, p. 189. Acts 1899, p. 312. Acts 1895, p. 70. Acts 1905, p. 129. Acts 1907, p. 236. Acts 1909, S. S., p. 327. Acts 1899, p. 313.]

Art. 4001. [2515] **Commissioner to keep record, to show what.**—The game, fish and oyster commissioner shall keep a record book, which shall be well bound, and in which shall be recorded all special taxes collected, all licenses issued and license fees collected, all certificates issued for locations of private

oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined, and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and cost of same, the streams, lakes or ponds stocked, number and kinds of fish used in each and showing all collections and disbursements in and from his office. [Acts 1899, p. 313. Acts 1895, p. 70. Acts 1905, p. 129.]

Art. 4002. **Commissioner to keep accounts with locators.**—The game, fish and oyster commissioner shall keep an account with each and every person, firm or corporation holding certificates for the location of private oyster beds in this state, showing the amounts received as rents, etc. [Acts 1895, p. 70. Acts 1905, p. 129.]

Art. 4003. [2516] **Commissioner to make annual report to governor, to be printed, etc.; requisites; penalty.**—The game, fish and oyster commissioner shall make, on the thirty-first day of August of each year, or as soon thereafter as practicable not later than October 1 of each year, a report to the governor, showing the condition of the fish and oyster industry. The report shall show all special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of locations of private oyster beds, and rents received therefor, and all other amounts collected from whatever source, and the disbursements thereof, as provided for in this chapter, with such observations and remarks as pertain to the industry. The report shall also contain a statement of all stock fish furnished, to whom furnished, and cost of same, the streams, lakes, or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subject. [Art. 2517, Acts 1899, p. 313.] The governor shall order a sufficient number of copies of such report to be printed and filed in the secretary of state's office, for the purpose of free distribution to parties interested therein. Failing to make such report within the time specified, the said commissioner may, in the discretion of the governor, be dismissed from his office. [Acts 1905, p. 130. Acts 1899, p. 312. Acts 1895, p. 70. Acts 1907, p. 233.]

Art. 4004. [2518d] **Deputies in coast counties; special deputies over entire coast; appointment; powers.**—The game, fish and oyster commissioner is authorized to appoint one or more deputy commissioners in each coast county in this state. Such deputy or deputies shall have and exercise the same powers and duties in their respective counties as the game, fish and oyster commissioner for the execution of the fish and oyster laws, and, in addition to these county deputies, the game, fish and oyster commissioner is authorized to appoint as many as two special deputies who shall have jurisdiction over the entire coast for the execution of the fish and oyster laws; and, in the execution of these laws, these special deputies shall have the same authority as that given to the game, fish and oyster commissioner; provided, that such special deputies shall at all times be subject to the orders of the game, fish and oyster commissioner. These special deputies shall be appointed and give bond in the same manner as that provided for county deputies. [Acts 1895, p. 70. Acts 1905, p. 130.]

Art. 4005. [2517] **Deputies in interior counties; appointment, powers, duties, charges.**—The game, fish and oyster commissioner shall have the right to appoint one or more deputy fish commissioners in any interior county in the state, for the execution of the fish laws, for stocking any public stream, lake or pond, and for the protection of said plants, said deputy to have the same authority over public fresh water streams, lakes or ponds in his county, and be under the same restrictions as the coast deputies appointed under this chapter; provided, that, when such deputy serves without pay, he shall not

be required to give bond, and the commissioner shall not be held responsible for his acts. The interior deputies shall have the right to charge a sum not to exceed two dollars and fifty cents per day for the time actually employed in the examination of streams, lakes or ponds, and the stocking of the same, to be paid by the county, or parties having such waters stocked; and the state shall not be liable in any sum for the services of any deputy fish commissioner, or deputy fish and oyster commissioner, in the interior or on the coast. [Acts 1895, p. 70. Acts 1899, p. 313.]

Art. 4006. [2518h] **Qualifications of deputy fish commissioner, etc.**—No person shall hold the office of deputy fish commissioner or deputy fish and oyster commissioner who is not a citizen of the United States and resident of the state and county in which he holds his office, except the special deputies provided for in article 4004, who must be citizens of the United States and residents of the state of Texas. All deputies shall hold their office at the pleasure of the game, fish and oyster commissioner. [Acts 1899, p. 314. Acts 1895, p. 70. Acts 1905, p. 131.]

Art. 4007. [2518g] **Oath and bond of deputy commissioner.**—Before entering upon the duties of his office, each deputy fish and oyster commissioner shall file with the fish and oyster commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the game, fish and oyster commissioner, and said bond and oath shall be governed by the provisions of article 3977. [Acts 1895, p. 70.]

Art. 4008. [2518f] **Duties of deputy fish commissioner, etc.**—Each deputy fish and oyster commissioner shall exercise the duties of his office in and for the county from which he was appointed. [Id.]

Art. 4009. [2518e] **Weekly reports by deputies; with remittances; annual reports.**—All deputies, whether county or special, shall make a weekly report to the game, fish and oyster commissioner of all funds collected by them, remitting along with said report all sums of money collected by them during the said week, and shall make an annual report to the game, fish and oyster commissioner not later than August first of each year, which report shall set forth in detail such acts as are provided for in article 4003 and article 4014. [Acts 1905, p. 131. Acts 1895, p. 70. Acts 1907, p. 235.]

Art. 4010. [2518j] **Commissioner responsible for his deputies.**—The commissioner shall be responsible, on his bond, for the official acts of his deputies. [Acts 1895, p. 70.]

Art. 4011. [2518] **“Fish and oyster fund.”**—All the money derived by the state from fines for infraction of the fish and oyster laws, fees for licenses, and taxes on private oyster beds, shall be kept by the comptroller separate under the head of, “Fish and Oyster Fund.” [Id.]

Art. 4012. [2518a] **Fines, etc., to go to general fund of county.**—All moneys derived by counties from fines for infraction of the fish and oyster laws, fees, taxes, etc., shall go to the general fund of the county. [Id.]

Art. 4013. [2518b] **Fines distributed, how.**—Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and one-fourth shall go to the informer, and one-half of the residue shall go to the fish and oyster fund of the state, and the other half of the residue shall go to the county in which the case was tried. [Id.]

Art. 4014. [2518c] **Disposition of funds collected by coast deputies.**—All funds collected by deputy fish and oyster commissioners along the coast for register certificates, licenses, fees and rents for locating private oyster beds and any other fees that may be prescribed, shall be, by said deputies and each of them, paid over weekly to the game, fish and oyster commissioner. Such funds so collected by the game, fish and oyster commissioner weekly from the deputy game, fish and oyster commissioners along the coast shall be

by the game, fish and oyster commissioner deposited monthly in the state treasury, to the credit of the fish and oyster fund. [Acts 1907, p. 234. Acts 1905, p. 130. Acts 1903, p. 190. Acts 1899, p. 313. Acts 1895, p. 70. Acts 1909, S. S. p. 325.]

Art. 4015. [2517] Compensation of commissioner.—The game, fish and oyster commissioner shall for his services in the fish and oyster department be allowed the sum of eighteen hundred dollars per annum, to be paid out of any funds in the state treasury not otherwise appropriated, to be paid in the same manner as other officers of the state. He shall also be allowed a sum, not to exceed six hundred dollars per annum, for office rent, traveling and other expenses, to be paid on vouchers approved by the governor, showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, state laws and charts necessary to the execution of the duties of his office, such stationery, books, etc., not to exceed one hundred dollars in value. [Acts 1895, p. 70. Acts 1899, p. 313.]

Art. 4016. [2518c] Compensation of deputy commissioners.—Out of the money collected by deputy fish and oyster commissioners along the coast for register certificates, licenses, fees and rents for locations of private oyster beds and any other fees that may be prescribed, and deposited in the state treasury as provided in article 4014, shall be paid the salaries of the chief deputy, special deputies and regular deputies provided for under this chapter monthly, on approval by game, fish and oyster commissioner, the comptroller drawing his warrant in favor of each of said persons on said fish and oyster fund, as follows:

One chief deputy the sum of one hundred and twenty-five dollars per month, who shall have the same powers and authority as the game, fish and oyster commissioner, in the absence or inability, or any other cause of the game, fish and oyster commissioner to act; but said chief deputy shall at all times be subject to the orders of said game, fish and oyster commissioner; and, in addition to said salary of said chief deputy game, fish and oyster commissioner, shall be paid his actual traveling expenses in the performance of his duties, upon the approval of his expense account by the game, fish and oyster commissioner.

Two special deputies having jurisdiction over the entire coast, subject to the orders of the commissioner, an amount not to exceed \$600 per annum each.

One deputy at Sabine Pass, \$50 per month.

One deputy at Galveston, \$60 per month.

One deputy at Houston, \$50 per month.

One deputy at Velasco, \$50 per month.

One deputy at Matagorda, \$50 per month.

One deputy at Palacios, \$50 per month.

One deputy at Port Lavaca, \$60 per month.

One deputy at Rockport, \$50 per month.

One deputy at Corpus Christi, \$50 per month.

One deputy at Point Isabel, \$50 per month.

But in no instance shall the state be liable for the payment of said deputies, and, in the event that there are not sufficient funds to the credit of the fish and oyster fund at the end of any month to pay the salaries herein fixed for such month, then the game, fish and oyster commissioner shall prorate the amount then on hand in proportion to the salaries received for such month. [Acts 1907, p. 234. Acts 1905, p. 130. Acts 1903, p. 190. Acts 1899, p. 313. Acts 1895, p. 70. Acts 1909, S. S., p. 325.]

Art. 4017. [2518i] Fees of commissioner.—In making arrests, summoning witnesses and serving processes, the commissioner, or his deputy, shall be al-

lowed the same fees and mileage as sheriffs, the same being charged as costs and collected the same as are sheriff's costs and fees. [Acts 1895, p. 70.]

Art. 4018. Commissioners' court may appropriate money for stocking waters with fish; deputy for, etc.—The commissioners' court of any county bordering on any stream or having within its borders any public stream, lake or pond, shall have the right to appropriate a sum not to exceed two hundred dollars per annum, out of the general fund of the county, or as much thereof as said court may deem necessary, for the purpose of stocking said waters with fish, and at the request and recommendation of said commissioners' court, the state game, fish and oyster commissioner shall appoint a deputy fish commissioner for said county, who shall have charge of all public waters in said county for the purpose of stocking and protecting same, and the commissioners' court shall pay the said deputy for his services such amount as may be agreed upon, not to exceed two dollars and fifty cents per day. [Acts 1899, p. 316.]

Art. 4019. Improving, etc., the natural oyster beds of Matagorda Bay; expenditure authorized, provided, etc.—The game, fish and oyster commissioner is hereby authorized to use and expend the sum of three thousand dollars, or as much thereof as may be necessary, out of the fish and oyster fund, for the purpose of improving and reviving the natural oyster beds in Matagorda bay, in the state of Texas, by constructing a canal from the northeast end of said bay, connecting same with the lakes and bayous leading into the San Bernard river, for the purpose of conducting salt water into said bay; and said amount of three thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of said fish and oyster fund for such purpose, said money to be paid out upon the approval of the game, fish and oyster commissioner, and by warrant drawn by the state comptroller on the state treasurer; provided, that in no event shall the state be liable for the payment of any indebtedness created by virtue of this article, and the said game, fish and oyster commissioner shall only create such indebtedness when there are sufficient funds in said fish and oyster fund, not otherwise appropriated, to meet such indebtedness. [Acts 1909, S. S., p. 328.]

Art. 4020. Drag seine in breeding grounds taken charge of, when, by commissioner.—The game, fish and oyster commissioner, or any deputy, who may find any drag seine or set nets in any waters of the state designated as breeding grounds for fish, turtle and terrapin during the closed season of said waters (consisting of the time intervening between April 1 and September 1 of each year), not in the possession of the owner thereof, and without any person in charge of same, it is hereby made his duty to take charge of such property and proceed to advertise and sell the same in the same manner as it is provided in the law governing the sale of estrayed animals. [Acts 1899, p. 316.]

Art. 4021. Commissioner may purchase patrol boats, and employ deputies for same, etc.; compensation.—For the purpose of protecting the fish and oyster industry and to enforce and carry into effect the fish and oyster laws of this state, the game, fish and oyster commissioner is hereby fully authorized and empowered to purchase for the use of the state two boats of sufficient size and tonnage, to cost not exceeding one thousand dollars each, and to be paid for out of the fish and oyster fund of the state by warrants drawn on said fund by the game, fish and oyster commissioner, and duly approved by the governor; said boats, when so purchased, shall be used by the game, fish and oyster commissioner, or his deputies, in patrolling the bays and public coast waters of the state for the purpose of enforcing the criminal fish and oyster laws and for the better protection of the public and private oyster reefs of the state, and for the purpose of requiring all parties engaged in taking fish and oysters from the public waters to comply strictly with the laws of Texas. For the purpose of carrying out the provisions of this article, the game, fish and

oyster commissioner is authorized and empowered to employ not to exceed two men on each of said boats, who shall at all times be under the direction and supervision of the game, fish and oyster commissioner; provided, that one of said men on each of the boats herein provided may, in the discretion of the game, fish and oyster commissioner, be one of his regular authorized deputies, and shall receive sixty-five dollars per month; said employes hereby provided for, in case they be other than a regular authorized deputy, shall receive the sum of thirty dollars per month, and board for themselves not to exceed ten dollars each per month. The expense of operating and maintaining said patrol to be paid for out of the fish and oyster fund of the state, by warrants drawn on said fund by the comptroller and duly approved by the game, fish and oyster commissioner. [Acts 1909, p. 326.]

CHAPTER THREE.

GAME.

	Article.
Wild animals, birds, etc., property of public	4022
Hunting licenses required of non-residents, requisites and duration; fee....	4023
Non-resident licensee may take home game lawfully killed provided, etc....	4024
Hunting licenses required of residents, when; requisites; authority given, duration; fee	4025
County clerk to issue local hunting licenses, etc., keep stubs of, etc.....	4026
County clerk to keep record.....	4027
Monthly report of licenses by county clerk, in duplicate, to commissioner and comptroller	4028
Commissioner to enforce laws for protection, etc., of wild game, etc., bring actions, etc., for fines, etc; powers....	4029
Power to seize birds and animals, when; disposition of	4030
Commissioner to keep record; to contain what	4031

	Article.
Monthly report by commissioner.....	4032
Commissioner may appoint chief deputy; office in capitol; oath; duties.....	4033
Bond of chief deputy.....	4034
Commissioner may appoint deputy game commissioners; powers	4035
Disposition of fees and fines received by commissioner	4036
Disposition of fines by court or deputy commissioner	4037
Disposition of license fees received by county clerk	4038
Hunting license fund, a separate salary, etc., fund	4039
Compensation of commissioner and deputies	4040
Chief deputy to furnish blank hunting licenses to county clerks; accounts....	4041
Commissioner and deputies made fire commissioners; duties	4042

Article 4022. **Wild animals, birds, etc., property of public**—All the wild deer, wild antelope, wild Rocky Mountain sheep, wild turkey, wild ducks, wild geese, wild grouse, wild prairie chickens (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins, wild Mexican pheasants or chachalaca and all other wild animals, wild birds and wild fowls found within the borders of this state, shall be, and the same are hereby declared to be, the property of the public. [Acts 1907, p. 278.]

Art. 4023. **Hunting licenses required of non-residents; requisites and duration; fee.**—It shall hereafter be unlawful for any person who has not been a bona fide inhabitant of, and resident citizen of, this state for six months last past to hunt for or kill any game or birds protected by the laws of this state without first procuring a hunting license from the game, fish and oyster commissioner permitting him to do so, and paying to said commissioner the sum of fifteen dollars. Said license shall be dated when issued and shall remain in force until the first day of September following thereafter. [Acts 1909, 2 S. S. p. 456. Acts 1907, p. 256.]

Art. 4024. **Non-resident licensee may take home game lawfully killed, provided, etc.**—Any person to whom a non-resident license to hunt for game in

this state has been issued may take to his home beyond the boundaries of this state such game as he has himself lawfully killed, not to exceed one day's bag limit, and under such restrictions and regulations as may be prescribed by the game, fish and oyster commissioner. [Act 1907, p. 256.]

Art. 4025. Hunting licenses required of residents, when; requisites; authority given, duration; fee.—It shall hereafter be unlawful for any person to hunt or kill any game quadrupeds or game birds or wild fowl protected by the game laws of this state, except in the county of his residence or in counties adjoining the county of his residence or on land owned or controlled by him, without first obtaining a state hunting license from the game, fish and oyster commissioner permitting him to do so. Any person who has been a bona fide resident of this state for six months last past may procure a hunting license to hunt outside the boundaries of the county in which he resides, by paying a license fee of one dollar and seventy-five cents to the county clerk of the county in which he resides, to be dated when issued. Such license shall expire the first day of September of each year following such date. Such license shall authorize the person named therein to use firearms in the hunting or killing of game or game birds during the hunting season of that year, but only in the manner and time prescribed by law. Such license shall limit the number and quantity of game which may be taken or killed, in accordance with the provisions of law governing the subject. [Acts 1907, p. 256. Acts 1909, 2 S. S., p. 456.]

Art. 4026. County clerk to issue local hunting licenses, etc., keep stubs of, etc.—The county clerk of each county in this state is hereby authorized to issue local hunting licenses, under his official seal, to all persons complying with the provisions of this chapter, and shall fill out correctly and preserve the stubs attached thereto. [Acts 1907, p. 256. Id.]

Art. 4027. County clerk to keep record.—The county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each licensee, and the serial number and date of the license so issued, in a book to be furnished by the game, fish and oyster commissioner; which record shall be kept in his office and be open to the inspection of the public at all times during office hours. Said books and license stubs and unused licenses shall always be open to inspection of the game, fish and oyster commissioner or his deputies. [Acts 1907, p. 256. Id.]

Art. 4028. Monthly report of licenses by county clerk, in duplicate, to commissioner and comptroller.—The county clerk shall, within ten days of the close of each calendar month, make out a detailed report in duplicate under the seal of his office, showing the serial number and date of each license issued, and the name and residence of the person to whom issued; he shall forward one copy to the game, fish and oyster commissioner at Austin, and one copy to the comptroller, who shall charge the game, fish and oyster commissioner with the amount so shown to be remitted. [Acts 1907, p. 256. Id. p. 457.]

Art. 4029. Commissioner to enforce laws for protection, etc., of wild game, etc., bring actions, etc., for fines, etc.; powers.—It is hereby made a special duty of the game, fish and oyster commissioner to enforce the statutes of this state for the protection and preservation of wild game and wild birds, and to bring, or cause to be brought, actions and proceedings in the name of the state of Texas to recover any and all fines and penalties provided for in the laws now in force, or that may hereafter be enacted, relating to wild game and wild birds. Said game, fish and oyster commissioner may make complaint and cause proceedings to be commenced against any person for violation of any of the laws for the protection and propagation of game or birds, without the sanction of the county attorney of the county in which such proceedings are commenced; and in such case he shall not be required to furnish security for costs. [Acts 1907, p. 254.]

Art. 4030. Power to seize birds and animals, when; disposition of.—The game, fish and oyster commissioner shall, at any and all times, seize and take possession of all birds and animals that have been caught, taken or killed, or had in possession or under control, or have been shipped contrary to any of the laws of this state, and such seizure may be made without a warrant. All birds or animals seized by the commissioner shall be disposed of in such manner as may be directed by any court having competent jurisdiction to hear and determine cases for violation of the game and bird laws of this state. [Id.]

Art. 4031. Commissioner to keep record; to contain what.—It shall be the duty of the game, fish and oyster commissioner to keep in his office, in the capitol of this state, a well bound book in which he shall keep a complete list of the licenses issued, fines collected and a statement of all prosecutions instituted for violation of the game, fish and oyster laws, and the result of same. Said records shall be kept open for the inspection of the comptroller and the public. [Acts 1907, p. 256. Acts 1909, 2 S. S., p. 457.]

Art. 4032. Monthly report by commissioner.—The game, fish and oyster commissioner, at the close of each calendar month, shall file with the comptroller a report in writing and detail, stating the service performed by him during the last preceding month, including a detailed statement of the suits commenced at his instance and the disposition made of same, all fines, licenses and other fees collected, their disposition, and any other particulars he may deem proper. [Acts 1907, p. 255. Id. p. 455.]

Art. 4033. Commissioner may appoint chief deputy; office in capitol; oath; duties.—The game, fish and oyster commissioner shall have power to appoint a chief deputy, who shall maintain an office in the capitol of the state; said chief deputy shall take the constitutional oath of office and shall act as general assistant to said game, fish and oyster commissioner, and, during the absence, sickness or disability of the commissioner, he shall exercise the duties of said commissioner. Said chief deputy shall devote his entire time to the work of his office. [Acts 1907, p. 255.]

Art. 4034. Bond of chief deputy.—The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the secretary of state a good and sufficient bond in the sum of five thousand dollars for the faithful performance of the duties of his office. [Id. p. 256.]

Art. 4035. The commissioner may appoint deputy game commissioners; powers.—The game, fish and oyster commissioner shall also have power to appoint deputy game commissioners, who shall have the same power and authority as herein provided for the game, fish and oyster commissioner himself, subject to the supervision and control of and removal by the said game, fish and oyster commissioner. [Id. p. 255.]

Art. 4036. Disposition of fees and fines received by commissioner.—The game, fish and oyster commissioner shall, at the time of each monthly report required of him by this chapter, pay over to the state treasurer all fines, license and other fees collected by him, which shall be credited to the special fund provided for in this chapter. [Acts 1909, 2 S. S., p. 455.]

Art. 4037. Disposition of fines by court or deputy commissioner.—All fines collected in the county or district courts of this state for violation of the game and bird laws of this state, shall, within thirty days from date of the collection, be forwarded by the court, or the deputy game commissioner, to the game, fish and oyster commissioner, who shall deposit same in the state treasury, and same shall be credited to the special fund provided for the payment of salaries and expenses of deputies appointed under the provisions of this chapter. [Id.]

Art. 4038. Disposition of license fees received by county clerk.—The county clerk shall, with each monthly report required of him by this chapter, remit to the game, fish and oyster commissioner at Austin, all license fees

collected by him, less twenty-five cents for each license issued, which he may retain as his fee. Upon the receipt of such report and remittance, the game, fish and oyster commissioner shall deposit same in the state treasury to the credit of the special fund provided for in this chapter; and the comptroller shall credit said commissioner with the amount of the deposits so made. [Id. p. 457.]

Art. 4039. **Hunting license fund; a separate salary, etc.; fund.**—All funds paid into the state treasury from the sale of hunting licenses shall be set apart as a special fund for salaries and expenses of the game, fish and oyster commissioner and his various deputies, as provided in this chapter; provided, that the fund derived from the sale of hunting licenses contemplated by this chapter shall never be combined with the fish and oyster fund of the state; nor shall said fish and oyster fund ever be liable for the payment of any of the expenses contemplated by this chapter, but shall be kept intact and for the sole purpose of paying the expenses and maintaining the fish and oyster department of the state, as now provided by law; and the said commissioner and his deputies shall not be paid out of any other funds. [Acts 1907, p. 256.]

Art. 4040. **Compensation of commissioner and deputies.**—The game, fish and oyster commissioner shall receive, in addition to the salary now paid him for his services in the fish and oyster department, the sum of seven hundred dollars per annum, and his actual and necessary expenses incurred in the discharge of his said duties, to be paid monthly on the warrant of the comptroller, on the approval of his vouchers therefor. The chief deputy shall receive an annual salary of eighteen hundred dollars and his actual and necessary expenses incurred by him in the discharge of the duties of his office, to be paid monthly on the warrant of the comptroller, and on the approval of his accounts and vouchers therefor. Each deputy commissioner shall receive three dollars per day for each day actually spent in the discharge of his duties under the direction of the commissioner, and their actual expenses necessarily incurred when so employed, to be paid monthly on the warrant of the comptroller, on the approval of itemized vouchers verified under oath and certified and approved by the game, fish and oyster commissioner; provided, that the total amount paid out by the warrant of the comptroller for the salaries and expenses of the game, fish and oyster commissioner, his chief deputy and the other deputies provided for in this chapter, shall not exceed the amount received by the state treasurer from the sale of hunting licenses and the collection of fines and penalties in cases for the violation of the game and bird laws of this state. And in no event shall the state ever be liable for the pay of any of the deputy commissioners provided for in this chapter. [Id. pp. 255-256, secs. 5-6.]

Art. 4041. **Chief deputy to furnish blank hunting licenses to county clerk; accounts.**—It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk blank hunting licenses with stubs attached, numbered serially. Said chief deputy shall open an account with each county clerk and charge him with the number of licenses furnished said clerk. Said account shall show the serial number of such licenses. [Acts 1909, 2 S. S., p. 456, sec. 10.]

Art 4042. **Commissioner and deputies made fire commissioners; deputies.**—The game, fish and oyster commissioner and his deputies appointed under the provisions of this chapter are hereby made fire commissioners, and it shall be their duty, in addition to their duties provided for in this chapter, to caution sportsmen or other persons, while in the woods or marshes or prairies, of the danger from fire, and to extinguish all fires left burning by any one, to the extent of their power, and to give notice to any and all parties interested, when possible, of fires raging and beyond their control, to the end that same may be controlled and extinguished. [Acts 1907, p. 257, sec. 12.]

TITLE 64.

GUARDIAN AND WARD.

[See title "Fees of Office."]

Chapter.

1. General Provisions.
2. In What County Proceedings Shall be Commenced.
3. Commencement of Proceedings.
4. Persons Entitled to be Appointed Guardians, and Persons Who are Disqualified.
5. Appointment of Guardians.
6. Temporary Guardian.
7. Oath and Bond of Guardian.
8. Inventory, Appraisalment and List of Claims.
9. Powers and Duties of Guardians.
10. Renting and Leasing Property, and Investing and Loaning Money of Ward.
11. Sales.

Chapter.

12. Reports of Sales and Action of the Court Thereon.
13. Annual Accounts.
14. Death, Resignation and Removal of Guardian.
15. Claims Against the Estate.
16. Guardianship of Persons of Unsound Mind, and Habitual Drunkards.
17. Non-resident Guardians and Wards.
18. Removal of Guardianship.
19. Final Settlement.
20. Compensation of Guardians, Expense and Cost of Guardianship.
21. Appeal, Bill of Review and Certiorari.

CHAPTER ONE.

GENERAL PROVISIONS.

	Article.
Jurisdiction of county court over.....	4043
Jurisdiction of district court over.....	4044
Who are minors.....	4045
Who are persons of unsound mind.....	4046
Who is an habitual drunkard.....	4047
Record book of estates shall be used.....	4048
What papers shall be recorded.....	4049
Order, etc., of court shall be at a regular term, unless, etc.....	4050

	Article.
Provisions governing estates of decedents govern guardianships.....	4051
Contest of proceedings.....	4052
Cases of guardianship shall be called at each term.....	4053
Meaning of "term of court".....	4054
Appeals, etc., may be taken under the rules, etc., provided by law.....	4055

Article 4043. [2550] [2469] **Jurisdiction of county court over.**—The county court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind and habitual drunkards. [Const., art. 5, sec. 16. Act June 16, 1876, p. 19, sec. 4.]

Art. 4044. [2551] [2470] **Jurisdiction of district court over.**—The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and jurisdiction over guardians and wards, under such regulations as may be prescribed by law. [Const., art. 5, sec. 8.]

Art. 4045. [2552] [2471] **Who are minors.**—Male persons under twenty-one years of age, and females under twenty-one years of age who have never been married, are minors. [Act Aug. 18, 1876, p. 175, sec. 2.]

Art. 4046. [2553] [2472] **Who are persons of unsound mind.**—Persons of unsound mind are idiots, lunatics or insane persons. [Id. sec. 3.]

Art. 4047. [2554] [2473] **Who is an habitual drunkard.**—An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself or property. [Id.]

Art. 4048. [2555] [2474] **Record books of estates shall be used, etc.**—The record books used for the business of estates of decedents shall also be used for the business of guardianships.

Art. 4049. [2556] [2475] **What papers shall be recorded.**—The following papers shall be copied at length into the minutes of the court:

1. All applications, citations and returns upon citations.
2. All notices, whether published or posted, with the returns thereon.
3. All bonds and official oaths.
4. All inventories, appraisements and lists of claims, after the same have been approved by the court.
5. All reports of sales, renting or leasing of property, and of loaning or investing money, after such reports have been approved by the court.
6. All accounts and exhibits of the guardian, after the same have been approved by the court. [Id. p. 191, sec. 186.]

Art. 4050. [2557] [2476] **Orders, etc., of court shall be at regular terms, unless, etc.**—All decisions, orders and judgments of the court in matters of guardianship shall be rendered and entered on the minutes of the court at a regular term thereof, and in open court, except in cases where it is otherwise specially provided.

Art. 4051. [2558] [2477] **Provisions, etc., governing estates of decedents govern guardianships, etc.**—The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any of the provisions of this title.

Art. 4052. [2559] [2478] **Any person may contest proceedings.**—Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in the case of his failure. [Id. p. 170, sec. 18.]

Art. 4053. [2560] [2479] **Case of guardianship shall be called at each term.**—It shall be the duty of the county judge, at each regular term of his court, to call each case of guardianship upon his docket, and to make such orders therein as may be necessary, and to see that such orders, together with all papers required to be recorded, are entered upon the minutes, and to hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

Art. 4054. [2561] [2480] **Meaning of "term of court."**—Whenever a term of the county court is mentioned in this title, it is meant a term of such court held for the transaction of probate business.

Art. 4055. [2562] [2481] **Appeals, etc., may be taken under the rules provided by law.**—The judgments, orders, decrees and proceedings of the court in relation to guardianships may be appealed from to the district court by any person who may consider himself aggrieved thereby; or the same may be revised and corrected by certiorari, or bill of review, in the manner and under the rules and regulations provided by law.

CHAPTER TWO.

IN WHAT COUNTY PROCEEDINGS SHALL BE COMMENCED.

	Article.		Article.
Guardianship of estate of minor shall be commenced where parents reside.....	4056	Proceedings for guardianship of orphan commenced, where	4058
Where the parents reside in different counties	4057	Persons of unsound mind, etc.....	4059
		Where a guardian has been appointed by will	4060

Article 4056. [2563] [2482] **Guardianship of estate of minor shall be commenced where parents reside.**—A proceeding for the appointment of a guardian for the estate of a minor shall be commenced in the county where the parents of such minor reside. [Act Aug. 18, 1876, p. 176, sec. 19.]

Art. 4057. [2564] [2483] **Where parents reside in different counties.**—If the parents of the minor do not reside in the same county, the proceedings for such guardianship shall be commenced in the county where the parent who has the custody of the minor resides. [Id. sec. 20.]

Art. 4058. [2565] [2484] **Proceedings for guardianship of an orphan shall be commenced, where.**—A proceeding for the appointment of a guardian of the person and estate of an orphan, or of either, shall be commenced in the county where the last surviving parent of such orphan resided at the time of the death of such parent, or where such orphan is found, or where the principal estate of such orphan may be. [Id. sec. 21.]

Art. 4059. [2566] [2485] **Persons of unsound mind and drunkards.**—A proceeding for the appointment of a guardian of the person or estate, or of either, of a person of unsound mind, or an habitual drunkard, shall be commenced in the county where such person of unsound mind or habitual drunkard resides.

Art. 4060. [2567] [2486] **Where a guardian has been appointed by will.**—Where a guardian has been appointed by will, proceedings for letters of guardianship shall be commenced in the county where the will has been admitted to probate. [9 Texas, 109.]

CHAPTER THREE.

COMMENCEMENT OF PROCEEDINGS.

	Article.		Article.
Commenced by written application.....	4061	Return of citation.....	4065
Who may make application, and what		Minor fourteen years old, or over, shall	
the same shall contain.....	4062	be personally cited.....	4066
Clerk shall issue citation, which shall		County judge shall commence proceed-	
state what	4063	ings, when	4067
Citation shall be served, how.....	4064		

Article 4061. [2568] [2487] **Commenced by written application.**—A proceeding for the appointment of a guardian is commenced by written application, filed in the county court of the county having jurisdiction of the case. [Act Aug. 18, 1876, p. 177, sec. 23.]

Art. 4062. [2569] [2488] **Who may make application, and what the same shall contain.**—The application may be made by any person, and it shall state:

1. The name, sex, age and residence of the minor.
2. The estate of such minor, if any, and the probable value thereof.
3. Such facts as show the jurisdiction of the court over the case. [Id. sec. 24.]

Art. 4063. [2570] [2489] **Clerk shall issue citation, which shall state, what.**—Upon the filing of such application, the clerk shall immediately issue citation, which shall state that an application has been filed, and by whom, for the guardianship of the person, or estate, or both, as the case may be, of the minor, naming such minor, and shall cite all persons interested in the welfare of such minor to appear at a term of the court named in such citation, and contest such application if they see proper to do so.

Art. 4064. [2571] [2490] **Citation shall be served, how.**—Such citation shall be served by posting copies thereof for not less than ten days before the first day of the term of the court at which the application is to be acted upon, one of which copies shall be posted at the court house, and two other copies at two other public places in the county, not in the same city or town.

Art. 5065. [2572] [2491] **Return of citation.**—The sheriff or other officer serving such citation shall return the same, stating thereon, in writing, the time and places, when and where, he posted such copies, and shall sign such return officially.

Art. 4066. [2573] [2492] **Minor fourteen years old or over shall be personally cited.**—If the minor be fourteen years of age or over, such minor shall be personally served with citation to appear and answer such application; or such minor may, by writing filed with the clerk, waive the issuance of such citation, and make choice of a guardian. [Id. sec. 27.]

Art. 4067. [2574] [2493] **County judge shall commence proceedings, when.**—Whenever it shall come to the knowledge of the county judge that there is within his county any minor without a guardian of his person or estate, he shall cause a citation to be posted to all persons interested in the welfare of such minor to show cause at a regular term of his court why a guardian of such minor should not be appointed; and, if such minor be fourteen years of age or over, he shall be personally cited. [Id. sec. 28.]

CHAPTER FOUR.

PERSONS ENTITLED TO BE APPOINTED GUARDIANS, AND PERSONS WHO ARE DISQUALIFIED.

	Article.		Article.
Father entitled, where parents live together	4068	Where no one who is entitled applies, court shall appoint, etc.....	4075
Parents equally entitled, when.....	4069	Who entitled in case of persons of unsound mind, etc.....	4076
Surviving parent entitled to.....	4070	Court shall appoint, when.....	4077
Surviving parent may appoint guardian by will, etc.....	4071	Who are not qualified.....	4078
Who entitled to guardianship of orphans.....	4072	Minor fourteen years of age may select his guardian.....	4079
Where ascendants are equally entitled.....	4073		
Collateral kin entitled, when.....	4074		

Article 4068. [2575] [2494] **Father entitled where parents live together.**—Where the parents of the minor live together, the father is the natural guardian of the person of the minor children by the marriage, and is entitled to be appointed guardian of their estates. [Act Aug. 18, 1876, p. 175, sec. 8.]

Art. 4069. [2576] [2495] **Parents equally entitled, when.**—Where the parents do not live together, their rights are equal; and the guardianship of their minor children shall be assigned to one or the other, according to the circumstances of each case, taking into consideration the interest of the child alone. [Id. sec. 9.]

Art. 4070. [2577] [2496] **Surviving parent entitled.**—Where one of the parents is dead, the survivor is the natural guardian of the persons of the minor children, and entitled to be appointed guardian of their estates. [Id. sec. 10.]

Art. 4071. [2578] [2497] **Surviving parent may appoint guardian by will, etc.**—The surviving parent of a minor may, by will or written declaration, appoint any person not disqualified to be guardian of the persons of his or her children after the death of such parent; and such person shall be entitled to be appointed guardian of their estates also after the death of such parent. [Id. sec. 11.]

Art. 4072. [2579] [2498] **Who entitled to guardianship of orphans.**—Where the minor is an orphan, and no one has been appointed by the parent to be the guardian of such minor, as provided in the preceding article, the nearest ascendant in the direct line of such minor, if not disqualified, is entitled to the guardianship of both the person and the estate of such minor. [Id. sec. 12.]

Art. 4073. [2580] [2499] **Where ascendants are equally entitled.**—If there be more than one ascendant in the same degree in the direct line, they are equally entitled; and the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone. [Id. sec. 13.]

Art. 4074. [2581] [2500] **Collateral kin entitled, when.**—In case the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line, who comes immediately after the presumptive heir or heirs of the orphan; and, if there be two or more in the same degree, the guardianship shall be given to the one or the other, according to circumstances, taking into consideration the interest of the orphan alone. [Id. sec. 14.]

Art. 4075. [2582] [2501] **Where no one who is entitled applies, court shall appoint, etc.**—If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian.

Art. 4076. [2583] [2502] **Who entitled in case of person of unsound mind, etc.**—In the case of a person of unsound mind, or an habitual drunkard,

the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship; and, where two or more are equally entitled, the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person.

Art. 4077. [2584] [2503] **Court shall appoint proper person, when.**—If no person who is entitled to such guardianship and who is qualified shall apply therefor, the court shall appoint some proper person to be such guardian.

Art. 4078. [2585] [2504] **Who are not qualified to be guardians.**—The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.

5. Those who are themselves or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor or part of his fortune may depend.

6. Those who are debtors to the minor, unless they discharge the debt prior to such appointment; but this subdivision does not apply to the father or mother of such minor. [Id. sec. 16.]

Art. 4079. [2586] [2505] **Minor fourteen years of age may select his own guardian.**—A minor who is fourteen years of age or over has the right to select a guardian, either of his person or estate, or both; which selection may be made in open court, in person or by attorney; and the person selected, if qualified, shall be entitled to be appointed guardian, except in the case where the surviving parent of such minor has appointed a guardian by will or written declaration; in which case, the person so appointed shall be entitled to the guardianship.

CHAPTER FIVE.

APPOINTMENT OF GUARDIANS.

Article.	Article.
Court may appoint, when.....4080	Guardian of minor continues in office, until, etc.....4086
What facts must appear before appointment is made.....4081	Guardian of person of unsound mind, etc., continues in office, until, etc.....4087
Only one guardian of the person or estate shall be appointed, except.....4082	Court may appoint receiver, when.....4088
Order of appointment, requisites.....4083	Guardianship of estate of non-resident minor.....4089
Minor having guardian may select another, when.....4084	Letters shall issue, when, and shall state, what.....4090
Another guardian shall be appointed, when.....4085	

Article 4080. [2587] [2506] **Court may proceed to appoint, when.**—At a regular term of the court, after notice shall have been given by citation duly served as required by law, the court may proceed to the appointment of a guardian.

Art. 4081. [2588] [2507] **What facts must appear before appointment is made.**—Before appointing a guardian, the court must be satisfied:

1. That the person for whom a guardian is sought to be appointed is a minor, a person of unsound mind or an habitual drunkard.
2. That the court has jurisdiction of the case.
3. That the person to be appointed guardian is not disqualified to act as such and is entitled thereto; or, in case no person who is entitled thereto

applies therefor, that the person appointed is a proper person to act as such guardian.

Art. 4082. [2589] [2508] **Only one guardian of the person or estate shall be appointed, except, etc.**—Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife. [Act Aug. 15, 1870. P. D. 6926.]

Art. 4083. [2590] [2509] **Order of appointment shall contain what.**—The order of the court appointing a guardian shall be entered upon the minutes of the court, and shall specify:

1. The name of the person appointed.
2. The name of the ward.
3. Whether the guardian is of the person, of the estate, or of both the person and estate of such ward.
4. The amount of the bond required of such guardian.
5. If it be the guardianship of the estate, the order shall also appoint three or more discreet and disinterested persons to appraise such estate, and return such appraisement to the court.
6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

Art. 4084. [2591] [2510] **Minor having guardian may select another, when.**—A minor having a guardian of his person or estate, appointed by the court, may, upon attaining the age of fourteen years, by application in writing filed in the court in which such guardianship is pending, select another guardian of his person or of his estate; and, if the court is satisfied that the person selected is suitable and competent, the appointment of such person as guardian shall be made, and the letters of guardianship to the former guardian shall be revoked; except, in the case where such former guardian has been appointed by the will or written declaration of the parent of such minor, in which case the minor shall not be permitted to select another guardian, unless such appointed guardian die, resign or is removed from such guardianship.

Art. 4085. [2592] [2511] **Another guardian shall be appointed, when.**—Whenever a person appointed guardian fails to qualify as such, according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Art. 4086. [2593] [2512] **Guardian of minor continues in office, until, etc.**—The guardian of a minor continues in office, unless sooner discharged according to law, until the minor arrives at the age of twenty-one years, or, being a female, marries, or until such minor shall die. [Act Aug. 18, 1876, p. 178, sec. 38.]

Art. 4087. [2594] **Guardian of person of unsound mind, etc., continues in office until, etc.**—The guardian of a person of unsound mind or an habitual drunkard shall continue in office, unless sooner discharged according to law, until the ward shall be restored to sound mind or to correct, sober habits, as the case may be, or shall die. [Acts 1876, p. 175.]

Art. 4088. [2595] **Court may appoint a receiver, when.**—When, from any cause, the estate of a minor, person of unsound mind or of an habitual drunkard is without a guardian, and such estate is likely to injure or waste, the county judge shall, upon application or without application, either in term time or in vacation, appoint some suitable person to take charge of such estate, as receiver, until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and

shall specify the duties and powers of such receiver; and the provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable. If, during the pendency of such receivership, the wants of such minor, person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence, clothing or education, the county judge is hereby authorized, and it shall be his duty, upon application or without application, either in term time or in vacation, to appropriate by an order entered upon the minutes of his court, out of the effects of such estate, an amount sufficient for such purpose; said amount to be paid by such receiver upon such claims for the subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. If, at any time, the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities of the beneficiary of said estate and the current expenses thereof, he may, under the direction of the county judge, loan said money for such length of time as said county judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in article 4141. [Acts of 1885, p. 81.]

Art. 4089. [2596] [2515] **Guardianship of estate of non-resident minor.**—When a minor or person of unsound mind resides out of the state and owns property in this state, guardianship of the estate of such minor or person of unsound mind may be granted when it is made to appear that a necessity exists for such guardianship, in like manner as if such minor or person of unsound mind resided in this state; and the court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this state and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by the order of the court for education or treatment. [Id. p. 176, sec. 22.]

Art. 4090. [2597] [2516] **Letters shall issue, when, and shall state, what.**—When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate, attested by the seal of the court, stating the fact of such appointment and qualification and date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of the person to whom issued to act as guardian. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

CHAPTER SIX.

TEMPORARY GUARDIAN.

	Article.		Article.
County judge may appoint temporary guardian of person and estate, etc., of minor, when, etc.....	4091	Appointment not effective till oath and bond	4094
Order shall state what.....	4092	Upon appointment citation to issue; requisites	4095
Court to determine contest; pending what, temporary guardian to act; exhibit where appointment set aside....	4093	Provision of title 51 apply.....	4096

Article 4091. **County judge may appoint temporary guardian of person and estate of minor, when, etc.**—Whenever it may appear to the county judge that the interests of any minor and his or her estate, or either, require immediate appointment of a guardian, he shall, either in open court or in vacation, without citation and with or without written application therefor, appoint some suitable person temporary guardian of the person of such minor and his or her estate, or either, as the case may be; and the appointment so made may be made permanent, as hereinafter provided for. [Acts 1905, p. 18, sec. 1.]

Art. 4092. **Order shall state what.**—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after service of citation, the same shall be made permanent. [Id. sec. 2.]

Art. 4093. **Court to determine contest; pending what, temporary guardian to act; exhibit where appointment set aside.**—In case such appointment is contested, the court shall hear and determine the same as the law and the facts require; and, during the pendency of such contest, the person so appointed as temporary guardian shall continue to act as such; and, in case such appointment is set aside, the court shall require the person so appointed to make out, and file in court, under oath, a complete exhibit of the condition of such minor's estate, and what disposition, if any, he has made of the same, or any portion thereof. [Id. sec. 3.]

Art. 4094. **Appointment not effective till oath and bond.**—Such appointments shall not take effect, until the person so appointed has taken the oath and given bond as required by law. [Id. sec. 4.]

Art. 4095. **Upon appointment, citation to issue; requisites.**—Immediately after such appointment so made, it shall be the duty of the clerk of the court to issue citation; which shall state the name of the person appointed, and when so appointed, and the name of the minor, or minor's estate, or both, as the case may be, and shall cite all persons interested in the welfare of such minor to appear at the term of court named in such citation, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Id. sec. 5.]

Art. 4096. **Provisions of title 51 apply.**—That all the provisions of this title, relating to the guardianship of the persons and estates of minors shall apply to temporary guardianship of the persons and estates of minors, in so far as the same are applicable and not inconsistent with any of the provisions of this chapter. [Id. sec. 6.]

CHAPTER SEVEN.

OATH AND BOND OF GUARDIANS.

Article.	Article.
Oath of guardian.....	Bond of father or mother under twenty-
4097	one years of age valid.....
Bond of guardian of the person.....	4106
4098	New bond may be required, etc.....
Bond of guardian of the estate.....	4107
4099	Guardian shall cease to act as such,
What sureties required.....	4100
4100	when
Premium on surety company bond to be	4108
paid by guardian.....	Surety may be relieved in same manner,
4101	etc.....
Surety company bonds validated.....	4109
4102	Oath and bond to be presented within
Bond where same person is guardian	4110
of both person and estate.....	twenty days
4103	Oath and bond to be recorded, etc.....
No bond required when will, etc., has	4111
dispensed with it.....	Sureties released, when, etc.....
4104	4112
Bond of married woman as guardian.....	
4105	

Article 4097. [2598] [2517] **Oath of guardian.**—The guardian shall take an oath faithfully to discharge the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law; which oath shall be indorsed on the bond of such guardian, and may be taken before any officer of the county in which the proceedings for such guardianship are pending, authorized to administer oaths generally. [Acts Aug. 18, 1876, p. 177, sec. 35.]

Art. 4098. [2599] [2518] **Bond of guardian of the person.**—The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to the county judge of the county where such guardianship is pending, and to be approved by such county judge, conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward. [Id. sec. 31.]

Art. 4099. [2600] [2519] **Bond of guardian of the estate.**—The bond of the guardian of the estate of a ward shall be in amount equal to double the estimated value of the property belonging to such estate, payable to the county judge of the county where such guardianship is pending and to be approved by such county judge, conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such ward according to law; and it shall be the duty of such county judge to annually examine into the condition of the estate of the ward and the solvency of such guardian's bond, and to require such guardian, at any time it may appear that such bond is not ample security, to protect such estate and the interests of his ward, to execute another bond in accordance with law. And, in such case, he shall notify the guardian as in other cases; and should damage or loss result to the estate of any ward through the negligence of such county judge to perform the duties herein prescribed, such county judge shall be liable on his official bond, payable to such ward, an amount equal to his loss due to such negligence. [Acts 1895, p. 231.]

Art. 4100. [2601] [2520] **What sureties required.**—Any bond required by the provisions of this chapter to be given by a guardian shall be subscribed by such guardian, and by at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending; or such bond shall be subscribed by such guardian and by one or more corporations authorized and empowered to issue and execute guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and authorized to carry on such business in this state by the laws thereof; and where a guardian's bond is made with a corporation or corporations as surety or sureties thereon, the provisions requiring two sureties shall not apply, but the same may be made with one corporation as surety, if the judge of the court shall deem such surety sufficient. [Acts 1897, p. 52. Acts 1876, p. 177. Acts 1899, p. 229.]

Art. 4101. [2601] [2520] **Premium on surety company bond to be paid by guardian.**—In all cases where such bond is made by any corporation authorized to issue and execute guaranty or indemnity bonds, the premium on such bond shall be paid by the guardian, and shall not be paid out of the estate of his ward. [Acts 1897, p. 52. Acts 1876, p. 177. Id.]

Art. 4102. [2601] [2520] **Surety company bond validated.**—All bonds of guardians heretofore made in this state with a corporation or corporations as surety or sureties thereon are hereby validated and made effectual in like manner to the same extent as if made under the provisions of the two preceding articles. [Acts 1897, p. 52. Acts 1876, p. 177. Id. sec. 2.]

Art. 4103. [2602] [2521] **Bond where same person is guardian of both person and estate.**—Where the same person is appointed guardian of both the person and estate of a ward, only one bond shall be given by such guardian, varying the form thereof to suit the case. [Act 1876, p. 177, sec. 34.]

Art. 4104. [2603] [2522] **No bond required when will, etc., has dispensed with it.**—When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust; in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases. [Id. sec. 33.]

Art. 4105. [2604] [2523] **Bond of married woman as guardian.**—Where a married woman may be appointed guardian, she may, jointly with her husband, or without her husband, if he be absent from the state or refuse to join in the bond with her, execute such bond as guardian as the law requires, and acknowledge the same before any officer authorized by law to take acknowledgments of married women to written instruments; and such bond shall bind her estate in the same manner as if she were unmarried, but shall not bind her husband as surety unless he sign and be approved as such. [Id. sec. 39.]

Art. 4106. [2605] [2524] **Bond of father or mother under twenty-one years of age valid.**—A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age. [Id. sec. 40.]

Art. 4107. [2606] [2525] **New bond may be required, etc.**—The county judge shall have power to require new bonds of guardians in all cases where he has power to require new bonds of executors or administrators, and under the same rules and regulations, and with like effect.

Art. 4108. [2607] [2526] **Guardian shall cease to act as such, when.**—When a guardian has been required to give a new bond, he shall thereafter refrain from acting as such guardian, except to preserve the property committed to his charge, until he has given such new bond and the same has been approved. [Id. sec. 43.]

Art. 4109. [2608] [2527] **Surety may be relieved in same manner, etc.**—A surety upon the bond of a guardian may be relieved from his bond, in the same manner and with like effect, as is provided in the case of a surety upon the bond of an executor or administrator. [Id.]

Art. 4110. [2609] [2528] **Oath and bond to be presented within twenty days.**—The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or in vacation, for the action of such judge.

Art. 4111. [2610] [2529] **Oaths and bonds shall be recorded.**—The oaths of guardians and their bonds, when approved, shall be immediately filed with the clerk of the county court and recorded in the minutes of said court and safely preserved.

Art. 4112. [2611] [2530] **Sureties relieved, when, etc.**—When a new bond has been given and approved, the sureties upon the former bond of such

guardian shall not be liable for any misconduct of such guardian occurring after the approval of such new bond, and shall be released from all liability for the acts of such guardian occurring after the approval of such new bond. [Id. sec. 44.]

CHAPTER EIGHT.

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS.

Article.	Article.
Inventory shall be returned, when.....4113	Appraisers to be appointed in such case, when.....4118
List of claims.....4114	Additional inventory to be required, when.....4119
Affidavit of guardian to inventory.....4115	Inventory may be corrected.....4120
Property held in common shall be specified.....4116	Inventories, etc., evidence.....4121
Additional inventory, when.....4117	

Article 4113. [2612] [2531] **Inventory shall be returned in thirty days, etc.**—It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a true and perfect inventory of all the property, real and personal, belonging to said estate, which has come to the knowledge of such guardian; and each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory; and the same shall be subscribed and sworn to by such appraisers before any officer of the county in which the inventory is made, authorized by law to administer oaths generally. [Act Aug. 18, 1876, p. 179, sec. 50.]

Art. 4114. [2613] [2532] **List of claims.**—The guardian shall also make out and attach to such inventory and appraisement a list of all claims due or to become due belonging to the estate. Such list shall state:

1. The name of each person indebted to the estate.
2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.
3. The date of such indebtedness, and the date when the same was due or will be due.
4. The amount of each claim and the rate of interest thereon, and the time for which the same bears interest. [Id. sec. 50.]

Art. 4115. [2614] [2533] **Affidavit of guardian to inventory, etc.**—The guardian shall annex to the inventory, appraisement, and list of claims, an affidavit in substance as follows: "I, A B, guardian of the estate of C D, do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian before some officer of the county in which the same is made who is authorized to administer oaths generally.

Art. 4116. [2615] [2534] **Property held in common shall be specified.**—If any property be held or owned by the ward in common with another or others, it shall be distinctly stated in the inventory or list of claims, as the case may be, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property. [Id. sec. 52.]

Art. 4117. [2616] [2535] **Additional inventory, when.**—Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims, as the case may be. [Act March 20, 1848. P. D. 3899.]

Art. 4118. [2617] [2536] **Appraisers to be appointed in such case, when, etc.**—Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property, as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory, either in term time or in vacation, by an order of the court entered upon the minutes.

Art. 4119. [2618] [2537] **Additional inventory, etc., may be required, when.**—Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims. [Id.]

Art. 4120. [2619] [2538] **Inventories, etc., may be corrected, etc.**—Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered, under the same rules and regulations as are provided in the case of estates of decedents.

Art. 4121. [2620] [2539] **Inventories, etc., evidence.**—All inventories, appraisements or lists of claims, when approved by the court, or the record thereof, or copies of the same or of the record thereof, duly certified under the seal of the clerk of the county court having charge thereof, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward, if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. [Id. P. D. 3900.]

CHAPTER NINE.

POWERS AND DUTIES OF GUARDIANS.

	Article.		Article.
Of the person.....	4122	May take property for debt due ward,	
Same subject.....	4123	when.....	4129
Guardian of the estate.....	4124	Guardian of estate shall pay to guardian	
Of both person and estate.....	4125	of person, etc.....	4130
Guardian of the estate shall manage		Ward's education and maintenance.....	4131
same prudently.....	4126	Property in common with others.....	4132
Duty to collect estate.....	4127	Guardian shall not dispute ward's title,	
Shall use diligence to collect claims.....	4128	except, etc.....	4133

Article 4122. [2621] [2540] **Of the person.**—The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. [Act Aug. 18, 1876, p. 181, sec. 75.]

Art. 4123. [2622] [2541] **Same subject.**—It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is educated in a manner suitable to his condition, and, if necessary for his support, that he learn a trade or adopt some useful profession. [Id. sec. 7.]

Art. 4124. [2623] [2542] **Guardian of the estate.**—The guardian of the estate is entitled to the possession and management of all property belonging to the ward, to collect all debts, rents, or claims due such ward, to enforce all obligations in his favor, to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this title. [Id. sec. 76.]

Art. 4125. [2624] [2543] **Of both person and estate.**—The guardian of both person and estate has all the rights and powers, and shall perform all the duties of the guardian of the person, and of the guardian of the estate. [Id. sec. 79.]

Art. 4126. [2625] [2544] **Guardian of the estate shall manage same prudently.**—It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property; and he shall account for all such rents, profits and revenues as the estate would have produced by such prudent management. [Id. sec. 77.]

Art. 4127. [2626] [2545] **Duty to collect estate.**—It is the duty of the guardian of the estate, immediately after receiving letters, to collect, and take into possession, the personal property, books, title papers, and other papers belonging to the estate. [Id. sec. 48.]

Art. 4128. [2627] [2546] **Shall use diligence to collect claims, etc.**—The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; provided, there is a reasonable prospect of collecting such claims or debts, or of recovering such property; and, if he neglects to use such diligence, he and his sureties shall be liable for all damages occasioned by such neglect. [Id. sec. 78.]

Art. 4129. [2628] [2547] **May take property for debt due ward, when.**—The guardian of the estate may receive property in payment of any debt due to the ward, in all cases where he shall be of the opinion that the interest of his ward will be advanced thereby, being responsible for a prudent exercise of the discretion hereby conferred. [Id. sec. 92.]

Art. 4130. [2629] [2548] **Guardian of estate shall pay to guardian of person, etc.**—When different persons have the guardianship of the person and estate of a ward, the guardian of the estate must pay over to the guardian of the person, semi-annually, a sufficient amount of money, to be fixed by the court, for the education and maintenance of the ward, and, on failure, shall

be compelled to do so by order of the court, after being duly cited. [Id. sec. 93.]

Art. 4131. [2630] [2549] **Education and maintenance of ward.**—The court may direct the guardian of the person to expend, for the education and maintenance of his ward, a specific sum, although such sum may exceed the income of the ward's estate; but, without such direction of the court, the guardian shall not be allowed, in any case, for the education and maintenance of the ward, more than the clear income of the estate. [Id. sec. 94.]

Art. 4132. [2631] [2550] **Property held in common with others.**—If the ward holds or owns any property in common, or as part owner with another person, the guardian shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common, or joint owners, would be entitled. [Id. sec. 49.]

Art. 4133. [2632] [2551] **Guardian shall not dispute ward's title, except, etc.**—The guardian, or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that shall have come into the possession of such guardian, as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it. [Id. sec. 69.]

CHAPTER TEN.

RENTING AND LEASING PROPERTY, AND INVESTING AND LOAN- ING MONEY, OF WARD.

Article.	Article.		
Guardian may carry on or rent farm, etc., under order of court.....	4143	Investing money in real estate.....	4143
Duty of guardian to rent out property, when, etc.....	4135	Notice of application to invest in real estate.....	4144
May rent improved property, other than, etc., without order.....	4136	Order of court on such application.....	4145
Court may order improved property rented.....	4137	Contract of investment must be approved by the court.....	4146
Unimproved land may be leased.....	4138	Title to be made to ward, and property to be inventoried, etc.....	4147
Guardian may be cited to show cause why he should not rent land.....	4139	Guardian may be cited to show cause why he should not invest funds.....	4148
Money shall be invested, how.....	4140	County judge shall see that fund is invested, etc.....	4149
Security for money loaned; approval by county judge, order, etc.....	4141	Guardian's liability for interest.....	4150
County judge not relieved from responsibility on bond.....	4142	Shall not be personally responsible for money loaned, when.....	4151
		Shall report renting to court.....	4152

Article 4134. [2633] [2552] **Guardian may carry on or rent farm, etc., under order of the court.**—If there be a farm, plantation, manufactory or business belonging to the estate, and if the same be not required to be at once sold for the payment of debts, it shall be the duty of the guardian of such estate, upon an order of the court, to carry on such farm, plantation, manufactory or business or rent the same, as shall appear for the best interest of the estate. In coming to a determination, the court shall take into consideration the condition of the estate, and the necessity that may exist for the future sale of such property for the payment of debts or the education and maintenance of the ward, and shall not extend the time of renting any such property beyond what may consist with the interests of the estate and of the ward. [Act Aug. 18, 1876, p. 182, sec. 86.]

Art. 4135. [2634] [2553] **Duty of guardian to rent out property, when, etc.**—When an order of the court is made directing property to be rented, it

shall be the duty of the guardian to obey such order and rent the property for the best price that can be obtained therefor, taking good security for the payment of the rent, and that the tenant will not commit, nor permit any other person to commit, waste on the rented premises. [Id. sec. 87.]

Art. 4136. [2635] [2554] **May rent improved property other than, etc., without order.**—The guardian may rent the improved property of the ward, other than such property as is named in article 4134 without an order of the court authorizing him to do so, and either at public or private renting; but, when he rents without an order of court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

Art. 4137. [2636] [2555] **Court may order improved property rented, etc.**—The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented, either at public or private renting, for any length of time, not exceeding one year, and upon such terms and conditions as the court may deem for the best interests of the ward.

Art. 4138. [2637] [2556] **Unimproved land may be leased.**—If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time, and upon such terms and conditions as the court may direct in its order. [Id. sec. 88.]

Art. 4139. [2638] [2557] **Guardian may be cited to show cause why he should not rent land out, etc.**—Any person, upon complaint in writing filed with the clerk of the county court, may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward; and, upon the hearing of such complaint, the court shall make such order as may, in his judgment, be for the best interest of the estate.

Art. 4140. [2639] [2558] **Money shall be invested, how.**—If, at any time, the guardian of the estate shall have on hand any money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, such guardian shall, under the direction of the court, invest such money in the bonds of the United States or of the state of Texas, or loan the same for the highest rate of interest that can be obtained therefor. [Id. 89.]

Art. 4141. [2640] [2559] **Security for money loaned; approval by county judge, order, etc.**—When the guardian loans the money, he shall take the note of the borrower, the same to be secured by mortgage with power of sale on unincumbered real estate situated in this state, worth at least double the amount of such note and interest, or on collateral notes secured by vendors' lien notes, as collateral, or may purchase vendors' lien notes; provided, that at least one-half has been paid on the land for which said notes are given; and he shall not deliver such money until such note and security have been taken and approved by the county judge of the county in which the guardianship is pending; which approval shall be by an order of such judge entered upon the minutes of his court, either in term time or vacation. [Acts 1876, p. 182. Acts 1897, p. 196.]

Art. 4142. **County judge not relieved from responsibility on bond.**—Nothing contained in the last preceding article shall relieve the county judge from responsibility on his bond as now provided by law. [Id.]

Art. 4143. [2641] [2560] **Investing money in real estate.**—When the guardian may think it best for his ward to have any surplus money on hand invested in real estate, he shall file an application in writing in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment. Such application shall state the nature of the investment sought to be made, and the reasons why the guardian is of

the opinion that it would be for the benefit of the ward to have the same made. [Acts Aug. 18, 1876, p. 182.]

Art. 4144. [2642] [2561] **Notice of application to invest in real estate.**—When any such application is filed, notice of the same shall be given in the same manner as in the case of an application to sell real estate belonging to the ward, and for the same length of time. [Id.]

Art. 4145. [2643] [2562] **Order of the court on such application.**—Upon the hearing of any such application at a regular term of the court, after notice thereof has been given as required, if the court be satisfied that such investment will be beneficial to the ward, an order authorizing the same to be made shall be entered upon the minutes; which order shall specify the investment to be made, and shall contain such other directions as the court may think it advisable to make. [Id.]

Art. 4146. [2644] [2563] **Contract of investment must be approved by the court.**—Where any contract has been made for the investment of money in real estate, under order of the court, such contract shall be reported in writing to the court by the guardian at the next regular term of such court thereafter; and it shall be the duty of the court to inquire fully into the same, and, if satisfied that such investment will benefit the estate of the ward, and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect entered upon the minutes of the court. [Id.]

Art. 4147. [2645] [2564] **Title to be made to ward and property to be inventoried, etc.**—When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Art. 4148. [2646] [2565] **Guardian may be cited to show cause why he should not invest or loan money.**—When there is any surplus money of the estate in the hands of the guardian, any person may, by complaint in writing filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court, to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter; and, upon the hearing of such complaint, the court shall enter upon the minutes such order as the law and the facts may require.

Art. 4149. [2647] [2566] **County judge shall see that money is invested, etc.**—It shall be the duty of the county judge, whenever it is made known to him in any manner that there is surplus money belonging to the ward in the hands of the guardian, to cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested, or why it should not be loaned at interest under the provisions of this chapter.

Art. 4150. [2648] [2567] **When guardian is liable for interest.**—If the surplus money in the hands of the guardian belonging to the ward can not be invested or loaned at interest as directed in this chapter, after due diligence to do so by the guardian, he shall be liable for the principal only of such money. But, if the guardian neglects to invest such money or loan the same at interest when he could do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same. [Id. sec. 90.]

Art. 4151. [2649] [2568] **Shall not be personally responsible for money loaned, when.**—The guardian shall not be personally responsible for money loaned under the direction of the court, on security approved by the court, in

case of the inability of the borrower to pay the same, and the failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same; in which case, he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence. [Id. sec. 91.]

Art. 4152. [2650] [2569] **Shall report renting, etc., to court.**—The guardian shall report to the court in writing, and verified by his affidavit, the renting or leasing of property belonging to the estate, or the investment or loaning of money belonging to the estate, within thirty days after any such transaction, stating fully the facts of such transaction.

CHAPTER ELEVEN.

SALES.

Article.	Article.
Certain property to be sold.....4153	Terms of sale.....4164
Sales of wild stock.....4154	Guardian shall not purchase property
When real estate may be sold.....4155	belonging to the ward.....4165
Guardian shall apply for order to sell	Bidder failing to comply with bid, liable,
real estate, when.....4156	when.....4166
Guardian shall be cited, when.....4157	Sales may be continued.....4167
Citation upon such application.....4158	Guardians' sales governed by the same
No order to be made until due notice	rules as executions.....4168
given.....4159	Notice of private sale not required.....4169
Considerations in ordering sale.....4160	Sale of mortgaged property to be under
May be for cash or credit, as court	terms as court may direct.....4170
deems the advantage.....4161	Mortgage dischargeable without sale.....4171
Order of sale shall state, what.....4162	Guardian may reduce rate of interest on
In what county real estate sold.....4163	ward's debts, how.....4172
	Renew evidence of debt, when.....4173

Article 4153. [2651] [2570] **Perishable property shall be sold.**—The guardian of the estate, as soon as practicable after appraisalment, shall apply for an order of the court to sell at public or private sale, for cash or on credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep on hand. [Act Aug. 18, 1876, p. 181, sec. 80.]

Art. 4154. [2652] [2571] **Sales of wild stock.**—If the guardian shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent per annum from the day of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate. [Id. secs. 84, 85.]

Art. 4155. [2653] [2572] **When real estate may be sold.**—When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay the debts against the estate, the guardian of the person, or of the estate, or any person holding a valid claim against the estate, or any person interested in the ward, may, by application in writing to the court in which such guardianship of the estate is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency. [Id. secs. 101-2.]

Art. 4156. [2654] [2573] **Guardian shall apply for order to sell real estate, when.**—It is the duty of the guardian to apply for such order whenever it appears that a necessity exists therefor, and to set forth fully in his application such necessity, and accompanying the application with an exhibit, under oath, showing fully the condition of the estate. [Id. sec. 105.]

Art. 4157. [2655] [2574] **Guardian shall be cited, when.**—When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made, and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Art. 4158. [2656] [2575] **Citation upon application for sale of real estate.**—Whenever an application for the sale of real estate is filed, it shall be the duty of the clerk immediately to issue a citation to all persons interested in the ward to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted; which citation shall state the property sought to be sold, and shall be served by posting, as in the case of sales of real estate of the estates of decedents, for at least twenty days before the first day of the term of the court to which such citation is made returnable. [Id. sec. 104.]

Art. 4159. [2657] [2576] **No order of sale shall be made until citation has been served, etc.**—No order for the sale of real property shall be made unless the citation provided for in the preceding article has been served in the manner, and for the length of time, thereby required and returned into court by the officer who served the same. [Id.]

Art. 4160. [2658] [2577] **Advantage of estate to be considered in ordering sale.**—When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold. [Id. sec. 103.]

Art. 4161. [2659] [2578] **May be sold on what terms.**—A sale of real estate may be ordered by the court for cash, or for part cash and part credit, or wholly on credit; and, if wholly on credit, then for no longer period than twelve months, at public auction or at private sale, as it may appear to the court to be most to the advantage of the estate. [Acts of 1892, S. S., p. 9.]

Art. 4162. [2660] [2579] **Order of sale shall state, what.**—An order for the sale of real estate shall state:

1. The property to be sold, giving such a description of it as will identify it.
2. Whether it is to be sold for cash or on credit, and, if on credit, the length of such credit.
3. Whether it is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale.
4. The necessity and purpose of such sale.
5. It shall require the sale to be made and the report thereof returned to the court in accordance with law. [Acts of 1876, p. 181, sec. 100.]

Art. 4163. [2661] [2580] **In what county real estate shall be sold.**—All sales of real property shall be made in the county where the guardianship is pending, unless such real property is situated in another county; in which case, the court may order the sale to take place in the county where the real estate is situated. In all such cases, the sale shall be advertised in both counties. [Id. sec. 108.]

Art. 4164. [2662] [2581] **Terms of sale.**—The terms of sale of real estate when made partly on credit shall be that the cash payment be not less than one-fifth of the purchase price, and that the purchaser give his note or notes for the deferred payments maturing in equal annual amounts; the last note to mature not later than five years from date of deed; said notes to bear interest from date at a rate of interest of not less than six per centum, payable

annually, and, in default of the payment of principal or interest or any part thereof when due, shall mature the whole debt; all notes for deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold, except where improved property or timbered lands are sold; in which exceptions, the cash payment shall not be less than one-third of the appraised value of the property so sold. If a sale be made wholly for credit, the purchaser's note must be secured by vendor's lien upon the property sold; and he shall also be required to furnish good personal security in addition to said lien; and the rate of interest shall not be lower than is provided in case of sales for part credit; and, in every case, the deferred payments shall be made payable in the county where the guardianship is pending. [Acts of 1892, S. S., p. 9.]

Art. 4165. [2663] [2582] **Guardian shall not purchase property belonging to ward.**—It shall not be lawful for the guardian to take the estate of his ward or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and, if any guardian shall, either directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon the complaint in writing of any person, and, after service of citation upon such guardian, and upon proof of such complaint, such sale shall be declared void by the court, and shall be set aside, and an order to that effect entered upon the minutes; and the costs of such sale, and of the proceedings to set the same aside, shall be adjudged against such guardian individually.

Art. 4166. [2664] [2583] **Bidder failing to comply with bid shall be liable, etc.**—When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian; and such person so failing to comply shall be liable to pay such guardian, for the use of the estate, ten per cent on the amount of his bid; and, also, the deficiency in price on the second sale of such property, if any such deficiency there be, to be recovered by suit in any court of the county where such sale was made having jurisdiction of the amount claimed.

Art. 4167. [2665] [2584] **Sale may be continued from day to day.**—Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day; and the continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Art. 4168. [2666] [2585] **Guardians' sales governed by same rules as execution sales.**—The laws regulating sales under execution, so far as the same relate to the advertisement and sale of property and the proceedings incidental thereto, and are not inconsistent with the provisions of this title, shall apply to and govern public sales by a guardian of the property of the ward. [Acts of 1876, p. 181, secs. 82-111.]

Art. 4169. [2667] [2586] **Notice of private sale not required.**—When a private sale of the property of the ward is made by a guardian, notice of such sale is not required to be given.

Art. 4170. [2668] [2587-2588] **Sale of mortgaged property to be made on such terms as court may direct.**—Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing citation to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made; and such sale shall be made upon such terms as the court may direct; which terms shall be stated in the order

of sale; and the notice and other proceedings shall be the same as in other sales by guardians. [Id. secs. 100, 107.]

Art. 4171. [2669] [2589] **Mortgage or lien may be discharged without sale.**—Should it appear to the court that the discharge of such mortgage or other lien, out of the general assets, would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. [Id. sec. 106.]

Art. 4172. [2670] **Guardian may reduce rate of interest on ward's debts, how.**—Should an estate in the hands of a guardian be involved in debt, and, upon proper showing made to the court, it shall appear that the guardian can pay off and discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or upon more advantageous terms than the old indebtedness, the court may, in its discretion, by order made for that purpose, allow the guardian to pay off and discharge existing debts by the execution of a good and sufficient mortgage or deed of trust upon real estate to secure the person furnishing the money with which to discharge said indebtedness; acts of guardians under this article to be reported to the court and approved as in case of sales; nor shall any guardian renew any indebtedness or evidence thereof except by order of the court, made upon application and notice as in case of sales of land. [Acts of 1892, S. S., p. 10.]

Art. 4173. [2671] **May renew debt, when.**—Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could were he able to act; and such act of the guardian shall have the same force and effect with reference to such novated paper as if done by the ward; provided, no such order shall be made if any creditor of said ward interpose any objection to the same before said order is granted; provided, that no such guardian shall renew the evidences of any debt against the estate of his ward which shall become barred by the statutes of limitation; nor shall such guardian renew the evidences of any debt that may have been made or contracted by his ward during his minority or other disabilities. [Id.]

CHAPTER TWELVE.

REPORTS OF SALES AND ACTION OF THE COURT THEREON.

	Article.		Article.
Sales shall be reported, when.....	4174	No conveyance until, when.....	4181
Report of sale, its requisites.....	4175	Penalty for neglect to take note and mortgage	4182
May be in term time or vacation.....	4176	Vendor's lien to be retained.....	4183
Action of court upon the report.....	4177	When property is not sold at time ordered	4184
Sale to be set aside, when.....	4178		
Conveyance of property sold.....	4179		
Conveyance of real estate, etc.....	4180		

Article 4174. [2672] [2590] **Sales shall be reported in thirty days.**—All sales of the property of the ward shall be reported to the court in which the guardianship is pending, by the guardian, within thirty days after the sale is made.

Art. 4175. [2673] [2591] **Report of sale and its requisites.**—The report of any sale shall be in writing, and shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths. It shall show:

1. The time and place of the sale.
2. The property sold, giving a description of the same.
3. The name of the purchaser of the property.
4. The amount for which each article of property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or was a private sale.
7. The terms of the sale.
8. Whether or not the purchaser has complied with the terms of the sale.

Art. 4176. [2674] [2592] **Report may be in term time or vacation.**—A report of sale may be made in term time or in vacation, and, when returned, shall be filed by the clerk and the filing thereof noted in the case upon the judge's docket.

Art. 4177. [2675] [2593] **Action of the court on the report.**—At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the court in which the same has been filed, at a regular term thereof, to inquire into the manner in which such sale was made, and to hear evidence in support of or against such report; and, if satisfied that such sale was fairly made and in conformity with law, the court shall cause to be entered upon its minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. [Act Aug. 18, 1876, p. 185, sec. 113.]

Art. 4178. [2676] [2594] **Sale shall be set aside, when.**—If the court is not satisfied that the sale was fairly made, and in conformity with law, an order shall be entered upon the minutes, setting the same aside, and ordering the property to be again sold, if necessary.

Art. 4179. [2677] [2595] **Conveyance of property sold.**—After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of a sale of personal property, no conveyance shall be necessary; but the decree of the court confirming the sale shall vest the right and title of the ward to the property sold in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale.

Art. 4180. [2678] [2596] **Conveyance of real estate.**—If the property sold be real estate, the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order; and such conveyance

shall vest the right and title of the ward to such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. [Id. sec. 115.]

Art. 4181. [2679] [2597] **No conveyance until terms of sale have been complied with.**—No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of sale have been complied with by such purchaser; and when such sale has been made on a credit, it shall be the duty of the guardian, before delivering a conveyance of the property to the purchaser, to take from such purchaser a note with good personal security, payable in the county in which the guardianship is pending, bearing ten per cent interest per annum for the purchase money, together with a mortgage containing a power of sale upon such real estate to secure the payment of such note, and to file such mortgage for record in the county where such real estate is situated.

Art. 4182. [2680] [2598] **Penalty for neglect to take note and mortgage, etc.**—Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering to the purchaser a deed, as required by the preceding article, such guardian and the sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason of such neglect.

Art. 4183. [2681] [2599] **Vendor's lien to be retained, when.**—All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not; and such lien shall, in no case, be waived.

Art. 4184. [2682] [2600] **When property is not sold at the time ordered, etc.**—If, from any cause, the guardian shall fail to sell any real estate ordered to be sold, at the time specified in the order, he shall report the facts to the court or judge, accompanied by his affidavit of the truth thereof, and the court or judge, either in term time or vacation, may, by an order entered upon the minutes, appoint another day for such sale, and so on, from time to time, until the sale is completed. [Id. sec. 116.]

CHAPTER THIRTEEN.

ANNUAL ACCOUNTS.

	Article.		Article.
Of guardian of the person.....	4185	|	Action of the court on account.....
Of guardian of estate.....	4186		Citation to return account, when.....
Shall be continued one term.....	4187		Penalty for failing to return.....
Citation on annual account.....	4188		This chapter not applicable to certain
Account must be proved by vouchers or other evidence	4189		estates, unless, etc.....

Article 4185. [2683] [2601] **Annual account of guardian of person.**—The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court an account, supported by his affidavit, showing the items of expenditure since the last account for the education and maintenance of the ward. [Act Aug. 18, 1876, p. 186, sec. 120.]

Art. 4186. [2684] [2602] **Annual account of guardian of estate.**—The guardian of an estate shall annually return to the court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.

2. Any changes in the property of the ward which have not been previously reported.

3. A complete account of receipts and disbursements since the last annual account.

4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.

5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.

6. The money and property still on hand, and the condition of such property, and the use that is being made of the same.

7. Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to such account, shall be the affidavit of the guardian that it contains a correct and complete statement of the matters to which it relates. [Id. sec. 119.]

Art. 4187. [2685] [2603] **Annual account shall be continued one term.**—When an annual account is presented, it shall be filed; and the filing thereof noted in the case upon the judge's docket, and, without being acted on, shall be continued until the second regular term of the court thereafter. [Id. sec. 121.]

Art. 4188. [2686] [2604] **Citation on annual account.**—Upon the filing of an annual account, the clerk shall issue a citation to all persons interested in the ward, stating that such account has been filed and the term of the court when it will be acted on; which citation shall be duly posted for twenty days and returned as in other cases of citation. [Id. sec. 122.]

Art. 4189. [2687] [2605] **Accounts must be proved by vouchers or other evidence.**—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence. [Id. sec. 124.]

Art. 4190. [2688] [2606] **Action of the court on the account.**—If the account be found incorrect, it shall be correctly stated; and, when so corrected, or if found correct, it shall be approved by an order of the court entered upon the minutes. [Id. sec. 125.]

Art. 4191. [2689] [2607] **Guardian shall be cited to return account, when.**—If the guardian fail to return an annual account, as required by the provisions of this chapter, he shall be cited to return the same at the next term of the court, and show cause for failing to return such account at the proper time. [Id. sec. 128.]

Art. 4192. [2690] [2608] **Penalty for failing to return account.**—If the guardian fail to return such account, after being cited to do so, or fail to show good cause for failing to return such account at the proper time, he may be fined by the court not exceeding five hundred dollars, for the use of the county; and he and his sureties shall be liable for all fines imposed and damages sustained by reason of such failure. [Id. sec. 129.]

Art. 4193. **This chapter not applicable to certain estates, unless, etc.**—This chapter shall not apply to estates of less than one thousand dollars, unless required by the probate judge or by order of the probate judge on application of some one interested in the estate; and, provided, that, if it is shown to the satisfaction of the probate judge that said report was not essential or necessary to the protection of the ward's interest, then, and in that event, he shall tax the cost of such report and court proceedings thereon to the party demanding the same. [Acts 1909, S. S., p. 334.]

CHAPTER FOURTEEN.

DEATH, RESIGNATION AND REMOVAL OF GUARDIANS.

	Article.		Article.
When guardian dies.....	4194	Order removing guardian shall state, what	4201
Resignation of guardian.....	4195	Person removed shall not be re-appointed	4202
Citation in such case.....	4196	Procedure on death of guardian.....	4203
Service of such citation.....	4197	Subsequent guardian shall account for what	4204
Action of the court upon application and account	4198	Subsequent guardian	4205
Removal of guardian without notice, when	4199		
Removal after citation.....	4200		

Article 4194. [2691] [2609] **When guardian dies.**—When a guardian dies the court, on application, shall appoint another. [Act Aug. 18, 1876, p. 179, sec. 54.]

Art. 4195. [2692] [2610] **Resignation of guardian.**—When a guardian wishes to resign, he shall present his application in writing to that effect to the court, and accompany such application with a full and complete account of the condition of the estate and of his guardianship verified by his affidavit. [Id. sec. 55.]

Art. 4196. [2693] [2611] **Citation in such case.**—Upon the filing of such application and account, the clerk shall issue a citation to all persons interested in such guardianship, which citation shall state:

1. That such guardian has filed his application for leave to resign the guardianship, and has accompanied the same by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship to appear at a certain term of the court, commencing on such a day and month, and contest the account of the guardian, if they see proper to do so. [Id. sec. 56.]

Art. 4197. [2694] [2612] **Service of such citation.**—Such citation shall be published once a week for three successive weeks in some newspaper in the county, if there be one regularly printed therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof; and such citation shall be duly returned by the officer executing the same. [Id. sec. 57.]

Art. 4198. [2695] [2613] **Action of court upon application and account.**—Upon the hearing of such application and account, if it appear that such guardian has accounted for all the estate according to law, the court shall enter an order upon the minutes that he delivered the estate remaining in his possession, if any there be, or the person of his ward, or both, as the case may be, to some person who shall have been or may be appointed and qualified as guardian in his place; upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged; and an order to that effect shall be made by the court and entered upon the minutes of the court. [Id. sec. 58.]

Art. 4199. [2696] [2614] **Removal of guardian without notice, when.**—Guardians shall be removed in the following cases, without notice, at the regular term of the court:

1. When they neglect to return, within thirty days after qualification, an inventory and list of claims of the property of the estate, as far as such property has come to their knowledge.

2. When they have been required to give a new bond, and neglect to do so within the time prescribed.

3. When they have removed from the state. [Id. sec. 59.]

Art. 4200. [2697] [2615] **Removal after citation.**—A guardian may be removed by the court of its own motion, or on the motion of any person interested in the ward, or his estate, after being cited to answer:

1. When he fails to return any account which he is required to return by any of the provisions of this title.

2. When he fails to obey any order of the court or judge, consistent with this title.

3. When there is good cause to believe that he has misapplied, embezzled or removed, or is about to misapply, embezzle or remove from the state, the property committed to his charge, or any part thereof.

4. When he is proved to have been guilty of gross neglect or mismanagement in the performance of any of his duties as guardian.

5. When he becomes of unsound mind, or becomes an habitual drunkard, or is sentenced to imprisonment for a term of years.

6. When, if he be the guardian of the person, he cruelly treats the ward, or neglects to educate and maintain the ward as liberally as the means of such ward and the circumstances of the case demand. [Id. sec. 60.]

Art. 4201. [2698] [2616] **Order removing guardian shall state what, etc.**—The order of the court removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall also further require such guardian to deliver the person of the ward, or his estate, or both, as the case may be, to some person who has been appointed guardian and has qualified as such in his place. [Id. secs. 61-2.]

Art. 4202. [2699] [2617] **Person removed shall not be reappointed.**—When any person shall have been removed from the guardianship of the person or estate of a ward, he shall not afterward be reappointed to such guardianship. [Id. sec. 63.]

Art. 4203. [2700] [2618] **When guardian dies, etc., estate shall be accounted for and delivered, etc.**—If a guardian die, resign, or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order; and, in case of a refusal to comply with an order of the court to that effect, the same may be enforced by attachment and punishment as for contempt. [Id. sec. 64.]

Art. 4204. [2701] [2619] **Subsequent guardian shall account for what.**—When a guardian succeeds a former guardian, he shall be required to account

for all the estate which came into the hands of his predecessor, and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. But such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence. [Id. sec. 65.]

Art. 4205. [2702] [2620] **Subsequent guardian succeeds to what.**—A subsequent guardian shall succeed to all the rights, powers and duties of his predecessor, and shall proceed with the guardianship in all respects as if it were a continuation of the same by the same guardian.

CHAPTER FIFTEEN.

CLAIMS AGAINST THE ESTATE.

Article.	Article.
Guardian may pay claim without authentication, when 4206 Claim shall not be allowed unless supported by affidavit, etc. 4207 Claim not founded on written instrument, affidavit shall state facts. 4208 When claim belongs to corporation, who shall make affidavit. 4209 Affidavit by officer of corporation, executor, etc., shall state what. 4210 Affidavit may be made before what officers 4211 Memorandum of allowance or rejection on claim 4212 Failure to make memorandum. 4213 Rejected claim barred, when. 4214 Memorandum evidence 4215 When claim is allowed, shall be presented, etc. 4216 Claims shall be examined, etc., by the court 4217 Any person may contest claim. 4218 Court shall bear evidence on claim. 4219	Order of approval or disapproval is a judgment 4220 Appeal may be taken from action of court on claim 4221 Action of court on claim. 4222 Lost claim, how proved. 4223 Claim by guardian established, how 4224 When a claim is "exhibited". 4225 When a claim is "established". 4226 When claims may be exhibited. 4227 Limitation is interrupted, how. 4228 Guardian shall not purchase claim. 4229 Claim established by judgment shall be filed, etc. 4230 Costs incurred in exhibiting, etc., a claim taxed, how. 4231 Claim docket. 4232 Payment of claims. 4233 Order to pay creditor. 4234 Execution against guardian. 4235 Sureties on guardian's bond shall be cited, when 4236 Citation and judgment in such case. 4237

Article 4206. [2703] [2621] **Guardian may pay claim without authentication, when.**—A guardian may pay any claim against the estate of his ward which he knows to be just, without the authentication thereof. [Id. sec. 95.]

Art. 4207. [2704] [2622] **Claim shall not be allowed unless supported by affidavit, etc.**—The guardian shall not allow, and the court shall not approve, any claim, except as provided for in the preceding article, unless it be accompanied by an affidavit of the claimant, that the claim is just, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited (if any), that there are no counter claims known to the affiant which have not been allowed, and that the sum claimed is justly due. [Id. sec. 154.]

Art. 4208. [2705] [2623] **Where claim is not founded on written instrument, affidavit shall state facts.**—Where the claim is not founded on an instrument in writing or an account, in addition to the statement required by the preceding article, the affidavit must state the facts upon which the claim is founded. [Id. sec. 155.]

Art. 4209. [2706] [2624] **When a claim belongs to a corporation, who shall make affidavit.**—When a claim belongs to a corporation, the cashier,

treasurer or managing agent of such corporation shall make the affidavit required to authenticate it. [Id. sec. 156.]

Art. 4210. [2707] [2625] **Affidavit by officer of corporation, executor, etc., shall state what, etc.**—When an affidavit authenticating a claim is made by an officer of a corporation, an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination and that he does verily believe that nothing has been paid and delivered toward the satisfaction of such claim, except the amount credited (if any), that there are no counter claims which have not been allowed, and that the sum claimed is justly due. [Id. sec. 157.]

Art. 4211. [2708] [2626] **Affidavit may be made before what officers.**—The affidavit authenticating a claim may be made before any officer authorized to administer oaths. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 4212. [2709] [2627] **Memorandum of allowance or rejection on claim.**—When a claim is presented to the guardian, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentment, and that he allows or rejects it, or what portion thereof he allows, if any. [Id. sec. 159.]

Art. 4213. [2710] [2628] **Effect of failure to make memorandum.**—The failure of a guardian to indorse on, or annex to, any claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim; and, in such case, the costs, if the claim be established, shall be adjudged against the guardian to be paid out of his own estate. [Id. sec. 160.]

Art. 4214. [2711] [2629] **Rejected claim, if not sued on in ninety days, barred.**—When a claim, or part thereof, has been rejected by the guardian, the claimant, if he does not submit thereto, shall institute suit thereon within ninety days after such rejection, or the same shall be barred. [Id. sec. 162.]

Art. 4215. [2712] [2630] **Memorandum evidence.**—When a rejected claim is sued upon, the indorsement thereon or annexed thereto of its rejection shall be taken to be true without proof, unless it be denied under oath. [Id. sec. 165.]

Art. 4216. [2713] [2631] **When claim is allowed, shall be presented, etc.**—After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket. [Id. sec. 161.]

Art. 4217. [2714] [2632] **Claims shall be examined, etc., by the court.**—At each regular term of the court, all claims which have been allowed and entered on the claim docket shall be examined by the court and approved or disapproved, in the same manner as is provided for claims against the estates of decedents. [Id. sec. 164.]

Art. 4218. [2715] [2633] **Any person may contest claim.**—Any person may appear and contest the approval of any claim, or any part thereof, and shall be entitled to process to compel the attendance of witnesses and the production of testimony as in ordinary suits. [Id. sec. 166.]

Art. 4219. [2716] [2634] **Court shall hear evidence on claim.**—Although a claim be properly authenticated and allowed, if the court be not well satisfied it is just, it shall send for persons and papers, and may examine the claimant and the guardian under oath and hear other evidence. If the court be not entirely convinced in such case by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved. [Id. sec. 167.]

Art. 4220. [2717] [2635] **Order of approval or disapproval is a judgment.**—The order of approval or disapproval of a claim has the force and effect of a judgment. [Id. sec. 168.]

Art. 4221. [2718] [2636] **Appeal may be taken from action of court on claim.**—When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in

whole or in part, he may appeal therefrom to the district court, as in the case of any other judgment rendered by said court.

Art. 4222. [2719] [2637] **Action of court shall be indorsed on claim, etc.**—When a claim is acted on by the court, the court shall indorse thereon, or annex thereto, a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket.

Art. 4223. [2720] [2638] **Lost claim may be proved, how.**—When a claim has been lost and can not be produced, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself; but, in such case, the claim must be proved by competent testimony, other than such claimant's affidavit or oath, produced in court or taken by deposition, before it shall be approved by the court. [Id. sec. 174.]

Art. 4224. [2721] [2639] **Claim held by guardian, established, how.**—A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. [Id. sec. 158.]

Art. 4225. [2722] [2640] **When claim is said to be exhibited.**—A claim is said to be legally exhibited:

1. When it is properly presented to the guardian, and after being allowed by him is filed.

2. When, after being rejected, suit is commenced thereon. [Id. sec. 169.]

Art. 4226. [2723] [2641] **When a claim is said to be established.**—A claim is said to be established:

1. When it has been allowed by the guardian and approved by the court.

2. When, in a suit thereon, it has been sustained by the judgment of the proper court. [Id. sec. 170.]

Art. 4227. [2724] [2642] **When a claim may be exhibited.**—Claims which have not been legally exhibited within the year may be exhibited at any time afterward, before the estate is closed, or suit on such claims would be barred by the general law of limitation. [Id. sec. 172.]

Art. 4228. [2725] [2643] **Limitation is interrupted, how.**—The general law of limitations is interrupted:

1. By filing a claim which has been allowed.

2. By commencing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

Art. 4229. [2726] [2644] **Guardian shall not purchase claim.**—It shall not be lawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward; and, upon proof to the satisfaction of the court of the violation of this provision, the court shall disapprove the claim.

Art. 4230. [2727] [2645] **Claim established by judgment shall be filed, etc.**—When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. [Id. sec. 164.]

Art. 4231. [2728] [2646] **Cost incurred in exhibiting, etc., a claim; taxed, how.**—The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

1. If a claim be allowed and approved, the estate shall pay the costs.

2. If a claim be allowed, but disapproved, the claimant shall pay the costs.

3. If a claim which has been rejected be established, the estate shall pay the costs. [Id. sec. 190.]

Art. 4232. [2729] [2647] **Claim docket.**—The claim docket required to be kept in estates of decedents shall be used also for the estates of wards, and under the same rules as far as applicable.

Art. 4233. [2730] [2648] **Payment of claims.**—It shall be the duty of the guardian to pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable; and the court may, at any time, either in term time or in vacation, by an order entered upon the minutes, direct the order in which the claims against the estate shall be paid, and the amount to be paid on each claim, when the funds are not sufficient to pay them all in full.

Art. 4234. [2731] [2649] **Creditor may obtain order for payment of claim.**—Any creditor of the estate of the ward whose claim has been approved by the court, or established by judgment, may, upon application in writing to the court in which such guardianship is pending, at a regular term thereof, obtain an order for the payment of such claim, upon proof being made that there are funds in the hands of the guardian subject thereto, or, if there be no funds, or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. [Id. sec. 96.]

Art. 4235. [2732] [2650] **Execution shall issue against guardian, when.**—If any guardian shall fail to pay any claim ordered by the court to be paid when demanded, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian. [Id. sec. 97.]

Art. 4236. [2733] [2651] **Sureties on guardian's bond shall be cited, when, etc.**—If the execution provided for in the preceding article be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued, and show cause why judgment should not be rendered against them for such debt, interest and costs. [Id. sec. 98.]

Art. 4237. [2734] [2652] **Citation and judgment in such case.**—Citation in such case may be issued to any county in the state; and, upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent damages thereon, together with interest and costs: and execution may issue thereon accordingly. [Id. sec. 99.]

CHAPTER SIXTEEN.

GUARDIANSHIP OF PERSONS OF UNSOUND MIND AND HABITUAL DRUNKARDS.

Article.	Article.		
County judge shall issue warrant on information	4238	Priority in guardianship	4247
Duty of county officer to file information, when	4239	Restraint of enraged ward	4248
Requisites of information	4240	Insane person at large	4249
Jury shall be impaneled	4241	Who are liable to maintain persons of unsound mind	4250
Proceedings and trial	4242	Expenses of confinement	4251
If verdict is against defendant, guardian shall be appointed	4243	County may recover expenses	4252
New trial may be granted, when	4244	Proceedings to discharge ward from guardianship	4253
Provisions as to minors apply to persons of unsound mind, etc.	4245	Same subject	4254
Order for support of ward's family	4246	Court may discharge from guardianship without jury, when	4255

Article 4238. [2735] [2653] **County judge shall issue warrant on information.**—If information be given to the judge of the county court that any person of the county is of unsound mind, or is an habitual drunkard, and is without a guardian, such judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such person be brought before him at a time and place to be named in such warrant. [Act Aug. 18, 1876, p. 187, sec. 141.]

Art. 4239. [2736] [2654] **Duty of county officer to file information, when.**—It shall be the duty of any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, to file information thereof with the county judge of such county, who shall issue his warrant as provided in the preceding article.

Art. 4240. [2737] [2655] **Requisites of information.**—The information provided for in the two preceding articles shall be in writing, and shall state the name of the person charged with being of unsound mind or an habitual drunkard, if his name be known, and, if unknown, such person shall be described, and that such person is of unsound mind, or is an habitual drunkard, as the case may be, to the best of the knowledge and belief of the informant; and such information shall be subscribed and sworn to by the informant before some officer of the county authorized to administer oaths.

Art. 4241. [2738] [2656] **Jury shall be impaneled.**—When the person charged is brought before the judge he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard, as charged in the information.

Art. 4242. [2739] [2657] **Proceedings and trial.**—The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant; and the proceedings and trial therein shall be governed by the same rules and regulations that govern in ordinary suits in the county court, unless otherwise provided.

Art. 4243. [2740] [2658] **If verdict is against defendant, guardian shall be appointed.**—If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the court shall proceed, immediately and without further notice, to appoint a guardian of the person and estate of such defendant in the same manner as in the case of a minor. [Id. sec. 143.]

Art. 4244. [2741] [2659] **New trial may be granted, when.**—The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party;

but, when two juries have concurred in a case, the second verdict shall not be set aside. [Id. sec. 144.]

Art. 4245. [2742] [2660] **Provisions as to minors apply to persons of unsound mind, etc.**—All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind and habitual drunkards, in so far as the same are applicable and not inconsistent with any provision of this chapter.

Art. 4246. [2743] [2661] **Order for support of ward's family.**—The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary. [Id. sec. 177.]

Art. 4247. [2744] [2662] **Husband or wife first entitled to guardianship.**—If the person committed to guardianship is married, the husband or the wife of such person, as the case may be, shall be entitled first in order to the guardianship.

Art. 4248. [2745] [2663] **When ward is furiously mad.**—If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of the guardian or other person under whose care he may be, and who is bound to provide for his support, to confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require. [Id. sec. 178.]

Art. 4249. [2746] [2664] **When insane person is not confined or in charge of any one.**—If any such person of unsound mind as is specified in the preceding article shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon, as provided in the preceding article. [Id. sec. 179.]

Art. 4250. [2747] [2665] **Who are liable to maintain persons of unsound mind, etc.**—Where the person of unsound mind or habitual drunkard has no estate of his own, they shall be maintained:

1. By the husband or wife of such person, if any, if able to do so.
2. By the father or mother of such person, if able to do so.
3. By the children and grandchildren of such person, if able to do so.
4. By the county in which said person has his residence. [Id. sec. 180.]

Art. 4251. [2748] [2666] **Expenses of confinement to be paid, how.**—The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has any estate; and, if he has no estate, such expense shall be paid by the person bound to provide for and support such insane person; and, if not so paid, the county shall pay the same. [Id. sec. 181.]

Art. 4252. [2749] [2667] **County may recover back expenses paid.**—In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay the same. [Id. sec. 182.]

Art. 4253. [2750] [2668] **Proceedings to discharge ward from guardianship.**—If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind, or an habitual drunkard, has been restored to his right mind, or to correct, sober habits, as the case may be, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation,

either in term time or in vacation, and show cause why such ward should not be discharged from further guardianship, or the guardian may appear without such citation. [Id. sec. 183.]

Art. 4254. [2751] [2669] **Same subject.**—If the fact of such alleged restoration be doubtful, the court shall, either in term time or in vacation, cause a qualified jury to be impaneled to try the issue as in the first instance, and and if it be found by such jury that the ward has been restored to his right mind, or has reformed, he shall be discharged from guardianship by an order to that effect entered upon the minutes; and the guardian shall immediately settle his accounts and deliver up all the property remaining in his hands to such ward. [Id.]

Art. 4255. [2752] [2670] **Court may discharge from guardianship without jury, when.**—If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order discharging the ward from guardianship, as provided in the preceding article. [Id.]

CHAPTER SEVENTEEN.

NON-RESIDENT GUARDIANS AND WARDS.

Article. Non-resident guardian may obtain letters in this state, how.....4256 Such guardian may remove property out of state, etc.....4257 Resident executor, etc., may be ordered to deliver property.....4258	Article. Property shall not be removed until debts are paid, etc.....4259 Benefits of this chapter shall not ex- tend, etc.....4260
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Article 4256. [2753] [2671] **Non-resident guardian may obtain letters in this state, how.**—Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation to such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this state, upon filing a bond with sureties, as in other cases, in double the amount of the estimated value of such estate. [Act Aug. 18, 1876, p. 180, sec. 70.]

Art. 4257. [2754] [2672] **Such guardian may remove property out of state, etc.**—Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the state, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and, if it be real property, he may obtain an order for the sale of it and remove the proceeds; such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian. [Id. sec. 71.]

Art. 4258. [2755] [2673] **Resident executor, etc., may be ordered to deliver property.**—Any resident executor, administrator or guardian having

any of the estate of such ward may be ordered by the court to deliver the same to such non-resident guardian. [Id. sec. 72.]

Art. 4259. [2756] [2674] **Property shall not be removed until debts are paid, etc.**—There shall be no removal from the state of any of such property, until all the debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the judge of the county court and approved by the clerk. [Id. sec. 73.]

Art. 4260. [2757] [2675] **Benefits of this chapter shall not extend, etc.**—The benefit of the provisions of this chapter shall not extend to the residents of any state, territory, district or country in which a similar law does not exist in favor of the residents of this state. [Id. sec. 74.]

CHAPTER EIGHTEEN.

REMOVAL OF GUARDIANSHIP.

	Article.		Article.
Application to remove guardianship to another county.....	4261	Transcript on removal.....	4264
Citation to sureties in such case.....	4262	When order shall take effect.....	4265
Action of court on application.....	4263	Guardianship when removed shall be proceeded with.....	4266

Article 4261. [2758] [2676] **Application to remove guardianship to another county.**—When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such application his reasons for desiring such removal. [Act Aug. 18, 1876, p. 185, secs. 117-18.]

Art. 4262. [2759] [2677] **Citation to sureties in such case.**—Upon the filing of such application, the clerk shall issue citation to the sureties upon the bond of such guardian, citing them to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted. [Id. sec. 118.]

Art. 4263. [2760] [2678] **Action of the court on application.**—Upon the hearing of the application, if no good cause be shown to the contrary, and if it appear that the removal of the guardianship would be to the interest of the ward, the court shall enter an order upon the minutes authorizing such removal upon the payment of all costs that have accrued.

Art. 4264. [2761] [2679] **Transcript to be made and transmitted by clerk, etc.**—When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the clerk of the county court of the county to which such guardianship has been removed.

Art. 4265. [2762] [2680] **When order of removal shall take effect.**—The order removing a guardianship shall not take effect until the transcript provided for in the preceding article has been filed in the office of the clerk of the county court of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

Art. 4266. [2763] [2681] **Guardianship when removed shall be proceeded with, how, etc.**—When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have already been recorded in the court from which the same has been removed.

CHAPTER NINETEEN.

FINAL SETTLEMENT.

	Article.		Article.
Guardianship, when settled.....	4267	Account shall be re-stated, when.....	4274
Guardian shall file account for final settlement; requisites of.....	4268	Must produce vouchers, etc.....	4275
Guardian may be cited to make final settlement, etc.....	4269	Court shall appoint attorney to represent ward, when.....	4276
Citation, when account is filed.....	4270	Debts that could not be collected to be excluded.....	4277
Same subject.....	4271	Labor or service of ward to be accounted for, etc.....	4278
Same subject.....	4272	Guardian may be attached, etc.....	4279
Action of court upon account.....	4273		

Article 4267. [2764] [2682] **When guardianship shall be settled.**—When the ward dies, or, if a minor, arrives at the age of twenty-one years, or, if a female, marries, or, if a person of unsound mind or habitual drunkard, is restored and discharged from guardianship, the guardianship shall be immediately settled and closed and the guardian discharged, as provided in the following articles of this chapter.

Art. 4268. [2765] [2683] **Guardian shall file account for final settlement, which shall show, what.**—The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship; which account shall show fully and completely:

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.
2. The disposition made of such property, rents, revenues and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.
6. Such account shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths.

Art. 4269. [2766] [2684] **Guardian may be cited to make final settlement, etc.**—Should the guardian fail to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the complaint in writing of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

Art. 4270. [2767] [2685] **Citation when account is filed.**—Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in the state, and his residence be known, issue a citation notifying such ward of the filing of such account, and of the term of court at which the same will be acted upon, and that he may appear and contest such account, if he see proper to do so.

Art. 4271. [2768] [2686] **Same subject.**—If the ward be not living but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited, as provided in the preceding article.

Art. 4272. [2769] [2687] **Same subject.**—If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a non-resident of the state, or if his residence be unknown, citation shall be published once a week for three successive weeks, in some newspaper published in the county, if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Art. 4273. [2770] [2688] **Action of the court upon account.**—After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear all exceptions and objections thereto (if any), and the evidence in support of or against such account, and if the same is found to be fair, just and correct, an order shall be entered upon the minutes approving it, and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same; and, upon compliance with such order, the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Art. 4274. [2771] [2689] **Account shall be re-stated, when.**—Should the account be found to be incorrect in any particular, the court shall cause the same to be corrected and re-stated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Art. 4275. [2772] [2690] **Guardian must produce vouchers, etc.**—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Art. 4276. [2773] [2691] **Court shall appoint attorney to represent ward, when.**—When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Art. 4277. [2774] [2692] **Debts that could not be collected to be excluded.**—In the settlement of the account of the guardian, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation. [Id. sec. 130.]

Art. 4278. [2775] [2693] **Labor or services of ward to be accounted for, etc.**—In the settlement of any of the accounts of the guardian, he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward; and the guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Art. 4279. [2776] [2694] **Guardian may be attached, etc., when.**—When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward, or other person legally authorized to receive the same, fails to obey such order, he may be attached and punished as for a contempt of court.

CHAPTER TWENTY.

COMPENSATION OF GUARDIANS, EXPENSES AND COSTS OF GUARDIANSHIP.

	Article.		Article.
Guardian of person serves gratis	4280	Costs shall be adjudged against appli-	
Commissions of guardian.....	4281	cant, when	4286
Extra compensation, when allowed.....	4282	In proceedings against persons of un-	
Expenses incurred to be allowed.....	4283	sound mind, etc.....	4287
Pay of appraisers.....	4284	Same subject	4288
Costs shall be adjudged against guard-		Cost laws apply to guardianships.....	4289
ian, when	4285		

Article 4280. [2779] [2697] **Guardian of person receives no pay.**—The guardian of the person alone is entitled to no compensation. [Act Aug. 18, 1876, p. 187, sec. 189.]

Art. 4281. [2780] [2698] **Commissions of guardians.**—The guardian of the estate is entitled to five per cent on all sums that he actually receives or pays away in cash; but this shall not be construed to include money on hand at the time of the commencement of the guardianship, or money received or paid over on the settlement of the guardianship. [Id. sec. 40.]

Art. 4282. [2781] [2699] **Extra compensation, when allowed.**—If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services. [Id.]

Art. 4283. [2782] [2700] **Expenses incurred to be allowed.**—All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in the collecting or attempting to collect claims or debts due the ward, and in recovering, or attempting to recover, property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian, to be paid out of the estate on satisfactory proof thereof being made to the court. [Id. sec. 131.]

Art. 4284. [2783] [2701] **Pay of appraisers.**—Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for every day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Art. 4285. [2784] [2702] **Costs shall be adjudged against the guardian, when.**—In all cases where the guardian shall neglect the performance of any duty required of him, and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate; and the court shall adjudge the same against him. [Id. sec. 191.]

Art. 4286. [2785] [2703] **Costs shall be adjudged against applicant, when.**—In all cases where a party shall make any application or opposition, and on the trial thereof he shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court. [Id. sec. 192.]

Art. 4287. [2786] [2704] **In proceedings against persons of unsound mind, etc.**—When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. [Id. sec. 195.]

Art. 4288. [2787] [2705] **Same subject.**—If the defendant, in the case mentioned in the preceding article, be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury. [Id.]

Art. 4289. [2788] [2706] **Cost laws apply to guardianships.**—The provisions of law regulating costs and security therefor shall apply to matters of guardianship, where the same are not expressly provided for in this title. [Id. sec. 189.]

CHAPTER TWENTY-ONE.

APPEAL, BILL OF REVIEW AND CERTIORARI.

Article.	Article.		
Right of appeal.....	4290	Appeal suspends decisions, etc., without bond, when	4296
Notice of appeal.....	4291	Judgment of district court shall be entered of record, etc.....	4297
Transcript on appeal.....	4292	Judgment dismissing appeal.....	4298
Several appeals may be embraced in same transcript, when.....	4293	Appeal shall be tried de novo.....	4299
Transcript shall be made out, etc., within what time.....	4294	Bill of review may be brought.....	4300
Appeal shall not suspend decision, etc., unless, etc.....	4295	Certiorari	4301

Article 4290. [2789] [2707] **Right of appeal.**—Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, may appeal to the district court as a matter of right, without bond. [Act Aug. 18, 1876, p. 192, sec. 197.]

Art. 4291. [2790] [2708] **Notice of Appeal.**—An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or, if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter. [Id. sec. 198.]

Art. 4292. [2791] [2709] **Transcript on appeal.**—When notice of appeal has been given, a certified transcript of the proceedings shall be made out by the clerk and transmitted to the district court of the county; such transcript shall not contain anything that does not relate to the decision, order or judgment appealed from. [Id. sec. 199.]

Art. 4293. [2792] [2710] **Several appeals may be embraced in same transcript, when.**—When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript. [Id.]

Art. 4294. [2793] [2711] **Transcript shall be made out, etc., within what time.**—If there be not time to make out such transcript before the first day of the next term of the district court after such appeal is taken, it shall be transmitted to such court within sixty days after such appeal is taken. [Id. sec. 200.]

Art. 4295. [2794] [2712] **Appeal shall not suspend decisions, etc., unless, etc.**—The appeal shall not suspend the decision, order or judgment, except in the cases mentioned in the succeeding article, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court at the time of entry of appeal, signed by two or more good and sufficient sureties, payable to, and approved by, the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him. [Id. sec. 201.]

Art. 4296. [2795] [2713] **Appeal suspends decision, etc., without bond, when.**—An appeal suspends the decision, order or judgment, without bond:

1. When taken by a claimant from the disapproval of his claim.

2. When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account. [Id. sec. 202.]

Art. 4297. [2796] [2714] **Judgment of district court shall be entered of record, etc.**—When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court. [Id. sec. 203.]

Art. 4298. [2797] [2715] **Judgment dismissing appeal, etc.**—Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained. [Id. sec. 204.]

Art. 4299. [2798] [2716] **Appeal shall be tried de novo.**—Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship shall be tried in the district court de novo; and the judgment of the district court therein shall be certified to the county court to be carried into effect. [Act May 13, 1846. P. D. 1460.]

Art. 4300. [2799] [2717] **Bill of review may be brought.**—Any person interested may, by a bill of review, filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and corrected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction. [Id. sec. 205.]

Art. 4301. [2800] [2718] **Certiorari.**—Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court under the same rules and regulations as are provided in estates of decedents.

TITLE 65.

HEADS OF DEPARTMENTS.

Chapter.

1. Secretary of State.
2. Comptroller of Public Accounts.
3. State Treasurer.
4. Commissioner of the General Land Office.
5. Attorney General.

Chapter.

6. Commissioner of Agriculture.
7. Commissioner of Insurance and Banking.
8. State Superintendent of Public Instruction.

CHAPTER ONE.

SECRETARY OF STATE.

Article.	Article.
Appointment and term of office.....4302	How distributed .....4311
Oath and bond.....4303	May sell copies of laws.....4312
Shall register acts of governor.....4304	Legislative journals, distribution of....4313
His general duties.....4305	Digest of laws, how distributed.....4314
Shall receive and bind enrolled bills....4306	Executive officers entitled to copies of digests .....4315
Shall forward laws to certain foreign officials .....4307	Officers shall receipt for books.....4316
Disposition of books received.....4308	Shall distribute U. S. laws.....4317
Copies of reports delivered to whom....4309	May appoint clerks.....4318
What public officers entitled to copies of general laws.....4310	Chief clerk may act in lieu of, when...4319

Article 4302. [2801] **His appointment and term.**—A secretary of state shall be appointed by the governor, by and with the advice and consent of the senate, and shall be continued in office during the term of service of the governor by whom he was appointed, and until his successor is appointed and qualified. [Const., art. 4, sec. 21. Act May 9, 1846. Amended act 1899, p. 3. O. & W. 1818.]

Art. 4303. **Oath and bond.**—He shall, within twenty days after he has received notice of his appointment, and before he enters upon the duties of his office, give a bond, payable to the governor and his successors in office, for the use of the state, in the sum of twenty-five thousand dollars, with not less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe to the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the comptroller of public accounts. [Act 1899, p. 3.]

Art. 4304. [2802] **Shall register governor's acts.**—He shall keep a fair register of all the official acts of the governor, and, when required, shall lay the same, and all minutes and other papers in relation thereto, before the legislature, or either branch thereof. [Id. sec. 2. O. & W. 1819.]

Art. 4305. [2803] **His general duties.**—He shall keep his office at the seat of government or other place where the sessions of the legislature may be held; he shall, in a separate book suitable for the purpose, keep a complete register of all the officers appointed and elected in the state, and commission the same when not otherwise provided for by law; he shall arrange and preserve all the books, maps, parchments, records, documents, deeds, conveyances and other papers belonging to the state that have been, or may be properly deposited there, and sealed with the seal of the state, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office; which copies shall be as legal and conclusive in evidence and to all intents and purposes in the courts of this state as the originals would have been; and he shall, when required, furnish the governor, the legislature or either branch thereof, with such copies, and shall

affix the seal of the state to all certificates of official character that may emanate from his office. [Id. sec. 13. O. & W. 1820.]

Art. 4306. [2804] **Shall receive and bind enrolled bills, etc.**—He shall attend at every session of the legislature for the purpose of receiving bills which have become laws, and immediately after the close thereof shall cause all such bills and all the enrolled joint resolutions of the legislature to be bound together in a volume to be kept in his office, and the date of the session to be written or stamped thereon, a certified copy of which he shall deliver to the public printer, together with an index of the same; and he shall carefully examine and compare the printed copy with the certified copy and correct all the errors contained in the former. [Id. sec. 4. O. & W. 1821.]

Art. 4307. [2805] **Shall forward laws, etc., to certain foreign officials.**—The secretary of state shall forward to the librarian of congress and the secretary of state of the United States, the secretary of the treasury of the United States, and the executive departments of all of the states of the union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the legislature, and at the expense of the state. [Act March 20, 1848. Amended Act 1909, p. 124. O. & W. 1825.]

Art. 4308. [2806] **Disposition of books received.**—The secretary of state shall turn over to the person in charge of the state library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office; and he shall, in like manner, turn over to the librarian of the supreme court at the capitol all volumes of reports of the courts of any other state or territory received by him; and he shall, in like manner, turn over to the state library, all printed volumes of the statutes or laws of any nation, state or territory, to be deposited in said state library for the same use and purpose as the other books kept there. [Amended Act 1909, p. 124, sec. 8.]

Art. 4309. [2807] **Copies of reports to be sent to whom**—The secretary of state shall deliver, by mail or otherwise, to each justice of the supreme court, each judge of the courts of appeals, the attorney general, the assistant attorney general, the governor, each district judge of the state, each professor of law of the university of Texas, the librarian of said university, and to the county judge of each county for the use of the counties, one copy of the reports of the supreme court and court of appeals, hereafter issued; also shall furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the department of state, or when they are hereafter delivered by the state to either of the said officers or authorities, the secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report. [Acts of 1887, p. 114.]

Art. 4310. [2808] **What officers entitled to receive copies of laws.**—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the legislature, to-wit: The governor and heads of departments, each member of the legislature, the judges of the several courts throughout the state, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the legislature, to-wit: County treasurer, county surveyor, sheriff, assessor of taxes, collector of

taxes, inspector of hides and animals, justice of the peace, constable and county commissioner. [Acts 1885, p. 68.]

Art. 4311. [2809] **How distributed.**—The secretary of state shall distribute the printed laws of each session of the legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the governor and heads of departments, and to all state or district officers, a copy each, as therein provided; and he shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. [Act Feb. 2, 1850, p. 99, sec. 3. P. D. 4585.]

Art. 4312. [2810] **May sell copies of laws.**—The secretary of state is authorized to sell copies of the general and special laws of the state of Texas that have been or may hereafter be published, at a price not to exceed twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the state; and provided, further, that any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the state treasury. [Acts 1883, p. 33.]

Art. 4313. [2811] **Legislative journals, how distributed.**—He shall distribute to the governor and heads of departments, and to each member of the legislature, a copy of the printed journals of both houses; and he shall also forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the clerk of the county court, for the use of said courts respectively. [Id. sec. 4. P. D. 4586.]

Art. 4314. [2812] **Digest of laws, how distributed.**—Whenever a digest or revision of the laws of the state has been or shall be subscribed for, or published by the state, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the supreme and district courts and courts of appeals, to each clerk of the supreme, district and county courts, and courts of appeals, and to each justice of the peace that may be a resident in said county; and it shall be the duty of said county judge to deliver one copy of each of said volumes to each of said officers that may reside in said county. [Id. sec. 5. P. D. 4587.]

Art. 4315. [2813] **Executive officers entitled to copies.**—The secretary of state shall also deliver to each of the executive officers at the seat of government one copy of each volume of any edition of a digest or revision of the laws of the state, whether such books shall be subscribed for or published by the state, which shall belong to said office; and the officer receiving any such volume shall be bound to deliver it to his successor, and shall be liable to pay his successor the costs and charges that may be necessary to supply the office with any book he may neglect so to deliver. [Id. sec. 7. P. D. 4589.]

Art. 4316. [2814] **Officers shall receipt for books.**—Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office; and said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the inspection and examination of any citizen of this state; and, should any of said officers fail or refuse to deliver any of said books to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any of said books that he shall so fail or refuse to deliver. [Id. sec. 6. P. D. 4588.]

Art. 4317. [2815] **Shall distribute U. S. laws.**—The secretary of state shall forward to the clerk of the county court of each county, for the use of the

county, one copy of all the acts of the congress of the United States which may be received in his office. [Act May 9, 1846, p. 189, sec. 6. P. D. 4582.]

Art. 4318. [2816] **May appoint chief and other clerks.**—The secretary of state shall appoint a chief clerk and such number of assistant clerks as may be authorized by law, each of whom shall receive such compensation as may from time to time be fixed by appropriation.

Art. 4319. [2817] **Chief clerk may act, when.**—In the absence of the secretary of state, or his inability to act from any cause, the chief clerk may perform all the duties required by law of that officer. [Id. sec. 7. P. D. 5094.]

CHAPTER TWO.

COMPTROLLER OF PUBLIC ACCOUNTS.

[See "Education—Public" Ch. 11.]

Article.	Article.		
Election and term of office.....	4320	Shall render account to governor, when.....	4340
Vacancy, how filled.....	4321	Shall preserve books, records, etc.....	4341
Bond.....	4322	To be notified of deficiencies, when.....	4342
Seal.....	4323	Chief clerk.....	4343
Accounting officer for state.....	4324	Deposit warrants.....	4344
Shall keep account between state and		Deposit receipts.....	4345
U. S.....	4325	Claims and accounts.....	4346
Examine accounts of persons indebted		Claims to be classified.....	4347
to state.....	4326	List of claims to be kept.....	4348
Accounts to be verified by affidavit.....	4327	Pay warrants.....	4349
Shall require statements.....	4328	Pay warrants registered.....	4350
Audit claims against state.....	4329	Law not to apply to pension warrants.....	4351
Certain claims to be presented before		Registration of bonds.....	4352
legislature convenes.....	4330	Account of bonds belonging to each	
Claims to have priority.....	4331	fund to be kept separate.....	4353
Warrants on treasurer.....	4332	State general ledger.....	4354
No warrants to be drawn, unless.....	4333	Revenue ledger.....	4355
Shall prescribe forms.....	4334	Ledger for account of tax collectors.....	4356
Allowance to tax collector.....	4335	Ledger for account of state treasurer.....	4357
Comptroller's account to be approved by		Shall keep journals.....	4358
secretary of state.....	4336	Issue duplicate warrants, when.....	4359
Bond, etc., to be deposited in office.....	4337	Duty when duplicates are improperly	
Audited claims to be reported to legisla-		issued.....	4360
ture.....	4338	Comptroller and treasurer to examine	
Accounts to be closed, when.....	4339	and cancel warrants.....	4361

Article 4320. **Election and term of office.**—That there shall be elected by the qualified voters of this state, at the time and places of election for members of the legislature, a comptroller of public accounts, who shall hold his office for the term of two years, and until the election and qualification of his successor. [Act 1910, 4, S. S., p. 37, sec. 1.]

Art. 4321. **Vacancy, how filed.**—In case of a vacancy in the office of comptroller of public accounts, the governor shall fill the same by appointment for the unexpired term; which appointment shall be submitted to the senate for confirmation in accordance with law. [Id. sec. 2.]

Art. 4322. **Bond.**—The comptroller shall, within twenty days after he shall have received notice of his election or appointment and before he enters upon the duties of his office, give a bond, payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with not less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office, and shall take and subscribe to the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state; which said bond shall not be void on the first recovery of part or of

the whole of the penalty, and shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust until his successor shall be duly qualified, and shall have entered upon the duties of his office. [Id. sec. 3.]

Art. 4323. **Seal.**—He shall procure, at the expense of the state, a seal with the words, "Comptroller's Office, State of Texas," engraved around the margin, and a star with five points in the center thereof, which shall be used as the seal of the comptroller's office in the authentication of all his official acts, except warrants drawn on the treasury of the state. [Id. sec. 4.]

Art. 4324. **Accounting officer.**—It shall be the duty of the comptroller of public accounts to superintend the fiscal concerns of the state, as the sole accounting officer thereof, and manage the same in the manner required by law; he shall also perform such official acts as were required of the secretary of the treasury of the republic of Texas, when not otherwise provided by law. [Id. sec. 5.]

Art. 4325. **Shall keep accounts between state and United States.**—He shall keep and state all accounts between this state and the United States, and all other accounts in which the state is interested, including all moneys received by the state as interest and other payments on land and office fees of his and other departments of the state government, and all other moneys received by the state from whatever source and for whatever purpose, and suggest plans for the improvement and management of the public revenue. [Id. sec. 6.]

Art. 4326. **Examine accounts of persons indebted to state.**—He shall examine and settle the accounts of all persons indebted to the state, and certify the amount or balance to the treasurer, and direct and superintend the collection of all moneys due the state. [Id. sec. 7.]

Art. 4327. **Accounts to be verified by affidavit.**—He shall require all accounts presented to him for settlement, not otherwise provided for by law, to be made on forms prescribed by him, and all such accounts shall be verified by affidavit taken before some officer authorized to administer oaths, touching the correctness of the same, or by oath or affirmation, which may be administered by himself in any case in which he may deem it necessary; and all such accounts of the same class and kind shall be uniform in size, arrangement, matter and form. [Id. sec. 8.]

Art. 4328. **Shall require statements.**—He shall require all persons who shall have received any moneys belonging to the state, and shall not have accounted therefor, to settle their accounts; and shall, from time to time, require all persons receiving moneys or having the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him. [Id. sec. 9.]

Art. 4329. **Audit claims against state.**—He shall audit the claims of all persons against the state in cases where provisions for the payment thereof have been made by law, unless the auditing of any such claim shall be otherwise specially provided for. [Id. sec. 10.]

Art. 4330. **Certain claims to be presented before legislature convenes.**—All sheriffs, attorneys and all other parties holding claims against the state of Texas, for which no warrants have been issued, and the appropriation for which has been exhausted, shall present the same to the comptroller of the state for his consideration at least thirty days before the meeting of each regular session of the legislature of the state of Texas. [Id. sec. 11.]

Art. 4331. **Claims to have priority.**—The comptroller of the state of Texas is authorized and directed to audit no claims against the state not presented within the time prescribed in the preceding article of this chapter, until all

claims presented prior to that time have been considered and passed upon by him. [Id. sec. 12.]

Art. 4332. **Warrants on treasurer.**—He shall draw warrants on the treasurer for the payment of all moneys directed by law to be paid out of the treasury; and no warrant shall be drawn unless authorized by law; and every warrant shall refer to the law under which it is drawn; and no warrant shall be issued in favor of any person, or the agent or assignee of any person indebted to the state, until such debt be paid. [Id. sec. 13.]

Art. 4333. **No warrants to be drawn, unless.**—No warrant shall be drawn on the treasury of this state by the comptroller based alone on the requisition of any individual or board, except as otherwise provided by law; but, in all cases, an account must first be made in pursuance of some specific appropriation, and filed with the comptroller by some one duly authorized and verified by affidavit. [Id. sec. 14.]

Art. 4334. **Shall prescribe forms.**—He shall prescribe and furnish the forms to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts, and shall adopt such regulations, not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper assessment and collection of the revenues of the state; and all such forms of the same class, kind and purpose shall be uniform in size, arrangement, matter and form. [Id. sec. 15.]

Art. 4335. **Allowance to tax collector.**—He shall remit, or make an allowance, to every tax collector in the auditing of his accounts, for all sums of money which, in his judgment, have been illegally assessed. [Id. sec. 15a.]

Art. 4336. **Comptroller's account to be approved by secretary of state.**—The account of the comptroller against the state shall not be passed to the treasurer until approved by the secretary of state. [Id. sec. 16.]

Art. 4337. **Bonds to be deposited in office.**—All liens, mortgages, bonds and other securities for money given to this state or any officer, and being for the use of the state, unless otherwise specially directed, shall be deposited in the office of the comptroller. [Id. sec. 17.]

Art. 4338. [2830] **Audited claims to be reported to legislature.**—The comptroller of the state of Texas shall keep a book for the purpose of registering and indexing all audited claims against the state, and, on the meeting of the regular session of the legislature, shall make a minute report of the same to the two houses thereof, giving the names and amounts of all audited claims. [Act 1876, p. 281.]

Art. 4339. **Accounts to be closed, when.**—The accounts of the comptroller shall be annually closed on the last day of August; and he shall exhibit all books, papers, vouchers and all other matters pertaining to his office, for the examination of either branch of the legislature, or any committee which may be by them appointed, whenever required by them to do so. [Act 1910, 4 S. S., sec. 18.]

Art. 4340. **Shall render account to governor, when.**—In addition to the reports required by the constitution, the comptroller shall exhibit to the governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the state, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed. [Id. sec. 19.]

Art. 4341. **Shall preserve books, records, etc.**—The comptroller of public accounts shall preserve the books, records, papers and other things belonging

to his office, and deliver the same, without injury or damage, to his successor. [Id. sec. 20.]

Art. 4342. To be notified of deficiencies, when.—All heads of departments, managers of state institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the state for any deficiency that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next legislature; and such estimate shall be immediately filed with the governor of the state, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file the same with the comptroller; and the same shall be authority for the comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the comptroller, or paid by the treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claim, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the legislature thereafter; provided, that the provisions of this section [article] shall not apply to fees and dues for which the state may be liable under the general laws; provided, further, when any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once, but must be approved by the governor as provided in this section [article].

Art. 4343. Chief clerk.—The comptroller shall appoint a chief clerk, who, before entering upon the duties of his office, shall be required to take the oath prescribed by the constitution, and give bond in the sum of ten thousand dollars, payable in like manner as the bond of the comptroller, conditioned for the faithful performance of his duties, whose duty it shall be to discharge the duties of the comptroller when the comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the comptroller, to supervise the keeping of the books, records and accounts of the department, and to perform such other duties as may be required of him by law and by the comptroller; and, in the event the office of the comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as comptroller until a comptroller is appointed and qualified.

Art. 4344. Deposit warrants.—The comptroller shall have printed uniform deposit warrants, which shall be of four classes: "State revenue," "available school," "permanent school," and "miscellaneous;" and which shall be prepared in triplicate and marked "original," "duplicate," and "triplicate," respectively. Each class shall be separately serially numbered, and shall be on paper of a different color from the other classes. He shall provide for the use of his department a warrant register for each class of deposit warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled and the lines numbered consecutively. When a deposit warrant is prepared, it shall be registered in the deposit warrant register for the class to which it belongs and on the line in such register corresponding in number with the number of the deposit warrant registered. A distribution of the amount stated in each deposit warrant shall be posted in detail to the ledger containing accounts for each source of reve-

nue. The triplicate deposit warrant shall be, on receipt by the treasurer of the amount stated therein, receipted by the treasurer and delivered to the person making the deposit, the original to the state treasurer, who shall file the same numerically; and the duplicate shall be, on receipt of the amount stated therein, receipted by the treasurer, and by him returned to the comptroller, who shall file same numerically. The printed forms for these warrants shall be so prepared and arranged that the original, duplicate and triplicate may, by use of carbon sheets, all be prepared at one and the same writing; and no deposit shall be received into the state treasury on any account, except upon a deposit warrant issued as herein provided.

Art. 4345. **Deposit receipts.**—The comptroller shall have printed uniform deposit receipts, to be issued by the comptroller to cover moneys and other securities received and held by the state treasurer for which no deposit warrant is issued, or the issuance of a deposit warrant for which, if deferred, except office fees of the state treasurer. Such receipts shall be prepared in duplicate and marked "original" and "duplicate," respectively, and shall be serially numbered; and the printed form for these receipts shall be so prepared and arranged that the original and the duplicate may, by the use of carbon sheets, both be prepared at one and the same writing. The duplicate shall be receipted by the treasurer, and by him returned to the comptroller, and the original delivered to, and retained by, the state treasurer. He shall provide his office with separate registers, prepared in like manner and form, as the register provided for in article 4344 of this chapter, in which he shall register the deposit receipts, issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued.

Art. 4346. **Claims and accounts.**—All claims and accounts against the state shall be submitted on forms prescribed by the comptroller, and in duplicate, when required by him, and, except claims for pensions, shall be so prepared as to provide for the entering thereon, for the use of the comptroller's department, as well as other appropriate matters, the following:

- (a) Signature of the head of the department or other person responsible for incurring the expenditure, or of the person on whose account the expenditure was incurred.
- (b) Appropriation number.
- (c) Initials of the person ascertaining if there are funds available.
- (d) Initials of the person auditing the claim.
- (e) Number and date of warrant issued with the initials of the person preparing the warrant.
- (f) Initials of the person posting to ledger.
- (g) Initials of the person comparing the claim and warrant.

Art. 4347. **Claims to be classified.**—There shall be three classes of claim forms, as follows:

1. "General," which shall consist of: (a) payrolls, covering departmental and institutional services; (b) traveling expense vouchers; (c) purchases and services other than personal; and (d) sheriff and court claims; and under the head of sheriff and court claims the comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary; but those of the same kind, use and purpose shall be uniform in size, arrangement, matter and form.

2. "Special," covering all claims for which special warrants are issued and all claims and accounts under this head of the same kind, use and purpose shall be uniform in size, arrangement, matter and form.

3. "Pensions." The forms for pensions shall be prescribed by the comptroller, and shall be uniform in size, arrangement, matter and form.

Art. 4348. **List of claims to be kept.**—When claims and accounts are received, it shall be ascertained if there are funds available therefor; and the persons making the examination shall indicate such fact by marking his initials upon such claim; and, if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class, "general," "special," and "pension," respectively. There shall be kept, either in book form or in the form of a card index, an alphabetical index of claimants; but, as to pay rolls, the department or institution shall be the claimant. The index shall show only the name of the claimant and the number of the claim. After the expiration of two years, such claims shall be removed from the files and otherwise securely stored and preserved as records.

Art. 4349. **Pay warrants.**—The comptroller shall have printed uniform pay warrants, which shall be of three classes, "general," "special," and "pension." Such warrants shall be prepared in duplicate, and shall be marked "original," and "duplicate," respectively; and each class shall be serially numbered and shall be of a color of paper different from the other class. Such warrants shall be prepared so as to provide for entering thereon, in addition to other appropriate matter, the following:

(a) Initials of the person in the comptroller's department comparing the warrant with the claim.

(b) Initials of the person in the comptroller's department registering the warrant.

(c) Designation of the fund against which the warrant is drawn.

Art. 4350. **Pay warrants registered.**—The comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled, and the lines numbered consecutively. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such entries in those registers shall be on the line corresponding in number with the number on the pay warrant register; and such registry shall consist only of an entry of the amount and name of the payee of such warrant; and, if a warrant is erroneously prepared and not issued, or is canceled, or is properly shown to be lost or destroyed, such fact shall be noted in the register opposite the number of such warrant in the register. One person shall be designated by the comptroller as warrant clerk and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the comptroller for warrants coming into his possession. No warrant shall be prepared except on presentation to the warrant clerk of a properly verified and audited claim, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. When a warrant has been properly prepared, the claim upon which it was prepared shall be initialed with the initials of the warrant clerk, and such warrant shall be registered as herein provided; and the fact of the registration thereof shall be shown by writing thereon the initials of the person registering the same. When a warrant is properly prepared, it shall be, with the claim upon which it is based, passed to the comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead. Such warrant shall then be passed to, and registered in, the treasurer's department and signed by the state treasurer, or some

person authorized by law to sign for him, and returned to the comptroller's department. Such warrant shall then be delivered by the comptroller to the person entitled to receive it; and he shall, at his option, take a receipt from such person therefor; which receipt shall be filed in his office. The printed forms for these warrants shall be so prepared and arranged that the original and duplicate may, and the same shall, by the use of carbon sheets, be prepared at one and the same writing.

Art. 4351. Law not to apply to pension warrants.—Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered.

Art. 4352. Registration of bonds.—The comptroller shall procure for the use of his department suitable books appropriately ruled and printed, to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall register alphabetically all state, county, school, municipal, and drainage or other such bonds required by law to be registered by him. Neither the bonds nor opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register; and, on the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed; and, when any bond is paid or redeemed, it shall be the duty of the proper officer of the authority paying such bond to notify the comptroller of the fact and date of such payment or redemption, and for entering the file number of all documents and other papers filed in connection with such bond; and all papers and documents pertaining to such bonds shall be filed and appropriately numbered.

Art. 4353. Account of bonds belonging to each fund to be kept separate.—The comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the state; each of which accounts shall be charged with the principal of such bond or purchase; and, with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; each of which controlling accounts shall be balanced quarterly at the same time as and the balance of which shall correspond with like accounts kept by the state treasurer.

Art. 4354. State general ledger.—The comptroller shall establish and maintain a double entry system of bookkeeping to be in charge of the chief bookkeeper. The accounts of each of the funds shall be opened in a "state general ledger;" and, at the start, credited with a balance of the funds on hand. An account shall also be opened with the state treasurer and charged with the cash on hand and the balance in depositories. Each charge shall represent the aggregate amount of cash held by him for the various funds. Thereafter, no entry shall be made in the ledger except by means of the double entry system. Warrants issued shall be charged in monthly totals to the fund accounts. Accounts shall be opened for the purpose of showing the amount of outstanding pay warrants from time to time; which accounts shall be credited with the warrants issued and charged with the warrants paid. All outstanding pay warrants, at the time this act shall go into effect, shall

be definitely ascertained, and the account started with a credit for the aggregate amount, and the several fund accounts charged with the outstanding pay warrants against said accounts respectively. The comptroller shall charge the state treasurer in totals with all deposit warrants as issued and credit him with warrants paid so that the balance in the treasurer's hands, together with the balance in the state depositories, shall agree with the balance shown by this account.

Art. 4355. **Revenue ledger.**—The comptroller shall keep a ledger, to be known as "revenue ledger," in which a distribution shall be made of the revenues derived by the state from all sources, and the amount derived from each source, as stated. The sources of revenue printed on the back of the duplicate in each deposit warrant issued therefor by the comptroller shall be posted to the revenue ledger, and its balances periodically agreed with the deposit warrants issued.

Art. 4356. **Ledger for accounting of tax collectors.**—The comptroller shall keep the accounts of tax collectors in a separate ledger, one for current taxes and the other for delinquent and insolvent taxes, and these ledgers shall be made self-balancing by means of controlling accounts.

Art. 4357. **Ledger for account of state treasurer.**—The comptroller shall keep a suspense ledger in which the accounts of the state treasurer shall be stated in respect to moneys held by him, pending the issuance of deposit warrants and moneys and securities held, other than those for state purposes, for all of which the comptroller shall issue deposit receipts, posting the same in total to this ledger. It shall also include the accounts of heads of departments for all moneys received by them, and not deposited with the state treasurer; which accounts shall be kept in monthly totals based upon monthly reports furnished to the comptroller by each of the heads of departments.

Art. 4358. **Shall keep journals.**—The comptroller shall keep journals through which all entries are made in the ledgers.

Art. 4359. **Issue duplicate warrants, when.**—The comptroller of public accounts, when satisfied that any original warrant drawn upon the state treasurer has been lost, or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the state has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the comptroller his bond in double the amount of the claim, with two or more good and sufficient sureties, payable to the governor, to be approved by the comptroller, and conditioned that the applicant will hold the state harmless and return to the comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the state on collecting the same.

Art. 4360. **Duty when duplicates are improperly issued.**—If, after the issuance of said duplicate or copy, the comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the state, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in the court having jurisdiction of the amount in controversy, in the city of Austin, Travis county, Texas.

Art. 4361. **Comptroller and treasurer to examine and cancel warrants.**—The comptroller shall examine the disbursements of the treasurer at the

end of each quarter, and shall, together with the treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands.

CHAPTER THREE.

STATE TREASURER.

[See "Education—Public." See "Depositories."]

Article.	Article.
His election, term of office and salary.....4362	Custodian of school fund bonds.....4376
Vacancies, how filled.....4363	Duty with respect thereto.....4377
His bond and oath.....4364	Authority to return certain moneys to counties.....4378
New bond may be required.....4365	Warrant system.....4379
Failure to give new bond.....4366	Shall post daily totals.....4380
Shall receive moneys on warrants of comptroller.....4367	Register of warrants issued.....4381
How money to be paid out.....4368	Shall keep certain other accounts.....4382
Shall keep strict account.....4369	Outstanding warrants.....4383
An account for each appropriation.....4370	General revenue account.....4384
Shall make an annual exhibit to governor.....4371	Appropriation ledger.....4385
Public moneys only to be kept in treasury.....4372	Daily statement from land office.....4386
May appoint chief clerk, etc.....4373	Office fee book.....4387
Chief clerk may act, when and how.....4374	Cash balancing books.....4388
Shall turn over to his successor.....4375	Ledger to contain, what.....4389
	Bond books.....4390
	Bond register.....4391

Article 4362. [2849] **His election and term of office.**—There shall be elected by the qualified voters of the state, at the time and places of election for members of the legislature, a state treasurer, who shall hold his office for the term of two years, and until the election and qualification of his successor. [Re-enacted Acts 1909, 2 S. S., p. 438, sec. 1. Const., art. 4, sec. 2.]

Art. 4363. [2850.] **Vacancies, how filed.**—Should a vacancy occur in the office of the state treasurer, the governor shall fill the same by appointment for the unexpired term; which appointment shall be submitted to the senate, if in session, for confirmation. [Re-enacted Acts 1909, 2 S. S., p. 438, sec. 2.]

Art. 4364. [2851] **His oath and bond.**—The state treasurer shall, within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with no less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office, and shall take and subscribe the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state; which said bond shall not be void on the first recovery of part, or of the whole of the penalty, but shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust, and until his successor shall be duly qualified and shall have entered upon the duties of his office. [Acts March 19, 1846, p. 10, sec. 1. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 3. P. D. 5282.]

Art. 4365. [2852] **New bond may be required.**—It shall be the duty of the attorney general, with the comptroller, on the first days of June and

December of every year, to examine the bond of the treasurer and make diligent inquiry into the condition of the sureties on said bond; and, if, in the opinion of the attorney general, said bond is not sufficient, from death, removal, insolvency of said sureties, or from any cause, to secure the state in her rights, then, it shall be the duty of the attorney general to notify said treasurer in writing of the insufficiency of said bond; and, should said treasurer fail, for the space of twenty days from the date of such notice, to furnish a sufficient new bond, it shall be the duty of the governor forthwith to suspend said treasurer from office. [Act May 3, 1873, p. 62, sec. 3. Re-enacted Act 1909, 2 S. S., p. 438, sec. 4.]

Art. 4366. [2853] **Failing to give new bond.**—Should the treasurer be suspended from office under the provisions of the preceding article, it shall be the duty of the governor to appoint some suitable person as treasurer, who shall give bond as in other cases, said bond to be approved by the governor; and the appointee shall perform the duties of treasurer until the suspended officer shall give a new bond to be approved by the governor, as in other cases. [Id. sec. 4. Re-enacted Act 1909, 2 S. S., p. 438, sec. 5.]

Art. 4367. [2854] **Shall receive moneys on warrant of comptroller.**—The treasurer shall receive, on the warrants of the comptroller of public accounts, all moneys which shall, from time to time, be paid into the treasury of the state, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the comptroller, and the triplicate given to the person depositing such moneys. [Act March 19, 1846, sec. 2. P. D. 5283. Re-enacted Act 1909, 2 S. S., p. 438, sec. 6.]

Art. 4368. [2855] **How money to be paid out.**—The treasurer shall countersign and pay all warrants drawn by the comptroller of public accounts on the treasury, which are authorized by law; and no money shall be paid out of the treasury except on the warrants of the comptroller. [Id. sec. 3. P. D. 5284. Re-enacted Act 1909, 2 S. S., p. 438, sec. 7.]

Art. 4369. [2856] **Shall keep strict accounts.**—He shall keep true, regular and methodical accounts of the receipts and expenditures of the public moneys of the treasury, and close his accounts annually on the thirty-first day of August, with the proper and legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year. [Id. sec. 4. P. D. 5285. Re-enacted Act 1909, 2 S. S., p. 438, sec. 8.]

Art. 4370. [2858] **An account for each appropriation.**—He shall also open an account in the treasury for all appropriations of money made by law, so that the appropriations and the application in pursuance thereof may clearly and distinctly appear. [Id. sec. 6. P. D. 5287. Re-enacted Act 1909, 2 S. S., p. 438, sec. 9.]

Art. 4371. [2859] **Shall make an annual exhibit to the governor.**—In addition to the reports required by the constitution, the treasurer shall submit to the governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the treasury, and of the balance of money remaining therein to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to do so. [Id. sec. 7. P. D. 5288. Re-enacted Act 1909, 2 S. S., p. 438, sec. 10.]

Art. 4372. [2860] **Public moneys and that only to be kept in the treasury.**—All moneys received by the treasurer shall be kept in the safes and vaults of the treasury; and it shall not be lawful for the treasurer to keep or

receive into the building, safes or vaults of the treasury any money, or the representative of money, belonging to any individual, except in cases expressly provided for by law; nor shall it be lawful for said treasurer to appropriate to his own use, or loan, sell or exchange any money, or the representative of money, in his custody or control as such treasurer. [Act May 3, 1873, p. 62, sec. 1. P. D. 5290. Re-enacted Act 1909, 2 S. S., sec. 11.]

Art. 4373. [2861] **May appoint chief clerk, etc.**—The treasurer shall appoint a chief clerk, who shall be required to give bond in the sum of twenty thousand dollars, payable to the governor of the state, and conditioned as is the bond of the state treasurer, and shall appoint such other employes as may be authorized by law; each and all of whom shall receive such compensation as may from time to time be appropriated by law for that purpose. [Amended Act 1909, 2 S. S., sec. 12.]

Art. 4374. [2862] **Chief clerk may act, when and how.**—The chief clerk of the treasurer's office shall, whenever by reason of sickness, unavoidable absence or other cause, the treasurer is not able to act, sign his own name as acting treasurer, and do such other acts and things as the treasurer himself might legally do; and the legal acts and signatures of such chief clerk as acting treasurer shall be as valid as the acts and signatures of the state treasurer himself. [Amended Act 1909, 2 S. S., sec. 13.]

Art. 4375. [2863] **Shall turn over to his successor.**—The treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the state, together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to the office of state treasurer. [Act March 19, 1846, p. 10, sec. 8. P. D. 5289. Re-enacted Act 1909, 2 S. S., p. 438, sec. 14.]

Art. 4376. [2863a] **Custodian of school fund bonds.**—The treasurer of the state of Texas is hereby made the custodian of all bonds in which the school funds of the state of Texas have been, or may hereafter be, invested; and it is hereby made his duty to keep said bonds in his custody until the same shall be paid off, discharged, or otherwise disposed of by the proper authorities of said state. [Acts 1895, p. 9. Re-enacted Act 1909, 2 S. S., p. 438, sec. 15.]

Art. 4377. [2863b] **Duty with respect thereto.**—Said treasurer shall, upon the payment of any installment of interest, see that the proper credit is given, and that the coupons on said bonds, when paid, shall be properly separated therefrom and canceled by said treasurer. [Id. Re-enacted Act 1909, 2 S. S., p. 438, sec. 16.]

Art. 4378. **Certain money returned to counties.**—Whenever there is money in the state treasury placed there to pay off any of the obligations due by any county, city or town, and it is made to appear to the comptroller, by certified copy of the records of county commissioners' court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then it shall be the duty of the comptroller to draw a warrant on the state treasury in favor of such county, city or town for the amount of money so remaining in the treasury; and the state treasurer shall pay such money on said warrant of the comptroller to the treasurer of such county, city or town, for the benefit of the general fund of such county, city or town. [Act 1901, p. 19.]

Art. 4379. **Deposit warrant register.**—The state treasurer shall cause to be prepared a deposit warrant register designed with columns for state revenue, available school fund, and miscellaneous; all warrants to be entered consecutively and distributed to the proper columns. [Act 1909, 2 S. S., p. 438, sec. 17.]

Art. 4380. Shall post daily totals.—The state treasurer shall cause the daily totals of state revenue and all available school deposit warrants to be posted to the fund accounts in the ledger, and the items in the miscellaneous column to be posted in detail, except that deposit warrants for bonds sold or redeemed shall be posted in a bond book. [Id. sec. 18.]

Art. 4381. Register of warrants issued.—The state treasurer shall keep registers of warrants issued, one for general warrants, and one for special warrants. In the case of pensions, the comptroller shall furnish a list of those issued; which list shall be compared with the warrants and shall constitute the treasurer's register of pension warrants issued. The date of payment of all warrants shall be stamped on the above registers. The state treasurer shall keep a "warrants paid register" with columns headed "general," "special," and "pensions." In this register, the general and special warrants shall be entered when paid in detail and the pension warrants in one daily total. [Id. sec. 19.]

Art. 4382. Certain other accounts.—The state treasurer shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which, when opened, shall be credited the daily totals of the several registers of warrants issued and charged with the daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants. [Id. sec. 20.]

Art. 4383. Outstanding warrants.—Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the comptroller for his record. With this list, the state treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month. [Id. sec. 21.]

Art. 4384. General revenue account.—The state treasurer shall charge the daily totals of the general warrants issued from the register to "general revenue" account in the ledger. The daily total of pension warrants issued shall be similarly treated; while the special warrants issued shall be charged to the fund account to which they apply, except that those issued for bonds purchased shall be posted to the bond book. [Id. sec. 22.]

Art. 4385. Appropriation ledger.—The state treasurer shall charge all pay warrants issued under the authority of appropriations in detail to the "appropriation ledger," an account being kept for each appropriation, which shall be credited with the amount of the appropriation. The total of the appropriation so credited shall be charged to an account called "appropriation voted." The daily totals of the general warrants issued shall be credited to this account, so that the balance shall represent the aggregate amount of unused appropriation. [Id. sec. 23.]

Art. 4386. Daily statement from land office.—The state treasurer shall receive daily from the general land office a detailed list of remitters of money for interest, principal and leases of school, university and asylum lands, together with the actual remittances, which he shall cash and deposit in his vault, if the necessity arises. A deposit receipt shall be issued by the comptroller for the daily total of such remittances; and the cashier of the treasurer's department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. When deposit warrants are issued, they shall be credited in this cash book, as well as any refunds; and the balance shall represent the aggregate of items still in suspense. Refunds shall be made in a manner similar to that in present use, except that they shall all be made on the comptroller's authority. [Id. sec. 24.]

Art. 4387. **Office fee book.**—The state treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the treasury department; which fees shall be deposited into the treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the comptroller. [Id. sec. 25.]

Art. 4388. **Cash balancing book.**—The treasurer shall keep a book, to be called “cash balancing book,” for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. [Id. sec. 26.]

Art. 4389. **Ledger to contain what.**—The ledger kept by the state treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants except those issued for bonds. The pay warrants issued, except those for bonds, shall be charged to the several fund accounts from the warrant register in daily totals. [Id. sec. 27.]

Art. 4390. **Bond book.**—The state treasurer shall keep a bond book, with columns for each fund, which shall start with the aggregate amount of bonds now held and be charged with all subsequent additions and credited with all bonds sold or redeemed. The entries in the bond book shall be posted from the deposit warrant and special warrant registers, being the deposit warrants issued for bonds sold or redeemed and special warrants for bonds purchased. The treasurer shall also keep a bond register, in which shall be entered the essential details of all bonds held by him and belonging to any state fund. [Id. sec. 28.]

Art. 4391. **Bond, etc., register.**—The state treasurer shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and state depository banks, and all other bonds lodged with him under the provisions of the statutes, the registration of which is not otherwise provided for by law. The relinquishment of these securities shall be on the authority of the comptroller. The state treasurer shall keep a separate bond book in which to enter all these transactions consecutively, posting each item to the register; which book shall be opened with the aggregate of securities now held. [Id. sec. 29.]

CHAPTER FOUR.

COMMISSIONER OF THE GENERAL LAND OFFICE.

[See "Public Lands"—Ch. 2.]

Article.	Article.		
His election, term of office.....	4392	Receiving clerk	4402
Vacancies, how filed.....	4393	Shall receive and receipt for money.....	4403
His bond and oath.....	4394	Shall register receipts and payments.....	4404
Seal of office.....	4395	Shall report to the governor.....	4405
General duties.....	4396	If defaulting, to be removed.....	4406
To give information to the governor, etc.....	4397	Chief and other draftsmen.....	4407
Chief clerk, his bond, etc.....	4398	Appointment of clerks.....	4408
May act as commissioner, when.....	4399	Salary of chief draftsman, etc.....	4409
Spanish translator.....	4400	All employes may be removed by the	
His duties.....	4401	commissioner	4410

Article 4392. [2864] **His election and term.**—There shall be elected by the qualified voters at the time and places of election for members of the legislature, a commissioner of the general land office, who shall hold his office for the term of two years, and until the election and qualification of his successor in office, and shall reside at the capital during his continuance in office. [Const., art. 4, secs. 2, 23.]

Art. 4393. [2865] **Vacancies, how filled.**—In case of a vacancy in the office of commissioner of the general land office, the governor shall fill the same by appointment, which shall be submitted to the senate, if in session, for confirmation; and the person so appointed shall hold said office for the unexpired term.

Art. 4394. [2866] **His bond and oath.**—The commissioner of the general land office shall, before he enters upon the discharge of the duties of his office, enter into a bond with three or more sureties, in the sum of fifty thousand dollars, payable to the governor and his successors in office, for the use of the state, conditioned for the faithful discharge of his official duties, and take and subscribe the oath prescribed by the constitution; which bond, after being approved by the governor, shall, together with the oath, be filed in the office of the secretary of state. [Act May 12, 1846, p. 232, sec. 5. P. D. 4096.]

Art. 4395. [2867] **Seal of office.**—The commissioner of the general land office shall procure a seal of office with the words, "General Land Office, the State of Texas," engraved around the margin, and such other device as the governor shall approve; which approval shall be certified and recorded in the office of the secretary of state. [Id. sec. 6. P. D. 4089.]

Art. 4396. [2868] **His general duties.**—It shall be the duty of the commissioner to superintend, control and direct the official conduct of all subordinate officers of the general land office, and to execute and perform all acts and things touching or respecting the public land of the state of Texas, or rights of individuals in relation thereto, as may be required of him by law. [Id. sec. 1. P. D. 4091.]

Art. 4397. [2869] **Give information to the governor, etc.**—The commissioner of the general land office shall give information to the governor, or either branch of the legislature, concerning the public lands, or the general land office, from time to time, as may be required. [Id. sec. 12. O. & W. 1155.]

Art. 4398. [2871] **Chief clerk.**—The commissioner of the general land office shall appoint a chief clerk, who shall hold his office at the pleasure of the commissioner, and shall enter into bond, with three or more sureties, in the penal sum of twenty thousand dollars, payable to the governor and his successors in office, for the use of the state, and conditioned for the faithful discharge of the duties of his office; which bond shall be approved by the gov-

ernor and filed in the office of the secretary of state. [Acts of 1846, p. 232, sec. 4. P. D. 4094.]

Art. 4399. [2872] **May act as commissioner, when.**—In case of sickness, absence, death or resignation of the commissioner of the general land office, it shall be lawful for the chief clerk to perform all the duties required of the commissioner. [Id. sec. 4. P. D. 4095.]

Art. 4400. [2873] **Spanish translator.**—The commissioner of the general land office shall appoint a translator who shall thoroughly understand the Spanish and English languages, and who shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, and give bond, with three or more good sureties, in the penal sum of twenty thousand dollars, payable to, and to be approved by, the governor, and conditioned for the faithful discharge of the duties of his office. [Id. sec. 3. Act Dec. 14, 1837, p. 62, sec. 33. P. D. 4094, 4097.]

Art. 4401. [2874] **His duties.**—It shall be the duty of said translator to translate into the English language, and record in a book to be kept by him for that purpose, all the laws and public contracts relating to titles of lands which are written in the Spanish or Castilian language, and also to translate and record in like manner all original titles or papers relating thereto which are written in said language, and which may be on file in the general land office. [Id. sec. 34. P. D. 4098.]

Art. 4402. [2875] **Receiving clerk.**—The commissioner of the general land office shall, with the consent and approval of the governor, appoint a suitable person to act as receiving clerk for the land office; and the person thus appointed shall, before entering upon the duties of his office, qualify and execute a bond in the sum of twenty-five thousand dollars, payable to the governor and approved by him, conditioned as other official bonds for a faithful discharge of the duties of his office; which bond shall be filed in the office of the secretary of state. [Act Nov. 10, 1866, p. 161, sec. 1.]

Art. 4403. [2876] **Shall receive and receipt for money.**—It shall be the duty of the receiving clerk to receive all funds that are required to be paid to the commissioner by existing laws, and to give to the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and, if any funds are received of a general character in advance of fees and dues, it shall be so stated; and the receiving clerk shall be responsible therefor to the state or individual. [Id. p. 162, sec. 2.]

Art. 4404. [2877] **Shall register receipts and payments.**—The receiving clerk shall keep a book or books, in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books, and shall make a report to the treasurer on the last day of each month of all funds in his hands due the state, paying the same in and taking the receipt in his own name in the same manner as heretofore required by law of the commissioner. [Id.]

Art. 4405. [2878] **Shall report to the governor, etc.**—It shall be the duty of the receiving clerk to furnish the governor, through the commissioner of the general land office, on or before the meeting of the legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment; and it shall be his duty to keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in; and, in his reports to the treasury he shall pay in kind all funds in his hands that belong to the state of Texas, and, upon his removal or resignation, shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the commissioner, taking a receipt for the same. [Id. sec. 3.]

Art. 4406. [2879] **If defaulter, to be removed.**—The commissioner shall from time to time examine the books and accounts of the receiving clerk and note that they are properly kept, and, if any defalcation is found, shall report the same to the governor at once, who shall suspend him from office until an examination is made, and, if found guilty, he shall be removed and proceedings instituted upon his bond to recover whatever deficit may occur. [Id.]

Art. 4407. [2880] **Chief and other draftsmen.**—The commissioner of the general land office shall appoint one chief draftsman, and such number of compiling or assistant draftsmen as may from time to time be authorized by law, whose duty it shall be to make out and complete maps of all surveys made in the several counties and districts from the maps furnished by county and district surveyors; and they shall from time to time, as surveys are made in the several counties and land districts and forwarded to the general land office, as required by law, plat such surveys upon the proper county or district maps. Such chief draftsman and other draftsmen shall also perform all drafting and other duties as may be required of them by the commissioner of the general land office, for the benefit of the state or individuals. [Act Feb. 5, 1841, p. 150. P. D. 4100.]

Art. 4408. [2881] **Appointment of clerks.**—The commissioner of the general land office shall appoint such number of clerks as may from time to time be authorized by legislative appropriation or other law of the state; and such clerks and the compiling and assistant draftsmen provided for in the preceding article, shall receive such compensation for their services as may be appropriated for that purpose.

Art. 4409. [2882] **Salary of chief clerk, etc.**—The chief clerk, translator, receiving clerk and chief draftsman shall receive such compensation for their services as may from time to time be appropriated by law for that purpose.

Art. 4410. [2883] **All employes may be removed by the commissioner.**—All clerks, draftsmen or other employes of the general land office, including the chief clerk, translator, receiving clerk and chief draftsman, shall hold their offices and positions at the pleasure of the commissioner, and may be removed by him at any time for satisfactory cause.

CHAPTER FIVE.

ATTORNEY GENERAL.

[See "Lands—Public." Ch. 10.]

Article.	Article.
His election and term.....4411	Agent of county authorized to bid.....4423
Vacancies, how filled.....4412	Sale of judgments against insolvents.....4424
Shall represent state in higher courts...4413	Register of official acts.....4425
And advise district attorneys.....4414	Shall pay over collections, when.....4426
Direct county attorneys to sue, etc.....4415	Enforce forfeitures of charters, when...4427
Shall require and make reports of suits..4416	To inquire into charter rights, etc.....4428
Prepare forms for contracts.....4417	No admission to prejudice state.....4429
Shall advise the governor.....4418	Office, where kept.....4430
Shall inspect accounts, where.....4419	First office assistant to act, when.....4431
Represent state at sales.....4420	Assistant attorney general.....4432
To execute deeds, when.....4421	Same.....4433
May sell property, how.....4422	Governor to order suits, etc.....4434

Article 4411. [2884] **His election, term.**—There shall be elected by the qualified voters, at the time and places of election for members of the legislature, an attorney general, who shall hold his office for the term of two years, and until the election and qualification of his successor in office. [Const., art. 4, secs. 1, 2, 22.]

Art. 4412. [2885] **Vacancies, how filled.**—In case of a vacancy in the office of attorney general, the governor shall fill such vacancy by appointment, which shall be submitted to the senate, if in session, and the person so appointed shall hold his office until the next succeeding general election for members of the legislature and the qualification of his successor.

Art. 4413. [2886] **Shall represent state in higher courts.**—It shall be the duty of the attorney general to prosecute and defend all actions in the supreme court or courts of appeals in which the state may be interested, and also to perform such other duties as may be prescribed by the constitution and laws. [Act May 11, 1846, p. 206, sec. 1. P. D. 198.]

Art. 4414. [2887] **And advise district attorneys.**—He shall counsel and advise the several district and county attorneys in the prosecution and defense of all actions in the district or inferior courts wherein the state is interested, whenever requested by them. [Id. sec. 3. P. D. 200.]

Art. 4415. [2888] **Shall transmit state demands for suit.**—He shall transmit to the proper district or county attorneys, with such instructions as he may deem necessary, all certified accounts, bonds or other demands which may have been delivered to him by the comptroller of public accounts for prosecution and suit. [Id. sec. 6. P. D. 203.]

Art. 4416. [2889] **Shall require and make reports of suits.**—He shall require the several district and county attorneys to report to him semi-annually, at the close of the courts of their respective districts or counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money; and he shall report to the comptroller of public accounts annually, on the last day of October and at such other times as the comptroller may request, a full and correct statement of the situation of all suits instituted for the collection of public money. [Id. secs. 7, 8. P. D. 204-5.]

Art. 4417. [2890] **Prepare forms for contracts, etc.**—He shall, whenever requested by the comptroller of public accounts, prepare proper forms for contracts, obligations and other instruments which may be wanted for the use of the state. [Id. sec. 10. P. D. 207.]

Art. 4418. [2891] **Shall advise the governor, etc.**—At the request of the governor or the heads of departments at the capitol, he shall give them legal advice in writing upon any question touching the public interest or concerning their official duties. [Id. sec. 9. P. D. 206. Acts 1879, ch. 117, p. 127.]

Art. 4419. [2892] **Shall inspect accounts in offices of treasurer and comptroller.**—He shall at least once a month inspect the accounts in the offices of the state treasurer and the comptroller of public accounts, of all officers, and of individuals charged with the collection or custody of funds belonging to the state, and shall proceed immediately to institute, or cause to be instituted, against any such officer or individual, who is in default or arrears, suit for the recovery of funds in his hands; and he shall also institute immediately criminal proceedings against all officers or persons who have violated the laws by misapplying, or retaining in their hands, funds belonging to the state.

Art. 4420. [2893] **Required to attend sales and bid in land.**—In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state, except executions issued upon judgments in cases of scire facias, the agent or attorney representing the state, by and with the advice and consent of the attorney general of the state, is hereby authorized and required to attend such sales, and bid on, and buy in, for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon. [Acts 1879, S. S. pp. 9-10.]

Art. 4421. [2894] **To execute deeds.**—In all cases where property is so purchased by the state, the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases. [Id. sec. 2.]

Art. 4422. [2895] **May sell such property, how.**—The agent or attorney of the state buying for the state any such property at such sale shall be authorized, by and with the advice and consent of the attorney general, at any time to sell or otherwise dispose of said property so purchased in the manner and upon such terms and conditions as he may deem most advantageous to the state; and, if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury and placed to the credit of the general revenue; and when such sale is made the attorney general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property, which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof. [Id. sec. 3.]

Art. 4423. [2896] **Agent of county authorized to bid in for county and to sell same.**—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the state, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the state is given in this chapter in similar cases; and, when any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and, whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property. [Id. sec. 4.]

Art. 4424. [2897] **Sale of judgments against insolvents.**—Whenever the principal and sureties upon any judgment held by the state are insolvent, so that under any existing process of law said judgment or any part thereof can not be collected, there shall be, and is hereby constituted, a board consisting of the attorney general, comptroller and treasurer of the state, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to be the best interest of the state, all the right of the state to such judgment; and, if

by public sale, if the amount bid on the same should not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the state, and upon sale shall make a proper assignment of said judgment to the purchaser. [Id. sec. 5.]

Art. 4425. [2898] **Register of official acts.**—The attorney general shall keep in proper books, to be provided for that purpose at the expense of the state, a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the state is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. [Acts of 1846, p. 204. Id. sec. 12. P. D. 209.]

Art. 4426. [2899] **Shall pay over collections immediately.**—All money received by the attorney general for debts due or penalties forfeited to the state, shall be paid by him into the treasury immediately after the receipt thereof. [Id. sec. 11. P. D. 208.]

Art. 4427. [2900] **Enforce forfeiture of charters, etc.**—It shall be the duty of the attorney general, unless otherwise expressly directed by law, whenever sufficient cause exists therefor, to seek a judicial forfeiture of the charters of private corporations; and he shall at once take steps to seek such forfeiture in all cases where satisfactory evidence is laid before him that any corporation receiving state aid has, by the non-performance of its charter conditions or the violations of its charter, or by any act or omission, misuser or non-user, forfeited its charter or any rights thereunder. [Act Aug. 21, 1876, p. 312, sec. 1.]

Art. 4428. [2901] **And inquire into all charter rights.**—He shall also especially inquire into the charter rights of all private corporations and, from time to time, in the name of the state, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. [Const., art 4, sec. 22.]

Art. 4429. [2902] **No admission to prejudice.**—No admission, agreement or waiver, made by the attorney general, in any action or suit in which the state is a party, shall prejudice the rights of the state. [Act May 11, 1846, p. 206, sec. 14. P. D. 211.]

Art. 4430. [2903] **Office, where kept.**—The attorney general shall reside and keep his office at the seat of government. [Id. sec. 15. P. D. 212.]

Art. 4431. **First office assistant to act, when.**—In case of the absence or inability to act of the attorney general, the first office assistant of the attorney general shall discharge the duties which devolve by law upon the attorney general. [Act 1903, p. 117, sec. 1.]

Art. 4432. [2904] **Assistant attorney general.**—The governor shall appoint, by and with the advice and consent of the senate, if in session, an officer to be styled the assistant attorney general, who shall hold his office for the term of two years, and until the election and qualification of his successor. The assistant attorney general shall assist the attorney general in representing the interests of the state in all suits, pleas and prosecutions in the supreme court and courts of appeal. [Acts March 15, 1875, p. 179. Acts 1903, p. 117.]

Art. 4433. [2906] **Further duties.**—The assistant attorney general shall represent the state in all cases in the district or inferior courts of any county when required so to do by the governor or attorney general; and he shall, in addition thereto, perform such other duties as may be required of him by law or by the governor or attorney general. [Id.]

Art. 4434. [2907] **Governor authorized to order civil suits, when.**—The governor is authorized to order through the proper officials the institution, prosecution or defense of any civil action or suit whenever he deems such course proper for the assertion or defense of any right of the state, and to render to said officials such assistance as to him may seem necessary or expedient. [Acts of 1887, p. 138.]

CHAPTER SIX.

COMMISSIONER OF AGRICULTURE.

Article.	Article.
Election and qualification.....	Nursery stock shipped into state; certificate of inspection.....
4435	4462
Term of office.....	Transportation companies not liable, when.....
4436	4463
Oath and bond.....	Commissioner to revoke certificate, when.....
4437	4464
Location of office.....	Provisions, how enforced.....
4438	4465
Chief clerk.....	Provisions, how enforced by prosecution.....
4439	4466
Chief clerk shall act, when.....	Terms defined.....
4440	4467
Same.....	Rules and regulations by commissioner.....
4441	4468
Seal.....	Reward.....
4442	4469
Duties.....	Expenses and claim for reward.....
4443	4470
Shall be member of board of directors of A. & M. college.....	Farmers to make affidavit.....
4444	4471
Shall make report.....	Discoverer to report to governor.....
4445	4472
Report printed and distributed.....	Farmers appointed to experiment.....
4446	4473
Shall co-operate with A. & M. college.....	Oath and preliminaries before payment of reward.....
4447	4474
Duties as to irrigation.....	Same.....
4448	4475
To employ engineers.....	Board to locate agricultural and experimental stations established.....
4449	4476
Shall maintain bureau of cotton statistics.....	Additional stations located.....
4450	4477
Public ginners, who are; to obtain certificates.....	Stations may be abandoned or located elsewhere.....
4451	4478
Affidavit.....	In locating, donations may be considered.....
4452	4479
Certificate furnished commissioner.....	Bulletins may be printed and circulated.....
4453	4480
Commissioner to furnish blanks.....	Stations may be discontinued at pleasure of board.....
4454	4481
Ginners to report to commissioner.....	Board may employ assistants, purchase implements, etc.....
4455	4482
Reports opened and made public, when.....	Appropriation for.....
4456	4483
Revealing contents of reports punishable.....	Board of directors of A. & M. college to assist U. S. government in maintaining stations.....
4457	4484
Shall supervise protection of fruit trees.....	
4458	
Proceedings where diseased trees, etc., are found.....	
4459	
Nurseries to be examined and certificates issued.....	
4460	
Shipments of nursery stock to be accompanied by certificate.....	
4461	

Article 4435. **Election and qualification.**—A commissioner of agriculture shall be elected by the people at the same time and in the same manner, who shall qualify and assume office, as all other state officers. He shall be an experienced and practical farmer, and shall have knowledge of agriculture, manufacture and general industry. [Acts 1907, p. 127, sec. 1.]

Art. 4436. **Term of office.**—The term of office of said commissioner shall be two years, and until his successor shall have been elected and qualified. Any vacancy occurring in said office shall be filled for the unexpired term by appointment of the governor. [Id. sec. 2.]

Art. 4437. **Oath and bond.**—Before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall execute a bond in the sum of five thousand dollars, with two or more good and sufficient sureties, payable to the state of Texas, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office, which oath and bond shall be filed in the office of the secretary of state. [Id. sec. 4.]

Art. 4438. **Location of office.**—The office of the commissioner shall be located in the city of Austin. [Id. sec. 6.]

Art. 4439. Chief clerk.—Said commissioner shall appoint one chief clerk, who shall possess a practical knowledge of agriculture, horticulture, manufacturing and kindred industries, and the proper methods of marketing the products of said industries. He may appoint such other clerks as the labors of his office may require, and all clerks shall be removable at the pleasure of the commissioner. [Id. sec. 7.]

Art. 4440. Chief clerk shall act, when.—The chief clerk shall possess all the powers and perform all the duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner, and shall enter into bond in the sum of three thousand dollars with two or more sureties to be approved by the governor, and payable to the state of Texas, conditioned for the faithful performance of his duties. [Id. sec. 8.]

Art. 4441. Same.—The chief clerk shall discharge such duties as may be prescribed by the commissioner; his annual salary shall not exceed fifteen hundred dollars per annum, payable monthly on certificate of the commissioner, and his expenses while traveling on the business of the office, under the direction of the commissioner, shall be paid by the state. [Id. sec. 9.]

Art. 4442. Seal.—The commissioner shall have and may use a seal of office, the design of which shall consist of a star with five points, surrounded by a wreath of olive and live oak; said seal shall not be less than one and a half and not more than two inches in diameter, and on the margin thereof around the wreath shall be inserted the words, "Commissioner of Agriculture, State of Texas," or some intelligible abbreviation thereof. [Id. sec. 10.]

Art. 4443. Duties.—The duties of the commissioner shall be as follows:

1. He shall cause to be executed all laws in relation to agriculture.
2. He shall encourage the proper development of agriculture, horticulture and kindred industries.

3. He shall encourage the organization of agricultural societies; and, for the benefit of the agricultural communities, he shall cause to be held farmers' institutes at such times and at such places throughout the state as will best promote the advancement of agricultural knowledge and the improvement of agricultural methods and practices. He shall publish and distribute such papers and addresses read or delivered at these institutes as he shall deem to be of value to the farming interest.

4. He shall investigate the subject of sub-soiling, the problems of drainage and of irrigation, their relation to agriculture, with a view to extending the area of the same, and the best modes of effecting each in the different portions of the state.

5. He shall investigate and report upon the question of broadening the market and of increasing the demand for cotton goods and all other agricultural and horticultural products, both in the United States and in foreign countries. Further, it shall be his duty to compile the statistics showing from abroad the number of bales of cotton consumed by the spinners, and demands for our cotton, the methods and course that sales to foreign countries now take, showing the purchasers, brokers, etc., through whose hands the cotton largely passes after leaving the producers, likewise showing in what countries an increased trade could be worked up, and thereby giving a better outlet for the trade and the best method to bring consumer and purchaser together, and all other information beneficial to farmers.

6. He shall cause to be investigated the diseases of grain, cotton, fruit, and other crops grown in this state, with a view to discovering remedies for such diseases. He shall also investigate the habits and propagation of the various insects that are injurious to the crops of this state, and the best methods for

their destruction. The protection of fruit trees, shrubs and plants shall be under his direct supervision and control, and he shall have and exercise all the powers and perform all the duties in relation thereto, conferred or imposed by law.

7. He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the state. He shall also collect and publish information relating to forestry, tree planting, the best means of preserving and replenishing forests, and shall encourage the planting and culture of nut trees and recommend such legislation as may be necessary for the protection, restoration and preservation of the forests of this state.

8. He shall inquire into the subjects connected with stockraising, dairying and poultry; the obtaining and rearing of such domestic animals and fowls as are of most value, and the breeding and improvement of the same. He shall encourage the raising of fish and the culture of bees.

9. He shall investigate and report upon the growing of wool, and the utility and profit of sheep raising; he shall also inquire into the culture of silk, its preparation for market and its manufacture.

10. He shall correspond with the department of agriculture at Washington, and with the departments of agriculture of the several states and territories of the United States, and, at his option, with those of foreign countries, and with the representatives of the United States in foreign countries, with the view of gathering facts and information that will aid and advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies, associations and individuals in the state as he may choose, having for their object the promotion of agriculture in any of its branches.

11. He shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be considered of benefit in developing the agricultural resources of this state. He shall cause a proper collection of agricultural statistics to be made annually; and, to this end, he shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the state, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. It is hereby made the duty of said tax assessor to return said blanks, with accurate answers, to the commissioner of agriculture on or before the first day of June following. It is further made the special duty of the said tax assessor to forward by registered mail to the commissioner of agriculture lists of the names and addresses of all ginners within their counties when asked to do so by the commissioner. It shall be the duty of the commissioner to furnish to every ginner blank forms for reports, which forms shall be filled out by said ginners as the commissioner may direct, and returned by them to the commissioner. In order to facilitate the collection and collation of accurate information concerning the various subjects treated of in this chapter, the heads of the several state departments, and of the state institutions, are hereby required to furnish accurately such information as may be at their command whenever called upon for same by said commissioner. In the prosecution of his work, the commissioner is hereby empowered to enter manufacturing establishments chartered or authorized to do business in this state, and said corporations shall furnish such information as said commissioner may request of them.

12. He shall make and publish such rules and regulations as he may deem necessary to carry into effect the provisions of this chapter. [Id. sec. 11.]

Art. 4444. Shall be member of board of directors of A. & M. College.—The commissioner of agriculture shall be ex officio a member of the board of directors of the agricultural and mechanical college of the state, and shall be allowed all necessary expense in attending the meetings of said board. [Id. sec. 12.]

Art. 4445. Shall make report.—The commissioner shall make and submit to the governor, on or before the first day of November of each year, a full and comprehensive report showing the work and expenditures of his office during the fiscal year preceding, which report shall be transmitted by the governor to the legislature. [Id. sec. 13.]

Art. 4446. Report printed and distributed.—Under the direction of the commissioner, the public printer shall print annually not to exceed ten thousand copies of the annual report of said commissioner, said report to be distributed to the farmers through the farmers' institutes and other agricultural organizations or otherwise, at the discretion of the commissioner. [Id. sec. 14.]

Art. 4447. Commissioner shall co-operate with A. & M. College.—No provision of this chapter shall be construed as to in any way conflict with the scope and character of the work of the agricultural and mechanical college or of the agricultural experiment stations, but the said commissioner shall co-operate with the said agricultural and mechanical college and said agricultural experiment stations in all lines looking toward the agricultural and horticultural interest of the state. [Id. sec. 15.]

Art. 4448. Duties as to irrigation.—It shall be the duty of the commissioner of agriculture to prepare and make public reports on the present system of irrigation now in operation in this state, the cost of maintenance and operation of same, the character and kind of irrigation plants which result in the greater saving to the users of water, the class and character of water contracts entered into by the various canal companies; he shall also inquire into the reasonableness and fairness of rates being charged for water by the various canal companies in this state, and, from time to time, shall make public the result of his inquiries; he shall collect and publish statistics and other information regarding the irrigation of rice and other crops as may be of benefit in developing and collaborating a more efficient system of laws safeguarding and defining the rights of users and sellers of water for irrigating purposes; and he shall make up and file an annual report on same with such recommendations as he may deem beneficial to the industry, which report shall be filed with the governor and transmitted to the legislature. [Act 1909, p. 353, sec. 1.]

Art. 4449. To employ engineers.—The commissioner of agriculture is hereby empowered and authorized to employ a competent engineer and expert, possessing a practical knowledge of the application of irrigation to the raising of rice and other crops, for the purpose of assisting him in performing the duties required of him in the preceding article. [Id. sec. 2.]

BUREAU OF COTTON STATISTICS.

Art. 4450. Shall maintain bureau of cotton statistics.—The commissioner shall maintain in the department of agriculture a bureau of cotton statistics, as hereinafter provided. [Act 1907, p. 313.]

Art. 4451. Public ginners, who are; to obtain certificate.—All custom ginners of seed cotton in this state are declared to be public ginners. Any person or persons, firm or corporation in this state, before engaging in the business of public ginners, shall obtain from the county clerk of the county in which gin is located a certificate after the following form:

Number

This is to certify that
ofcounty, Texas, has this day filed
affidavit required by law of all public ginners in this state.

(Seal.)

.....
County clerk of county, Texas.

[Id. sec. 1.]

Art. 4452. **Affidavit.**—The form of affidavit to be made to, and filed with,
the county clerk shall be as follows:

I, of
county, Texas, do solemnly swear that I will, so long as I may operate a public
gin, make and forward a true and correct report of the number of bales of
cotton ginned by me to the commissioner of agriculture at Austin, as re-
quired by law. [Id. sec. 2.]

Art. 4453. **Certificate furnished commissioner.**—The county clerk shall
number each certificate issued by him consecutively, beginning at number
one, and shall immediately forward to the commissioner of agriculture the
name and postoffice address to whom certificate was issued. The clerk shall
issue certificates to all ginners and shall take the affidavits as herein required
without cost to ginners. [Id. sec. 3.]

Art. 4454. **Commissioner to furnish blanks.**—The commissioner of agri-
culture, upon receipt of information of the issuance of a ginner's certificate
from any county clerk in this state, shall immediately forward all necessary
blanks to the public ginner for making official cotton report, which shall con-
sist of the following:

Envelopes addressed to the commissioner of agriculture, Austin, Texas;
and there shall be printed upon the upper left hand corner the words, "Offi-
cial Cotton Report of.....County," also blanks, to-wit:

Official Cotton Report.

Certificate No.

..... 19...

Commissioner of Agriculture,

Austin, Texas.

Sir: This is to certify that I have ginned
bales of cotton from the day of
19....., to the day of
19.....

(Signed)

[Id. sec. 4.]

Art. 4455. **Ginners to report to commissioner.**—All public ginners shall
make and forward reports to the commissioner of agriculture on the blanks
furnished them, by the third of each month, stating the exact number of bales
ginned by them the preceding calendar month. This report must be made by
all ginners, unless they have ceased to operate, the notice of which must be
forwarded to the commissioner of agriculture. These reports must be securely
sealed by ginners. [Id. sec. 5.]

Art. 4456. **Reports opened and made public, when.**—The commissioner of
agriculture shall open, on the eighth of each month, and tabulate the official
cotton reports of the various counties in the presence of three credible wit-
nesses, who shall be appointed by the governor. The complete report, showing
total number of bales of cotton ginned, shall be given out to the public, in-

cluding the press, at eleven o'clock a. m., on the ninth of each month. [Id. sec. 6.]

Art. 4457. Revealing contents of reports punishable.—If the commissioner of agriculture, his assistants, or any one else connected with the opening and tabulating of these official cotton reports, or any other person, shall give out any information as to the number of bales of cotton ginned before the time specified by this act, shall, upon conviction, be punished as provided by the Criminal Code. [Id. sec. 7.]

PROTECTION OF FRUIT TREES, SHRUBS AND PLANTS.

Art. 4458. Shall supervise protection of trees, etc.—The protection of fruit trees, shrubs and plants shall be under the supervision and control of the commissioner of agriculture, and the same shall be regulated as provided in the ensuing articles. [Acts 1909, p. 316.]

Art. 4459. Proceedings where diseased trees, etc., are found.—No person in this state shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees affected with the contagious disease known as yellows. Nor shall any person keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, or root rot. Nor shall any person knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot; nor any tree, shrubs or plant infested with or by the San Jose scale or other insect pest dangerously injurious to, or destructive of, trees, shrubs or other plants; nor any orange or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly," or other injurious insect pests or contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs or plants, infested with injurious insect pests or contagious diseases. Every such tree, shrub or plant shall be a public nuisance, and as such it shall be the duty of the commissioner of agriculture, or his representatives, to abate it; and no damage shall be awarded for entering upon the premises upon which there are trees, shrubs or plants infested with yellows, black knot, crown gall or other infectious or dangerous disease, or infested with San Jose scale or other dangerous insect pest, for the purpose of legally inspecting the same; nor shall any damages be awarded for the treatment by the commissioner of agriculture, or his duly authorized agents or representatives, of such trees, shrubs or plants, or for altogether destroying such trees if necessary to suppress such insect pest or disease, if done in accordance with the provisions of this article. But the owner of the trees, shrubs or plants shall be notified immediately upon its being determined that such trees, shrubs or plants should be destroyed, by a notice in writing signed by the commissioner, or the person or persons representing him; which said notice in writing shall be delivered in person to the owner of such trees, shrubs or plants, or left at the usual place of residence of such owner, or, if such owner be not a resident of the locality, to notify by leaving such notice with the person in charge of the premises, trees, shrubs or plants, or in whose possession they may be. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs or plants, and shall call attention to the law under which it is proposed to destroy them, and the owner shall, within ten days from the date upon which such notice shall have been received, remove and burn all such diseased or infected trees, shrubs or plants. If, however, in the judgment of said commissioner, or person representing him, any tree, shrub or plant infected with any disease, or infested with dangerously injurious insects, can be treated with sufficient remedies, he may direct such treatment to be carried out by the owner under the direction of

the commissioner, agent, employe or representatives. In case of objections to the findings of the chief inspector, employes or representatives of the commissioner, an appeal may be made to the commissioner, whose decision shall be final. An appeal must be taken within five days from service of said notice, and shall act as a stay of proceedings until it is heard and decided. When the commissioner, or chief inspector, or employer or representative appointed by him, shall determine that any tree or trees, shrub or other plants must be treated or destroyed forthwith, he may employ all necessary assistance for that purpose; and such representative or representatives, agent or agents, employe or employes, may enter upon any or all premises necessary for the purpose of such treatment, removal or destruction. But such commissioner, or the person representing him, shall, before such treatment or destruction, first require the owner or person in charge of the trees, shrubs or plants, to treat or destroy same, as the case may be; and, upon the refusal or neglect upon the part of said owner or person in charge to so treat or destroy such trees, plants or shrubs, then such commissioner, chief inspector, or person or persons representing him, shall treat or destroy such trees, shrubs or plants; and all charges and expenses thereof shall be paid by such owner or person in charge of said trees, shrubs or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered in any court having jurisdiction, upon the suit of such commissioner, or chief inspector, or the county attorney of the county where the premises are situated, together with all costs, including an attorney fee of ten dollars, to be taxed as other costs. [Id. sec. 1.]

Art. 4460. **Nurseries to be examined and certificates issued.**—The commissioner of agriculture shall cause an examination to be made at least once each year of each and every nursery or other place where trees, shrubs or plants, commonly known as nursery stock, are grown or exposed for sale, for the purpose of ascertaining whether the trees, shrubs or plants therein kept or propagated for sale are infected with contagious disease or diseases, or infested with insect pests. If, after such examination, it is found that the said trees, shrubs or other plants so examined are apparently free in all respects from any contagious or infectious disease or diseases, dangerously injurious insect pest or pests, the said commissioner shall issue to the owner or proprietor of the stock so examined a certificate setting forth the fact that the stock so examined was at the time of such examination apparently free from any and all such disease or diseases, insect pest or pests. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such act or sale or transference shall be punishable as provided by this law. [Id. sec. 2.]

Art. 4461. **Shipments of nursery stock to be accompanied by certificate.**—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle or package, contains nursery stock to be delivered to more than one individual, partnership, or corporation, each portion of such nursery stock to be delivered to such individual, partnership or corporation, shall also bear a copy of the certificate of inspection issued as provided in the preceding article. [Id. sec. 2.]

Art. 4462. **Nursery stock shipped into state; certificate of inspection.**—No individual, partnership or corporation outside the state shall be permitted to ship nursery stock into this state without first filing with the commissioner of agriculture a certified copy of his or their certificate of inspection issued by the proper authorities in the state in which the proposed shipment originates. This certificate must show that the stock to be shipped has been examined by the proper officer of inspection in that state or province, and that the stock

is apparently free from all dangerous insect pests or contagious diseases; and, when fumigation is required by the commissioner of agriculture, that the stock has been properly fumigated. Immediately upon receipt of the filing with the commissioner of agriculture of this certificate, he shall, in addition, make further investigation as to the moral standing and integrity of the applicant as will satisfy him that the applicant is entitled to receive a certificate. A fee of five dollars shall be required from the applicant, upon receipt of which the commissioner of agriculture may issue a certificate permitting the applicant to ship into the state. Each box, bale or package of nursery stock from outside the state shall bear a tag on which is printed a copy of the certificate of this state, and also a copy of the certificate of the state in which it originates. [Id. sec. 3.]

Art. 4463. **Transportation companies not liable, when.**—No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees, packages, bales, bundles or boxes when not accompanied by copies of the certificates provided for in the preceding article. The agent of such companies or common carriers shall report any such shipment to the commissioner of agriculture immediately. Shipments of nursery stock into this state, or originating within the state, without tags or proper certificates as provided for in article 4462 shall be dealt with as in article 4459. [Id. sec. 3.]

Art. 4464. **Commissioner to revoke certificate, when.**—The commissioner shall have power to revoke any certificate which has been issued when he shall find that false representations have been made by the party or parties to whom certificates have been issued, or who have refused to comply with the law, instructions, rules and regulations given by the commissioner of agriculture as required by the provisions of this chapter and its enforcement. [Id. sec. 4.]

Art. 4465. **Provisions, how enforced.**—The commissioner of agriculture shall enforce the provisions of the foregoing articles, and make and enforce such rules and regulations, not inconsistent with such articles, as may be deemed necessary for carrying the same into effect, including the provisions relating to the inspection of nurseries, orchards, forest trees, greenhouses, and all other products originating from the same, within the meaning of these articles. He shall also appoint one person who shall be designated as chief inspector, whose duty it shall be to inspect, or cause to be inspected, under the directions of the commissioner of agriculture all trees, plants and shrubs of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, individual or corporation in this state, and also to inspect, or cause to be inspected, all orchards provided for above, and may employ such other person or persons, expert or experts, as may be necessary from time to time for administering and carrying into operation and enforcing these provisions; provided, the chief inspector shall not, during the time of such service, be interested in or connected with any nursery business whatsoever. The said commissioner shall fix and collect reasonable fees for the inspection provided for, and not less than two dollars and fifty cents nor more than fifteen dollars shall be charged for each inspection. All fees collected shall be paid to the department of agriculture and credited to the fund provided for administering this law. Any persons or experts employed by the commissioner of agriculture for the purpose of administering the provisions, rules and regulations hereof shall be paid a salary. Such salary shall not exceed the sum of five dollars per diem and traveling expenses while actually engaged in performing their duties, the same to be paid out of any fund made available to the department of agriculture for the enforcement of this law. [Id. sec. 5.]

Art. 4466. **Provisions, how enforced by prosecution.**—To enforce the provisions hereof, and the rules and regulations of the commissioner of agriculture

in reference thereto, suit shall be entered by the county attorney in any court having jurisdiction, and the sheriff or peace officer of any such court shall perform his usual duties in enforcing the provisions hereof. Any moneys appropriated for the department of agriculture for the administration of these provisions shall be available for use to the amount necessary for the enforcement hereof, as indicated herein; provided, that all fines collected from proceedings hereunder shall revert to the available school fund of the county in which the prosecution originates and is tried. [Id. sec. 7.]

Art. 4467. **Terms defined.**—The term “nursery stock,” within the meaning of these articles, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery or taken from the forests and offered for sale; all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants, or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this state, which may be a medium for disseminating injurious insect pests and contagious diseases. The term “nursery” shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. “Being in the nursery business” applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock regardless of the variety or quantity of nursery stock sold or grown. The term “dealer” shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An “agent of a nursery or dealer” shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer with whom the nursery stock offered for barter and traffic originates, or some co-operative basis for handling nursery stock with the grower or dealer, as specified in this article. Any such agent shall have proper credentials from the dealer he represents or co-operates with, and, failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of these articles, or the rules and regulations of the commissioner. [Id. sec. 8.]

Art. 4468. **Rules and regulations by commissioner.**—The commissioner of agriculture shall prepare suitable rules and regulations for the traffic of cape jasmine cut flower shipments, also for the shipment of such greenhouse and floral plants as may require control, in order that the purposes for which this law is established may be accomplished. He shall also provide such rules and regulations concerning city, private or public, parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a protection and immunity from insect pests and contagious diseases intended to be provided for by this law. It shall be the duty of city administrations through their proper officers, the duty of owners of parks, of city residence or other city property, to obey these rules and regulations, and co-operate with the commissioner of agriculture, or his representatives, in enforcing such rules and regulations, or any provisions of this law. [Id. sec. 9.]

BOLL WEEVIL—REWARD FOR EXTERMINATION.

Art. 4469. **Reward.**—The sum of fifty thousand dollars is appropriated out of any money in the treasury not otherwise appropriated for the purpose of discovering a practical remedy for the destruction of the boll weevil, said money to be used as hereinafter set forth, to-wit: That said money be held

in the state treasury subject to a warrant drawn thereon signed by the governor, president of agricultural and mechanical college and the commissioner of agriculture of Texas. That said persons shall constitute a board whose duty it shall be to offer, in the name of the state of Texas, the said named fifty thousand dollars to any person or persons who shall discover and furnish a practical remedy for the destruction of the cotton boll weevil in Texas. That said money shall not be drawn from the treasury until it has been thoroughly proven as hereinafter provided that the person or persons in whose favor the warrant is drawn have produced a practical remedy that will destroy the cotton boll weevil. Said board of three as aforesaid shall act jointly with a committee of five practical farmers to be appointed by the governor from five representative districts of the cotton producing belt of the state where the cotton boll weevil is prominent. [Acts 1903, p. 72, sec. 1.]

Art. 4470. Expenses and claim for reward.—The sum of two thousand five hundred dollars, or so much thereof as is necessary, be and the same is hereby appropriated to pay the expenses and per diem of the board appointed to pass on the remedy produced, said money to be used out of any money not otherwise appropriated and paid out under direction of the governor; provided, that each member shall be allowed five dollars per day for his services. The persons presenting their claims for said reward must subscribe to the following oath, to wit: "I,, have discovered a practical method by which the cotton boll weevil can be destroyed at a cost of not more than one dollar per acre per annum, and cause no bad effect to the cotton. My method is so economical that it can be used by all cotton planters." [Id. sec. 2.]

Art. 4471. Farmers to make affidavit.—Said five practical farmers, reputable citizens, shall subscribe to the following oath: "I,, swear (or affirm) that I have witnessed experiments and applications of Mr. in the destruction of the cotton boll weevil at I further swear (or affirm) that this method of destroying the weevil is so economical and practical that, if followed as directed by, will effectually destroy the weevil affecting cotton. That I have witnessed the test made for the destruction of the cotton boll weevil, that I have not received anything, or been offered anything, of value to secure my vote or influence in securing the reward for the party or parties claiming the same, and I do further swear (or affirm) that, to the best of my judgment, that the method offered by, which I have seen tested, is economical, practical and will destroy the cotton boll weevil, if followed as directed." [Id. sec. 3.]

Art. 4472. Discoverer to report to governor.—After the person or persons claiming said reward have complied with the above demands, he or they shall report to the governor that he or they have discovered a practical remedy for the destruction of the cotton boll weevil. [Id. sec. 4.]

Art. 4473. Farmers appointed to experiment.—It shall then be the duty of the governor to appoint five practical farmers, of good character and reputation, as aforesaid, selecting one from each of five representative districts of the cotton producing belt of Texas, who shall assemble at a place designated by the governor, where experiments will be carried on by the party or parties claiming said reward, and, in case of refusal, resignation or disqualification of any member of the committee, the governor shall appoint another from the representative district so vacated to fill his place. [Id. sec. 5.]

Art. 4474. Oath; preliminaries before payment of reward.—Those who have been selected by the governor to pass upon the practicability and expediency of the method by which he or they propose to kill or destroy the cotton boll weevil shall subscribe to the following oath: "I,, do solemnly swear that I am not related to the party or parties who are now claiming said reward, neither am I in any way interested in his patent or proposed means of destroying the cotton boll weevil." After a fair test or tests covering all

points claimed by the inventor or discoverer of a practical remedy for the destruction of the cotton boll weevil have been made, or may be made from time to time covering two consecutive years, to satisfy fully all members of the committee appointed by the governor, commissioner of agriculture, and the president of the agricultural and mechanical college, that the remedy proposed by the party or parties having been given a fair test for two consecutive years under every requirement of the committee appointed by the governor, and having been by them declared to be so economical, practical and effective and that the cost of same does not exceed one dollar per acre per annum, will so report to the governor, in writing, giving in full the details of the experiment witnessed, and recommending that the governor, commissioner of agriculture and the president of the agricultural and mechanical college pay to the party or parties who have made the test the reward offered by the state of Texas. [Id. secs. 6, 7.]

Art. 4475. **Same.**—After the aforesaid board of practical farmers, acting jointly with the governor, commissioner of agriculture and president of the agricultural and mechanical college of Texas, have passed on the claims of all who make application for the aforesaid reward, and have decided upon the most meritorious claim presented as hereinbefore required, then shall a period of two successive years elapse in which the people may put into practical application the remedy recommended. And, if at the expiration of the two years it has, in the judgment of the aforesaid board, proven a success, the fifty thousand dollars shall be awarded to the person or persons discovering or inventing said remedy. Provided, that the insecticide, device or machine, if patented, or, if any insecticide, the formulae of same shall be conveyed to the state of Texas before said party competing for the prize shall have the right to have same tested by the board free of charge; provided, further, this remedy shall not interfere with the discovery of any remedy by the state of Texas in the experimental station or by the agricultural and mechanical college; and provided, also, no man shall receive any benefit until he first proves that he was the first discoverer of such remedy; and the governor shall have the right at any time to suspend this appropriation provided a satisfactory remedy has in his judgment been discovered by the state experimental board. [Id. sec. 8.]

AGRICULTURAL AND EXPERIMENTAL STATIONS.

Art. 4476. **Board to locate established.**—The governor, the commissioner of agriculture and lieutenant governor are hereby constituted a board vested with power to designate places or localities in the state upon which agricultural, horticultural and feeding stations may be established. [Acts 1909, p. 332, sec. 2.]

Art. 4477. **Additional stations located.**—There shall be established at such places in the state of Texas, as such board may deem proper, experimental stations in addition to those now in existence for the purpose of making experiments in the planting and growing of agriculture, horticulture, cereals and plants, and the feeding and fattening of livestock for slaughter; such stations to be under the care, control, management and direction of the director of the agricultural experiment stations of the agricultural and mechanical college of Texas, and to be maintained and operated at such places in Texas as said board may direct. Two of these experimental stations shall be established west of the ninety-eighth meridian, one of which shall be in west Texas and the other in northwest Texas; one shall be located in what is known as the black land belt in central or north Texas, and one shall be located in the rice belt of south or southeast Texas, and at such other points as said board shall designate. [Id. sec. 1.]

Art. 4478. **Stations may be abandoned.**—After the location of any such station or stations, the same may, at the pleasure of the board, be abandoned and located elsewhere in the state of Texas. [Id. sec. 3.]

Art. 4479. **In locating stations, donations may be considered.**—In the location of any such agricultural, horticultural, or feeding station, said board may take into consideration any donation of money or other property to be used in the operation and management of such station or stations, and may accept any lease of lands upon which to carry on such experiments. [Id. sec. 4.]

Art. 4480. **Bulletins to be printed and circulated.**—It shall be the duty of the director of such stations and feeding places to issue and circulate among the farmers and livestock raisers of the state, from time to time, as may be deemed beneficial to such industries, printed bulletins showing the results of such experiments, such bulletins to be mailed to such persons as may desire same. [Id. sec. 5.]

Art. 4481. **Stations may be discontinued.**—The state agricultural and experimental stations shall be under and subject to these provisions, and may at the pleasure of said board be discontinued at such time as they may direct. [Id. sec. 6.]

Art. 4482. **Board may employ assistance, etc.**—The director of such station or stations shall have authority, in the conduct and management of the same, to employ such assistance as may be necessary and to purchase, from time to time, such implements, equipment and seeds as may be necessary in the successful management thereof, subject to the approval of said board. [Id. sec. 7.]

Art. 4483. **Appropriation for.**—There shall be appropriated out of any funds in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars per annum, or so much thereof as may be necessary, to be expended in the location and establishment, maintenance and operation of such station or stations, such appropriation to extend for two years from the end of the fiscal year for 1909. [Id. sec. 8.]

Art. 4484. **Board of directors of A. & M. college to assist U. S. government in maintaining stations.**—The board of directors of the agricultural and mechanical college of Texas are authorized and directed to assist the national government in maintaining an experiment station for the purpose of conducting experimental culture of tobacco and carrying on researches and experiments in tobacco growing under the direction of the national government's expert in the Seventeenth representative district. [Act 1909, p. 278, sec. 1.]

CHAPTER SEVEN.

COMMISSIONER OF INSURANCE AND BANKING.

[See also Title "Banks & Banking."']

	Article.		Article.
Appointment of	4486	Shall report laws to commissioners of other states, when.....	4493
Term of office.....	4486	Shall see that no company does life business, when.....	4493
Vacancies in office, how filled.....	4487	Shall admit mutual companies, when.....	4493
Oath and bond.....	4488	May change form of annual statement.....	4494
Clerks, may appoint.....	4489	Duties when parties refuse to appear and testify.....	4495
Chief clerk, duties of.....	4490	Sheriff and other peace officers shall execute service.....	4496
Shall be styled Commissioner of Insurance and Banking, and have a seal.....	4491	Shall issue certificate of authority, when; shall revoke certificate when suit removed to Federal Court.....	4497
Ineligibility of certain persons.....	4492	Shall compute reserve liability of companies.....	4498
Duties of commissioner—		Shall calculate reinsurance reserve.....	4499
Shall execute the laws.....	4493	Shall examine companies, have free access to books, may revoke or modify certificate, expenses for examinations.....	4500
File articles of incorporation and other papers.....	4493	Powers and duties of commissioner in cases of examination.....	4501
Shall calculate net value of policies.....	4493	Transfer of securities, must be countersigned.....	4502
Shall see that company has net value of policies on hand.....	4493	State treasurer, duty in regard to transfers.....	4503
May accept the valuation of commissioners of other states.....	4493	Free access to records, books, etc., given to commissioner and state treasurer.....	4504
Shall see that companies furnish certificate.....	4493	Instruments executed and copies of papers made evidence.....	4505
Shall calculate the reserve on fire insurance.....	4493	Commissioner authorized to make inquiries of companies.....	4506
Shall charge premiums in marine and inland insurance.....	4493	Commissioner's report.....	4507
Duties when company's capital is impaired.....	4493	Valid final judgment, insurance company's certificate of authority revoked, when.....	4508
Shall publish result of examination.....	4493		
Shall suspend or revoke certificate of authority.....	4493		
Shall report to attorney general.....	4493		
Shall furnish blanks.....	4493		
Shall keep records.....	4493		
Shall give certified copies.....	4493		
Shall report annually to governor.....	4493		
Shall send copy of reports to.....	4493		

Article 4485. [2908] **Appointment by the governor.**—The governor shall appoint, by and with the advice and consent of the senate, a commissioner of insurance and banking, who shall be a citizen of the state and experienced in matters of insurance. [Act Aug. 21, 1876, p. 219, sec. 2; Acts 1887, p. 99; Acts 1889, pp. 53-54; Const., art. 16, sec. 38.]

Art. 4486. [2909] **His term of office.**—The commissioner of insurance and banking shall hold his office for the term of two years, and until the appointment and qualification of his successor. [Id. secs. 2, 5.]

Art. 4487. [2910] **Vacancies in office, how filled.**—The governor may fill any vacancy occurring in the office of commissioner of insurance and banking, and report the name of the person so appointed to the senate, if in session, or at the next succeeding session of the legislature. Should the senate fail to confirm the appointment made by the governor within ten days after being advised thereof, then the said office shall be deemed vacant and a new appointment shall be made until the office is filled. [Id. sec. 27.]

Art. 4488. [2911] **Oath and bond.**—Within fifteen days after notice of his appointment, and before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall give a bond to the state of Texas in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office, which oath and bond shall be filed in the office of the secretary of state. [Id. p. 219, sec. 3.]

Art. 4489. [2912] **May appoint clerks.**—Said commissioner may appoint a competent chief clerk and such other clerks as the labors of his office may require; and all clerks shall be removable at the pleasure of the commissioner. [Sen. Jour., 1895, p. 478.]

Art. 4490. [2913] **Chief clerk, duties of.**—The chief clerk shall possess all the power and perform all the duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act from any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner; he may also be required by the commissioner to enter into bond with security, payable to said commissioner, for the faithful performance of the duties of his position. [Id.]

Art. 4491. **Title and seal of office.**—The said commissioner shall be styled, the commissioner of insurance and banking, and shall have a seal of office, the design of which shall consist of a star with five points, with letters composing the word "Texas," arranged between the respective points thereof; said seal to be not less than one and a half and not more than two inches in diameter, and on the margin, "Department of Insurance and Banking," or an intelligible abbreviation thereof. Such seal thus formed and impressed shall be the seal of office of the department of insurance and banking. [Acts of 1889, p. 53. Acts of 1907, p. 127, sec. 16.]

Art. 4492. [2915] **Ineligibility of certain persons.**—No person who is a director, officer or agent of, or directly or indirectly interested in, any insurance company, except as insured, shall be a commissioner or clerk; and it shall be unlawful for such commissioner, or any person employed by him or in any way connected with his office, to purchase all or any part of any mine or mineral land, to be in any manner interested in such purchase, during the term of his office or employment. [Acts of 1887, p. 99. Acts 1888, p. 10.]

Art. 4493. [3050] **Duties of commissioner.**—In addition to the duties required of the commissioner of insurance and banking, he shall perform other duties as follows:

1. **Shall execute the laws.**—To see that all laws respecting insurance and insurance companies are faithfully executed.

2. **File articles of incorporation and other papers.**—To file and preserve in his office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with him, and, upon application of any party interested therein, to furnish certified copies thereof upon payment of the fees prescribed by law. [Acts 1909, p. 192, sec. 59, par. 2.]

3. **Calculate net value of policies.**—He shall, as soon as practicable in each year, calculate or cause to be calculated in his office, by an officer or employe of his department, the net value on the thirty-first day of December of the previous year of all the policies in force on that day in each life or health insurance company doing business in the state, upon the basis and in the manner prescribed by law. [Id. par. 3.]

4. **Shall see that the company has net value of policies on hand.**—Having determined the net value of all the policies in force, it shall be his duty to see that the company has in safe securities of the class and character required by the laws of this state the amount of said net value of all its policies, after all its debts and claims against it and at least one hundred thousand dollars of surplus to policy holders have been provided for. [Id. par. 4.]

5. **May accept the valuation of commissioners of other states.**—He may accept the valuation made by the insurance commissioner of the state under whose authority a life insurance company was organized, when such valuation has been properly made on sound and recognized principles, as a legal basis as above; provided, the company shall furnish to him a certificate of the insurance commissioner of such states, setting forth the value calculated on the data designated above of all the policies in force in the company on the previous thirty-first day of December, and stating that, after all other debts of the company and claims against it at that time, and one hundred thousand dollars surplus to policy holders, were provided for, the company had, in safe

securities of the character required by the laws of this state, an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own state. [Id. par. 5.]

6. **Shall see that company furnishes certificate.**—Every life insurance company doing business in this state during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the insurance commissioner, and shall be liable for all charges and expenses consequent upon not having furnished said certificates. [Id. par. 6.]

7. **Shall calculate the reserve on fire insurance.**—For every company doing fire insurance business in this state, he shall calculate the reinsurance reserve for unexpired fire risks by taking fifty per cent of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run; provided, that, when the reinsurance reserve, calculated as above, is less than forty per cent of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks. For every company transacting any kind of insurance business in this state, for which no basis is prescribed by law, he shall calculate the reinsurance reserve upon the same basis prescribed in this section [article] as to companies transacting fire insurance business. [Id. par. 7.]

8. **Shall charge premiums.**—In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve. [Id. par. 8.]

9. **Duties when company's capital is impaired.**—Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this state, and adding thereto all other debts and claims against the company, he shall, in case he find the capital stock of the company impaired to the extent of twenty per cent, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do business within this state, and shall thereupon, in case the company is organized under authority of the state, immediately institute legal proceedings to determine what further shall be done in the case. [Id. par. 9.]

10. **Shall publish results of investigation.**—The commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public. [Id. par. 10.]

11. **Shall suspend or revoke certificate.**—He shall suspend the entire business of any company of this state, and the business within this state of any other company, during its non-compliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by him; and he shall give notice thereof to the insurance commissioner or other similar officer of every state, and shall publish notice thereof; provided, that he shall give such company at least ten days notice in writing of his intention to suspend its right to do business or revoke the certificate of authority granted by him, stating specifically the reason why he intends to so suspend or revoke such certificate of authority. [Id. par. 11.]

12. **Shall report to attorney general.**—He shall report promptly and in detail to the attorney general any violation of law relative to insurance companies or the business of insurance. [Id. par. 12.]

13. **Shall furnish blanks.**—He shall furnish to the companies required to report to him the necessary blank forms for the statements required. [Id. par. 13.]

14. **Shall keep records.**—He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined. [Id. par. 14.]

15. **Give certified copies.**—At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office, when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law. [Id. par. 15.]

16. **Report annually to governor.**—He shall report annually to the governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this state, and such other information as will exhibit the affairs of said department. [Id. par. 16.]

17. **Send copies of reports to.**—He shall send a copy of such annual report to the insurance commissioner or other similar officer of every state and to each company doing business in the state. [Id. par. 17.]

18. **Report laws to commissioners of other states.**—On request, he shall communicate to the insurance commissioner or other similar officer of any other state, in which the substantial provisions of the law of this state relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this state doing business within such other state. [Id. par. 18.]

19. **See that no company does business, when.**—He shall see that no company is permitted to transact the business of life insurance in this state whose charter authorizes it to do a fire, marine, lightning, tornado or inland insurance business, and that no company authorized to do a life or health insurance business in this state be permitted to take fire, marine or inland risks. [Id. par. 19.]

20. **Admit mutual companies, when.**—The commissioner of insurance and banking shall admit into this state mutual insurance companies organized under the laws of other states and who have two hundred thousand dollars assets in excess of liabilities engaged in cyclone, tornado, hail and storm insurance. [Id. par. 20.]

Art. 4494. **May change form of annual statement.**—The commissioner of insurance and banking may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to him best adapted to elicit a true exhibit of their condition and methods of transacting business; provided, that such terms and requirements shall elicit only such information as shall pertain to the business of the company. [Id. sec. 60.]

Art. 4495. **Duty when parties refuse to appear and testify.**—Whenever any person shall refuse to appear and testify or to give information authorized by this chapter to be demanded by the commissioner of insurance, such commissioner may file his application under oath with any district judge or district court within this state, where said witness is summoned to appear; and it shall be the duty of said judge to summon said witness, administer oaths as required by law and require answers to such questions; and such judge or court shall have power to punish for contempt as now provided by law. [Acts 1909, p. 192, sec. 63.]

Art. 4496. **Sheriffs, etc., shall execute service.**—Sheriffs and other peace officers of this state shall execute process directed to them by the commissioner of insurance and make return thereof to him, as in the case of process issued from any of the courts. [Id. sec. 64.]

Art. 4497. **Shall issue certificate of authority, when; revoke certificate, when.**—Should the commissioner of insurance and banking be satisfied that any company applying for a certificate of authority has in all respects fully complied with the law, and that, if a stock company, its capital stock has been

fully paid up, that it has the required amount of capital or surplus to policy holders, it shall be his duty to issue to such company a certificate of authority under the seal of his office, authorizing such company to transact insurance business, naming therein the particular kind of insurance, for the period of not less than three months nor extending beyond the last day of February next following the date of such certificate. And, if any such insurance company organized under the laws of any state or country, after having obtained a certificate of authority from the commissioner of insurance and banking, or other officer authorized to issue such permit to do business in this state, shall bring in any federal court any suit or action against any citizen of this state, or shall remove any suit or action heretofore or hereafter commenced in any court of this state, to which it is a party, to any federal court, the commissioner of insurance and banking shall forthwith revoke and recall the certificate of authority of such insurance company to do and transact business in this state; and no renewal of authority shall be granted to such insurance company to do business in this state for a period of three years after such revocation; and such insurance company shall thereafter be prohibited from transacting any business in this state until again duly authorized by law. [Id. sec. 40.]

Art. 4498. Shall compute reserve liability of companies.—It shall be the duty of the commissioner of insurance and banking, as soon as practicable in each year, to compute the reserve liability on the thirty-first day of December of the preceding year of every company organized under the laws of this state, or authorized to transact business in this state, which has outstanding policies of insurance on the lives of citizens of this state, in accordance with the following rules:

1. The net value on the first day of December of the preceding year of all outstanding policies of life insurance in the company issued prior to the first day of January, 1910; shall be computed according to the terms of said policies on the basis of the American Experience Table of Mortality, and four and one-half per cent interest per annum.

2. The net value on the last day of December, of the preceding year, of all policies of life insurance issued after the thirty-first day of December, 1909, upon the basis of the Actuary's or Combined Experience Table of Mortality, with four per cent interest per annum; provided, that the policies of any such life insurance company thereafter issued upon the reserve basis of an interest rate lower than four per cent shall be computed upon the basis of the American Experience Table of Mortality with interest at such lower rate per annum; provided, that any company which, on January 1, 1909, was writing policies on the basis of four and a half per cent, may continue on that basis until January 1, 1912, and its policies shall be so valued.

3. In every case in which the actual premium charged for an insurance is less than the net premium for such insurance computed according to its respective tables of mortality and rate of interest aforesaid, the company shall also be charged with the value of annuity, the amount of which shall equal the difference between the premium charged and that required by the rules above stated, and the term of which in years shall equal the number of future annual payments due on the insurance at the date of the valuation. [Id. sec. 15.]

Art. 4499. Shall calculate reinsurance reserve.—On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the commissioner of insurance and banking shall have calculated in his office the reinsurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, by taking fifty per cent of the gross premiums on

all unexpired risks that have less than one year to run and a pro rata of all premiums received on risks that have more than one year to run. [Id. sec. 53.]

Art. 4500. **Shall examine companies, have free access to books, etc.**—The commissioner of insurance and banking shall, at the end of each two years, or oftener if he deems necessary, in person or by one or more examiners, commissioned in writing, visit each company organized under the laws of this state, and examine its financial condition and its ability to meet its liabilities. He shall have free access to all the books and papers of the company or agents thereof relating to the business and affairs of such company, and shall have power to summon and examine under oath the officers, agents and employes of such company and any other person within the state relative to the affairs of such insurance company. He may revoke or modify any certificate of authority issued by him when any conditions or requirements prescribed by law for granting it no longer exist; provided, that he shall give such company at least ten days notice in writing of his intention to revoke or modify such certificate of authority issued by him, stating specifically the reasons why he intends to revoke or modify such certificate. The expense of every such examination shall be paid by the company so examined, but the commissioner shall not make any charge for services except for traveling or other actual expenses and shall furnish the company with an itemized statement of such expenses. [Id. sec. 41.]

Art. 4501. **Powers and duties of commissioner in case of examination.**—The commissioner of insurance and banking, for the purpose of examination authorized by law, has power either in person or by one or more examiners by him commissioned in writing:

1. To require free access to all books and papers within this state of any insurance companies, or the agents thereof, doing business within this state.

2. To summon and examine any person within this state, under oath, which he or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this state, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this state refusing to permit such examination. The reasonable expenses of all such examinations shall be paid by the company examined.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exist.

5. He shall also have power to institute suits and prosecutions, either by the attorney general or such other attorney as the attorney general may designate, for any violations of the law of this state relating to insurance; and no action shall be brought or maintained by any person other than the commissioner of insurance and banking for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this state. [Id. sec. 66.]

Art. 4502. [3054] **Transfer of securities by commissioner not valid unless countersigned by treasurer.**—No transfer by the commissioner of securities of any kind, in any way held by him in his official capacity, shall be valid unless countersigned by the treasurer of the state. [Acts of 1879, p. 224, sec. 13.]

Art. 4503. [3055] **Duty of treasurer in regard to such transfers.**—It is the duty of the state treasurer:

1. To countersign any such transfer presented to him by the commissioner.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the legislature, to state the transfers and the amount thereof, countersigned by him. [Id.]

Art. 4504. [3056] **Free access to records, books, etc., given to commissioner and treasurer.**—For the purpose of verifying the correctness of records, the commissioner of insurance shall be entitled to free access to the treasurer's records, required by the preceding article, and the treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the commissioner. [Id. sec. 14.]

Art. 4505. [3057] **Instruments executed by commissioner, and copies of papers in his office made evidence.**—Every instrument executed by the commissioner of insurance of this state, or of any other state, in which the substantial provisions of the laws of this state relating to insurance have been, or shall be, enacted, pursuant to authority conferred by law, and authenticated by his seal of office, shall be received as evidence; and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence with the same effect as the originals. [Id. p. 223, sec. 11.]

Art. 4506. [3058] **Commissioner authorized to make inquiries of company, etc.**—The commissioner of insurance is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties; and it shall be the duty of the company so addressed to promptly answer such inquiries in writing. [Act Feb. 17, 1875, p. 39, sec. 18.]

Art. 4507. [3059] **Annual statement to be tabulated and submitted to legislature by commissioner.**—It shall be the duty of the commissioner to cause the information contained in the annual statements of companies to be arranged in tabular form and prepare the same in a single document for printing, and submit the same to the legislature as a portion of his regular report to that body. [Id. p. 43, sec. 28.]

Art. 4508. [3060] **Insurance company's certificate of authority to transact business to be revoked, when.**—Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, canceled and annulled, and said company shall be prohibited from transacting business of insurance in this state until said execution be satisfied. [Acts of 1879, ch. 144, p. 159.]

CHAPTER EIGHT.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

	Article.		Article.
Election of	4509	Governor shall lay such report before	4516
General duties	4510	legislature	4516
Instructions binding	4511	School officers to make reports to state	4517
Shall note educational progress.....	4512	superintendent	4517
Shall have school laws printed.....	4513	Reports to be filed.....	4518
Shall furnish plans for school buildings.....	4514	Shall pro rate available funds monthly.....	4519
Shall make report.....	4515	Shall disburse warrants drawn by comp- troller	4520

Article 4509. **Election of.**—There shall be elected, at each general election for state and county officers, a state superintendent of public instruction, who shall hold his office for a term of two years, and until his successor is elected and qualified, and shall receive an annual salary of twenty-five hundred dollars, and may employ as many clerks as may be necessary to perform the duties of his office; provided, that no greater number shall be employed than the legislature has appropriated salaries for. The superintendent shall take the oath of office prescribed by the constitution, and shall perform such duties as may be prescribed by law. Appeal shall always lie from the rulings of the state superintendent to the state board of education. [Acts 1905, p. 263, sec. 24.]

Art. 4510. **General duties.**—The superintendent of public instruction shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the state. He shall hear and determine all appeals from the rulings of the decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions, unless they are reversed by the state board of education. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools, and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, shall they be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts of whatsoever kind against the school fund that are to be paid by the state treasurer, and, upon such approval, the comptroller shall be authorized to draw his warrant. [Id. sec. 25.]

Art. 4511. **Instructions binding.**—The state superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations, binding for observance on all officers and teachers in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has made no provision, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. [Id. sec. 27.]

Art. 4512. **Shall note educational progress.**—It shall be the duty of the state superintendent of public instruction to inform himself concerning the educational progress of the different parts of this state and of other states. In so far as he may be able, he shall visit different sections of this state and address teachers' institutes, associations, summer normals and other educational gatherings, to instruct teachers and arouse educational sentiment; and the legislature shall make adequate appropriation for necessary traveling ex-

penses, or those of his representative, when in the service of the state. [Id. sec. 29.]

Art. 4513. Shall have school laws printed.—He shall cause to be printed for general distribution such number of copies of school laws as may at any time be necessary, to be determined by the state board of education. [Id. sec. 28.]

Art. 4514. Shall furnish plans for school buildings.—It shall be the duty of the state superintendent of public instruction to prepare, as many as three sets of plans for public school buildings, the said plans being designed to meet the needs of rural schools of various sizes, and, upon request of the trustees of any school district, shall furnish copies of such plans and specifications. [Id. sec. 81. Amended Act 1909, p. 21.]

Art. 4515. Shall make report.—The state superintendent shall, one month before the meeting of each regular session of the legislature and ten days prior to any special session thereof, at which, under the governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the board of education of the condition of the public schools throughout the state. Such report shall give all the information called for by the board of education, and contain such other matters as the state superintendent shall deem important. [Id. sec. 46. Acts 1905, p. 263.]

Art. 4516. Governor shall lay report before legislature.—The governor shall lay such report before the legislature, and two thousand copies of said report shall be printed in pamphlet form for the use of the legislature and for distribution among the various school officers and libraries within the state, and the superintendents of public schools of other states and territories of the United States and Canada, and the bureau of education at Washington city. [Id. sec. 47.]

Art. 4517. School officers to make reports to state superintendent.—The state superintendent shall require of county judges, county, city and town superintendents, county and city treasurers and treasurers of school boards, and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, and other school officers and teachers, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them; and any county judge, or county, city or town superintendent, assessor, treasurer or teacher, who shall wilfully fail to make such report within twenty days after the same shall have been required by the state superintendent to be filed, shall be deemed guilty of a misdemeanor, and shall on conviction be fined as provided in the Penal Code; and said fine shall be paid, when collected, to the available school fund. [Id. sec. 48.]

Art. 4518. Reports to be filed.—The state superintendent shall file all reports, documents and papers transmitted to him and the state board of education by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same. [Id. sec. 26.]

Art. 4519. Shall pro rate available funds monthly.—On the first day of each month, the state superintendent of public instruction shall pro rate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the comptroller, and shall thereupon certify to the comptroller the total sum pro rated to each; and such certificate shall be authority for the comptroller to draw his warrant in favor of the treasurer of each such county, city or town or school district for the amount stated in such certificate. [Acts 1909, 2 S. S., p. 432, sec. 5.]

Art. 4520. **Shall disburse warrants drawn by comptroller.**—He shall receive from the state treasurer all warrants drawn by the comptroller in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public school, and shall transmit such warrants to the respective treasurers in favor of whom they are drawn. [Id. sec. 5.]

TITLE 66.

HEALTH—PUBLIC.

Chapter.

1. Texas State Board of Health.
2. Special Quarantine Regulations.

Chapter.

3. Pure Food Regulations.
4. Embalming Board.

CHAPTER ONE.

TEXAS STATE BOARD OF HEALTH.

Article.	Article.
Texas state board of health; how constituted	4521
Salaries and expenses of president and members	4522
Time and place of meeting of board.	4523
Officers and assistants appointed; salaries and duties.	4524
Members of board to qualify; commissions to issue.	4525
Bond of the president.	4526
President shall have charge of state quarantine	4527
General powers and duties of the state board of health.	4528
Board to prepare sanitary code.	4529
Duty of board in compiling, preparing and publishing sanitary code.	4530
Courts shall enforce sanitary code.	4531
Publication and distribution of sanitary code	4532
Other laws affecting public health not repealed	4533
May revise sanitary code.	4534
Perform duties of state health officers.	4535
Members of board may enter, examine and inspect, etc.	4536
Investigations by board; powers of and duties of court.	4537
Office of county physician abolished; office of county health officer substituted	4538
Qualification, appointment and compensation of county health officer.	4539
Office of city health officer substituted for city physician.	4540
City health officer.	4541
City health officers to be appointed by board, when.	4542
Duties of county health officer.	4543
County health officer under direction of the board; proceedings against for failure in duty.	4544
Duties of health officers as to indigent consumptives	4545
County health officers under direction of the board; proceedings against for failure in duty.	4546
No cost or appeal bond required of board.	4547
Duties of health officer enumerated.	4548
City health officer may be removed, when and how	4549
Board to file charges against city health officer; proceedings	4550
Compensation of city health officer.	4551
Annual conference of county and city health officers	4552
Legal proceedings in name of board; duty of attorney general in regard to.	4553

Article 4521. **Texas state board of health; how constituted.**—The Texas state board of health shall consist of seven members, who shall be legally qualified practicing physicians, who shall have had at least ten years experience in actual practice of medicine within the state of Texas, of good professional standing, who shall be graduates of reputable medical colleges, to be appointed biennially by the governor on or before the tenth day of March following his inauguration. One member of said board, who shall be appointed by the governor and confirmed by the senate, shall be designated by the governor as state health officer, and who shall be president and executive officer of the board. The members of said board shall hold their office for a term of two years, and until their successors shall be appointed and qualified, unless sooner removed for cause. [Acts 1909, p. 340, sec. 1.]

Art. 4522. **Salaries and expenses of president and members.**—The president of said board shall receive annually a salary of two thousand five hundred dollars. The other six members of said board shall receive no salary, but each of said members shall be allowed for each and every day he shall be in attendance upon the meetings of the board the sum of ten dollars, including the time spent in travel, and three cents per mile going and coming for actual expenses, to be paid on their vouchers when approved by the president of the board and the governor, by warrant drawn by the comptroller against the general appropriation provided by law for that purpose; provided, no member shall receive more than five hundred dollars annually. [Id. sec. 2.]

Art. 4523. **Time and place of meeting of board.**—A majority of the members of the board shall constitute a quorum for the transaction of business.

The board shall meet at Austin quarterly on a day to be fixed by the board, or hear and determine all appeals from the rulings and decisions of subordinate as often and at such time and places as such meetings shall be deemed necessary for the board. Timely notice of such meetings shall be given to each member of the board by the president thereof. The board shall be convened on call of the president, or on demand of three members of said board made in writing to the president. The office of said board shall be in the capitol, at Austin; and the said board shall be furnished with all necessary equipment and supplies, including laboratory supplies, books, stationery, blanks, furniture, etc., as other offices of the state are furnished, including suitable rooms for its offices and laboratories, necessary for carrying on the work of the board, and to be provided in the capitol building, or other suitable buildings, to be designated by the governor. [Id. sec. 3.]

Art. 4524. Officers and assistants appointed; salaries and duties.—The president of the board shall appoint, with the approval of the governor, the following officers and assistants:

1. An assistant state health officer, who shall be a legally qualified practitioner of medicine under the laws of the state of Texas, and who shall have had five years experience in the practice of medicine in this state, whose duty it shall be to assist the president of the board in a general supervision of the affairs of his office and in the enforcement of quarantine and sanitation throughout the state. Said assistant state health officer shall receive an annual salary of two thousand and four hundred dollars.

2. A registrar of vital statistics, whose duty it shall be to correct, record, compile and tabulate the vital and mortuary statistics of the state as provided by law, and shall also be secretary of the board, and perform such other duties as may be directed by the president of the board, and he shall receive an annual salary of one thousand and eight hundred dollars.

3. A chemist and bacteriologist, who shall be learned in chemistry, pathology, and bacteriology and he shall receive a salary of one thousand and eight hundred dollars per annum. He shall make examinations and analyses of such things and matters as may be submitted to him by the board, or the state health officer, and shall report results of such examinations in such manner and form as may be directed by the board.

4. One stenographer and bookkeeper combined, at a salary of one thousand and two hundred dollars per annum.

5. One inspector, at a salary of one thousand and eight hundred dollars per annum. It shall be the duty of such inspector to conduct such inspection as required by the board and the president of the board, and to assist in the enforcement of all sanitary and quarantine laws of the state, and to perform such other necessary services as may be prescribed by the president of the board. [Id. sec. 4.]

Art. 4525. Members of board to qualify; commissions to issue.—Members of the board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state. Upon presentation of oaths and their certificates of appointment signed by the governor, the secretary of state shall issue commissions to them under the seal of the state, which shall be evidence and be authority to act as such members of the board. [Id. sec. 5.]

Art. 4526. Bond of the president.—The president of the board shall execute bond in the sum of ten thousand dollars, with two or more good and sufficient sureties, payable to the governor and his successors in office, conditioned for faithful performance of his official duties, to be approved by the governor, and filed in the office of the secretary of state. [Id. sec. 6.]

Art. 4527. President shall have charge of state quarantine.—The president of the board shall, besides his other duties, have charge of and superintend the administration of all matters pertaining to state quarantine. [Id. sec. 7.]

Art. 4528. General powers and duties of the state board of health.—The state board of health shall have general supervision and control of all matters pertaining to the health of the citizens of this state, as provided herein. It shall make a study of the causes and prevention of infectious and contagious diseases within the state, and, except as otherwise provided in this chapter, shall have direction and control of all matters of quarantine regulations and enforcement, and shall have full power and authority to prevent the entrance of such disease from points without the state, and shall have direction and control over all sanitary and quarantine measures for dealing with all such diseases within the state and to suppress same and prevent their spread. [Id. sec. 9.]

Art. 4529. Board to prepare sanitary code.—Power is hereby conferred on the Texas state board of health to prepare a sanitary code to be known as the sanitary code for Texas, which shall provide rules and regulations for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this state, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases; provided, however, that where a patient can be treated with reasonable safety to the public health, he shall not be removed from his home without his consent, or the consent of the parents or guardian, in case of a minor; which said code, when so made, adopted, approved by the governor, published and promulgated, shall have the force of law in all respects as far as relates to the following subjects:

(a) In the management of quarantine and disinfection with respect to all contagious, infectious diseases and exposures.

(b) In the government of quarantine and disinfection of all pestilential diseases, such as bubonic plague, Asiatic cholera, leprosy, typhus and yellow fever.

(c) For the inspection, sanitation and disinfection of all railway coaches (including interurban cars), sleeping cars, street cars, waiting rooms, toilet rooms in cars and stations, depots and stations; the regulations for the proper protection of the public water, ventilation and heat supplies in such places, and the sanitary conduct and condition of all persons within such places.

(d) Governing the reporting by physicians and health officers of the presence in any locality of all contagious and infectious diseases.

(e) Governing the manner and method of collecting and reporting all vital and mortuary statistics, including reports of births and deaths, designating to whom and by whom such report shall be made and the form of same.

(f) Governing the preparation for transportation of dead bodies.

Provided, that said Texas state board of health shall prepare and adopt at such time as they may deem proper and expedient an advisory supplement to such sanitary code for Texas, which shall contain rules and regulations on the following subjects:

1. Prescribing and fixing the standard for disinfectants; requiring employment of disinfectants of proper quality and standard for the disinfection of all premises as directed by the board.

2. Regulating the proper sanitary disposition of sewerage, garbage and offal, and the proper drainage of unsanitary premises.

3. Governing the proper interment and disinterment of dead bodies.

4. Regulating the examination and inspection, both ante mortem and post mortem, of all animals which may be intended for supplying food products of meat for human consumption; regulating and governing the protection of the public with reference to the sale and use of diseased animals for producing food products or meat, the manner of feeding to animals designated for pro-

ducing food products for human consumption, all offensive or disease producing food stuffs; regulating the inspection, examination and management of all dairy cows and herds for the purpose of controlling and suppressing tuberculosis and other diseases liable to be communicated from animal to man.

5. Regulating the sanitary condition of slaughter houses, meat markets and dairies.

6. Rules and regulations for the sanitation and disinfection of public buildings; provided, that a public building is hereby declared to be any building owned by the state, or any county or any city school building, college or university of any class, any dance hall, music hall, saloon, fire hall, skating rink, theater, theatorium, moving picture show, circus, pavilion, office building, hotel, lodging house, restaurant, lecture hall, place of public worship or any building or place used for the congregation, occupation or entertainment, amusement or instruction of the public.

7. Rules and regulations to govern and control the conduct and operation of markets, peddlers' wagons, and all other places and methods of exposure for sale of meats, fish, poultry, game, fruits, vegetables and all perishable articles of food exposed for sale, and to regulate the time and method of such exposure, and to prescribe and limit methods for the preservation of such articles of food, and to prohibit the doing of any act, or the use of any method, with respect thereto, which said board shall deem prejudicial to the public health; provided, that any condemnation of any such article of food shall be in writing and a record of the same shall be kept by said health department. Provided, that such advisory supplement to sanitary code for Texas shall be advisory only. It shall be the duty of all city and county health officers, members of city councils, city and county commissioners to co-operate at all times with the Texas state board of health in enforcing the rules and regulations contained in such advisory supplement; and any city or town in this state may, by a majority of its city council or commissioners, and whenever the subject matter relates to the public schools, with the approval of a majority of the members of the school board of such city or town, adopt such advisory supplement; and the rules and regulations therein contained shall thereafter have the full force and effect of law in such city or town; provided, that the commissioners' court of any county in this state may, by a majority vote, adopt said advisory supplement to the sanitary code for Texas, and thereafter the rules and regulations contained in such advisory supplement shall have the full force and effect of law outside of all incorporated cities and towns in such county. It shall be the duty of the said Texas board of health to investigate and to provide for the removal of known causes of disease; to provide for the extermination of obnoxious and hurtful insects, vermin and rodents when necessary to prevent and suppress disease. [Id. sec. 10.]

Art. 4530. Duty of board in compiling, preparing and publishing sanitary code.—For the compilation and preparation of such code, it shall be the duty of the board to consult authorities and make investigations relative to the most approved modern sanitary codes, and spare no pains to make the same complete in the light of modern science. On adoption of the said code by votes of a majority of the members of the board, and approved by the governor, it shall be published at length for one time in official monthly bulletin of the state board of health, and at least three times for three consecutive weeks in three daily newspapers of the state, after which adoption, approval and publication, it shall become operative and have the absolute force of law; and any person who shall violate any of the rules and regulations in said sanitary code after its adoption and publication as above provided for shall be punished as provided in the Penal Code. [Id. sec. 7.]

Art. 4531. Courts shall enforce sanitary code.—And it is hereby made the duty of the several courts of this state having jurisdiction over such offenses,

according to the grade thereof, to enforce and carry into effect each and all of the rules and regulations as promulgated in said sanitary code of Texas, when they shall have the force and effect of law as provided herein, and to impose and collect penalties in the amounts therein specified from all persons found guilty of any violations thereof. [Id. sec. 7.]

Art. 4532. **Publication and distribution of sanitary code.**—There shall be printed by the board, and by it published in pamphlet form a sufficient number of copies of the sanitary code for Texas for distribution to the public. Copies shall be furnished free upon application to county and municipal health authorities, boards of health, mayors, members of city councils, city commissioners, and judges, and clerks of courts. Copies of said code shall be furnished by the board upon application to any person applying therefor and paying a nominal sum to be fixed by the board, to cover cost of publication and transportation of same. [Id. sec. 7.]

Art. 4533. **Other laws affecting health not repealed.**—This chapter shall not be construed to repeal any of the laws of this state in force affecting the public health, but shall be construed to be cumulative to said laws; and the board of public health is hereby authorized to promulgate rules and regulations for all laws relating to the public health in force in this state. [Id. sec. 10.]

Art. 4534. **May revise sanitary code.**—Power is conferred upon the Texas state board of health to further revise and amend said sanitary code for Texas at any time they may deem proper and expedient; provided, that such revision and amendment shall come within the scope of the power herein conferred upon the board for enacting the original code. [Id. sec. 11.]

Art. 4535. **Perform duties of state health officer.**—It shall be the duty of said Texas state board of health to perform all functions and duties now imposed by existing laws upon the state health officer; and whenever state health officer is mentioned in the present laws, the Texas state board of health shall be deemed to succeed in purpose and effect, whenever such statutes are not in conflict with this chapter. [Id. sec. 12.]

Art. 4536. **Members of board may enter, examine and inspect, etc.**—The members of the board of health and every person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view all ground, public buildings, factories, slaughter houses, packing houses, abattoirs, dairies, bakeries, manufactories, hotels, restaurants and all other public places and public buildings where they may deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules, regulations and ordinances of the sanitary code for Texas after it has been adopted, promulgated and published by the board for the enforcement of any and all health laws, sanitary laws or quarantine regulations of this state. [Id. sec. 14.]

Art. 4537. **Investigations by board; powers and duties of court.**—The members of said board of health and its officers are severally authorized and empowered to administer oaths and to summon witnesses and compel their attendance in all matters proper for the said board to investigate, such as the determination of nuisances, investigation of public water supplies, investigation of any sanitary conditions within the state, investigation of the existence of infection, or the investigation of any and all matters requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and, in the event any witness summoned by said board or any of the officers or members of the same shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be

punished by the district court of the county in which such witness is summoned to appear as for contempt of said district court. [Id. sec. 15.]

Art. 4538. Office of county physician abolished; office of county health officer substituted.—The office of county physician is abolished within the several organized counties of this state, and instead the office of county health officer is created; and such office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of the state of Texas and of reputable professional standing. [Id. secs. 17-18.]

Art. 4539. Qualification, appointment and compensation of county health officer.—It is hereby made the duty of the commissioners' court by a majority vote in each organized county to appoint a proper person for the office of county health officer for his county, who shall hold office for two years and until his successor shall be appointed and qualify, unless sooner removed for cause. Said county health officer shall take and subscribe to the constitutional oath of office, and shall file a copy of such oath of office and a copy of his appointment with the Texas state board of health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners' court; provided, that no compensation or salary shall be allowed, except for services actually rendered. [Id. sec. 19.]

Art. 4540. Office of city health officer substituted for city physician.—The office of city physician for the several incorporated cities and towns within this state is abolished, and instead created the office of city health officer; and such office of city health officer shall be filled by a competent physician, legally qualified to practice medicine within this state, of reputable professional standing. [Id. secs. 20-21.]

Art. 4541. City health officer.—The city council or the city commissioners, as the case may be, of each incorporated city and town within this state shall elect a qualified person for the office of city health officer by a majority of the votes of the city council or city commission, as the case may be, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the constitutional oath of office, and shall file a copy of such oath and a copy of his appointment with the Texas state board of health, and shall not be deemed to be legally qualified until said copies shall have been so filed. [Id. sec. 22.]

Art. 4542. City health officers to be appointed by board, when.—In case the authorities hereinbefore mentioned shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided, then the Texas state board of health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill such office, first having given ten days notice in writing to such authority of the desire for such appointment. [Id. sec. 23.]

Art. 4543. Duties of county health officer.—Each county health officer shall perform such duties as have heretofore been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners' court and other officers of the county, and shall discharge any additional duties which it may be proper for county authorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas state board of health, or the president thereof, and is empowered and authorized to establish,

maintain and enforce quarantine within his county. He shall also be required to aid and assist the state board of health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his county; and he shall at all times report to the state board of health, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said Texas state board of health shall direct, touching such matters as may be proper for said state board of health to direct; and he shall aid said state board of health at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction. [Id. sec. 24.]

Art. 4544. County health officer under direction of board; proceedings against for failure in duty.—In all matters with which the state board of health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said state board of health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the state board of health; and pending charges for removal said county health officer shall not receive any salary or compensation; which cause shall be tried in the district court of the county in which such county health officer resides. [Id. sec. 25.]

Art. 4545. Duty of health officers as to indigent consumptives.—Hereafter, when any indigent person suffering from tuberculosis is sojourning in any other county than his residence makes application for financial relief to any county health officer or commissioners' court of any county in this state, or the mayor or health officer of any city in this state, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, it shall be the duty of the county health officer, mayor, city health officer or county judge to forthwith notify the state health officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide citizen of any county within the state of Texas, it shall be the duty of the state health officer, and he shall have the power, to purchase a ticket for said patient and furnish him with sufficient additional means to purchase food en route to his former home, and return such patient thereto. [Id. sec. 1.]

Art. 4546. County health officers under direction of board; proceedings against for failure of duty.—In the event any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the state board of health shall file charges with the commissioners' court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the state board of health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners' court shall hear the charges, at which hearing the county judge shall preside, and the state board of health may be represented. Either party, the state board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowance shall be paid to said county health officer for any subsequent earned salary; and, in the event the charges shall be sus-

tained, the county health officer shall be charged to pay all costs of court, and shall forfeit all salary, fees and allowances earned subsequent to the date of filing the charges and protests. [Id. sec. 26.]

Art. 4547. No cost or appeal bond required of board.—No bond for costs, or bond on appeal, or writ of error shall be required of the state board of health or state officials in any actions brought or maintained under this chapter. [Id. sec. 27.]

Art. 4548. Duties of city health officer enumerated.—Each city health officer shall perform such duties as may now or hereafter be required by the city councils and ordinances of city physicians, and such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, councils, commissioners or the ordinances of his city or town. He shall, in addition thereto, discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the state board of health and the president thereof. He shall be required to aid and assist the state board of health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the state board of health, in such manner and form as shall be prescribed by said board of health, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said state board of health shall direct, touching all such matters as may be proper for the state board of health to direct, and he shall aid said state board of health at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said state board of health shall direct. [Id. sec. 28.]

Art. 4549. City health officer may be removed, when and how.—In all matters in which the state board of health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board of health, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the state board of health, which cause shall be tried in the district court of the county in which such city health officer resides. [Id. sec. 28.]

Art. 4550. Board to file charges against city health officer.—In the event of a failure or refusal of said city health officer to properly discharge his duties of his office, the state board of health shall file charges against said city health officer with the council or city commission of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and council, or the mayor and commission, of the town or city in which said city health officer shall reside, at which hearing the state board of health may be represented, and either the city health officer or the state board of health shall have the right of appeal to the county court of the county in which the city or town is situated; and, if said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances accrued subsequent to the date of

filing of the charges and protest originally and which may be due him on account of his office. [Id. sec. 28.]

Art. 4551. **Compensation of city health officer.**—The compensation of city health officer shall be fixed by the mayor and council, or the mayor and commissioners, of the respective towns and cities within this state. [Id. sec. 29.]

Art. 4552. **Annual conference of county and city health officers.**—There shall be an annual conference of county health officers and city health officers of this state at such time and place as the state board of health shall designate, at which conference the president or some member of the state board of health shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference. [Id. sec. 30.]

Art. 4553. **Legal proceedings in name of board; duty of attorney general in regard to.**—In all matters wherein the board of health shall invoke the assistance of the courts, the action shall run in the name of the state of Texas; and the attorney general shall assign a special assistant to attend to all legal matters of the board; and, upon demand of the board, it shall be the duty of the attorney general to promptly furnish the necessary assistance to the board to attend to all its legal requirements. [Id. sec. 31.]

CHAPTER TWO.

SPECIAL QUARANTINE REGULATIONS.

Article.	Article.
Governor may issue proclamation.....4554	When corporate authorities may establish quarantine.....4566
Proclamation as to yellow fever and other diseases.....4555	Authorities may co-operate.....4567
Local quarantine.....4556	Commissioners may direct, etc., to declare quarantine.....4568
Local authorities to be subordinate to state, when.....4557	Bond of health officer at Galveston.....4569
Shelter to persons detained.....4558	Rules to be prescribed.....4570
Expenses.....4559	Sale of condemned property.....4571
Stations to be provided, etc.....4560	Vessels to be disinfected; fees of quarantine officer, etc.....4572
Governor to appoint local health officer.....4561	Persons to disinfect at their own expense.....4573
Incoming vessels.....4562	In case of irreconcilable conflict.....4574
Vessels from infected ports.....4563	
Payment of fine, etc.....4564	
Expenses to be itemized.....4565	

Article 4554. [4321] **Governor empowered to issue proclamation, when.**—The governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this state, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the governor the safety and security of the people may require. [Acts of 1891, p. 188.]

Art. 4555. [4324] **May issue proclamation, when.**—Whenever the governor has reason to believe that the state of Texas is threatened at any point or place on the coast, border or elsewhere within the state with the introduction or dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas state board of health, be guarded against by state quarantine, he shall, by proclamation, immediately declare said quarantine against any and all such places, and direct the Texas state board of health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine procla-

mation; and when from any cause the governor can not act, and the exigencies of the threatened danger require immediate action, the Texas state board of health is empowered to declare quarantine as prescribed in this article, and maintain the same until the governor shall officially take such action as he may see proper. [Acts of 1891, p. 188, sec. 4.]

Art. 4556. [4326] **Local quarantine.**—The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the state shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this state, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the governor; and, on the receipt of such report, he shall forthwith order the state health officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined. [Id. sec. 6.]

Art. 4557. [4328] **Local to be subordinated to state authorities.**—Whenever quarantine is declared by the governor or by any county or corporate authorities in the state, it shall be the duty of such authorities to establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the governor or Texas state board of health. [Id. sec. 8.]

Art. 4558. [4329] **Shelter, etc., to be furnished by health officer to persons detained.**—It shall be the duty of the Texas state board of health to furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and to provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the Texas state board of health and approved by the governor shall be paid by the state. [Id. sec. 9.]

Art. 4559. [4330] **Expenses, etc.**—All the costs and expenses of enforcing and maintaining the general quarantine, or such as are ordered by the governor or Texas state board of health shall be paid out of the fund appropriated for quarantine purposes. All quarantine officers appointed by the governor shall be selected and commissioned by the governor of the state, and shall be paid by the state, and all health authorities of the state, or of any county or city thereof, shall obey the rules and regulations prescribed by the governor or Texas state board of health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; provided, that the provisions of this chapter shall not apply to the port of Galveston; and provided, that the officer in charge of said station shall receive two hundred dollars per month. Temporary officers, or those commissioned by the governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the governor and Texas state board of health. All quarantine officers, whether of towns, cities, counties or state, shall be authorized to administer oaths to any person or persons suspected of violating any quarantine regulations; and any person or persons swearing falsely shall be punished according to the provisions of the Penal Code. [Acts of 1895, p. 142.]

Art. 4560. [4331] **Stations to be provided.**—It is hereby made the duty of any county, town or city authority upon the coast or elsewhere in Texas.

at as early a day as practicable after the promulgation of the governor's proclamation declaring quarantine, to provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns or cities, and to select, appoint and employ a competent physician as health officer, subject to the approval of the governor, at such stations, and to furnish said officer with such guards, employes and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the governor and Texas state board of health may prescribe. [Acts of 1883, p. 17.]

Art. 4561. [4332] Governor may appoint local health officer, when.—Whenever, on the coast of Texas or elsewhere in this state, the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then and in that event the governor shall have the power, and it shall be his duty, to appoint a health officer and to prescribe such regulations for the government of the same as he may deem necessary. [Acts of 1891, p. 186.]

Art. 4562. [4333] Incoming vessels to be stopped.—It shall be the duty of all health officers and all quarantine authorities to stop each and every vessel from any infected port or district, notwithstanding the said vessel may have a clean bill of health, if deemed necessary, (and such health officers or quarantine authorities shall have power so to do) to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district; and such officers and authorities shall detain said vessel at quarantine for such length of time as may be prescribed by the governor and Texas state board of health in their rules and regulations governing quarantine; and all such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the governor and Texas state board of health. [Acts of 1883, p. 17.]

Art. 4563. [4334] Vessels from infected ports.—Any vessel arriving at any of the quarantine stations of this state, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. [Acts of 1891, p. 188, sec. 12.]

Art. 4564. [4335] Payment of fine, etc.—The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine. [Id. sec. 13.]

Art. 4565. [4336] Expenses to be itemized.—It shall be the duty of the county, town or city authorities aforesaid, as soon as quarantine ceases to exist, to forward to the comptroller of the state an itemized account of all receipts and expenditures made by them, and when approved by the governor and Texas state board of health, said comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures as a credit to the quarantine fund. [Acts of 1883, p. 18.]

Art. 4566. [4337] Corporate authorities may establish quarantine, when.—Nothing contained in this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and

regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with, and subordinate to, said provisions and the rules and regulations prescribed by the governor and Texas state board of health. [Id.]

Art. 4567. [4338] **Municipal authorities may co-operate, how.**—The municipal authorities of towns and cities, and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual agreement, they may provide for the construction of said improvements and the payment therefor. [Acts of 1879, S. S. p. 9.]

Art. 4568. [4340] **Commissioners' court may direct county physician to declare quarantine, when.**—Whenever the commissioners' court of any county has reason to believe that they are threatened at any point or place within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and shall be guarded against by quarantine, they may direct their county health officer to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners' court to other parts of their respective counties. The medical officers of chartered cities and towns can perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the Texas state board of health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine. [Id. sec. 15.]

Art. 4569. [4341] **Bond of health officer at Galveston.**—The quarantine or health officer at Galveston, Texas, shall give bond, with two or more good and sufficient sureties, payable to the governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the state at his station, and for the faithful performance of his duty. [Id. sec. 16.]

Art. 4570. [4342] **To prescribe rules, etc.**—It is hereby made the duty of the governor and Texas state board of health, upon completion of the disinfecting warehouse at Galveston or any port on the coast of Texas, to prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at said ports from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the state without unnecessary restrictions upon commerce and travel. [Id. sec. 17.]

Art. 4571. [4342a] **Sale of condemned property.**—The state health officer be and is hereby authorized, with the advice and consent of the governor, to sell to the best advantage of the state, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of the state of Texas, and make due report of said sale or sales to the governor. [Acts of 1895, p. 2.]

Art. 4572. **Vessels to be disinfected; fees of quarantine officer, etc.**—Any vessel arriving at a port of this state, and required to be disinfected by the

terms of the governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and shall pay to such quarantine officer such fees as may be prescribed by the governor, before being released from quarantine. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as are prescribed by the governor. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the governor for the safe keeping of such collection, and shall report and remit them to the Texas state board of health at least once every month. [Act 1901, p. 266.]

Art. 4573. **Persons to disinfect at their own expense.**—Every person having control of any public building, railway company, sleeping car company, or other corporation, company or individual, or the receiver thereof, engaged in the carrying of passengers in this state, shall, at their own expense, within a prescribed time after receiving notice of the promulgation of the rules and regulations of the state board of health in relation thereto, carry the same into effect, or be punished as prescribed in the Penal Code. [Act 1903, p. 180.]

Art. 4574. **In case of irreconcilable conflict.**—Any provisions of this chapter which may irreconcilably conflict with the provisions of the foregoing chapter, shall yield to such provisions.

CHAPTER THREE.

PURE FOOD REGULATIONS.

Article.	Article.		
Appointment, salary and bond of dairy and food commissioner.....	4575	Manufacture and sale of misbranded and adulterated foods prohibited.....	4586
May be removed and vacancy, how filled.....	4576	Drugs, confectionery and food, when deemed adulterated.....	4587
Appointment, salary and bond of assistant commissioner.....	4577	Term "misbranded" defined.....	4588
Appointment and salary of stenographer.....	4578	Foodstuffs to be protected from dust, vermin, etc.....	4589
Inspectors: appointment, duties and salary.....	4579	Manufacture and sale of impure cider prohibited.....	4590
Expenses of department provided for and limited.....	4580	Manufacture and sale of certain foods discolored and adulterated, prohibited.....	4591
Department located, where.....	4581	Baking powder to be labeled, how.....	4592
Rights and duties of commissioner.....	4582	Sale of impure milk prohibited.....	4593
Unlawful for officers to issue certificates, in what cases.....	4583	Milk inspector in cities and towns.....	4594
Annual report of commissioner, contents.....	4584	Exemptions from prosecutions.....	4595
Shall issue bulletins and notices of judgments; proceedings in case of seizures by commissioner.....	4585		

Article 4575. **Appointment, salary and bond of dairy and food commissioner.**—The governor shall appoint a suitable person to be dairy and food commissioner, who shall be a practical analytical chemist and bacteriologist, who shall hold office for a term of two years or until his successor is appointed and qualified; said commissioner shall receive an annual salary of two thousand dollars. Before entering upon the duties of his office he shall subscribe and file in the office of the secretary of state an oath of office in the form prescribed by law, and shall enter into bond with the state of Texas in the sum of ten thousand dollars, with sureties to be approved by the governor, conditioned for the faithful performance of his duties. [Act 1909, p. 166, sec. 12.]

Art. 4576. **May be removed, and vacancy, how filled.**—The governor shall have the power to remove such commissioner at any time in his discretion, and in case of a vacancy in the office of commissioner from any cause, the governor may appoint another person to fill the same. [Act 1909, sec. 13.]

Art. 4577. **Appointment, salary and bond of assistant commissioner.**—The commissioner may, with the advice and consent of the governor, appoint an assistant commissioner, who shall be a practical analytical chemist. The salary of the assistant commissioner shall be one thousand and two hundred dollars per annum. The assistant commissioner shall enter into bond with the state of Texas for the sum of five thousand dollars, with sureties to be approved by the commissioner, conditioned for faithful performance of his duties. [Id. sec. 14.]

Art. 4578. **Appointment and salary of stenographer.**—The commissioner shall appoint one stenographer for the transaction of the business of his office. Said stenographer shall receive an annual salary of not to exceed the sum of nine hundred dollars. [Id. sec. 15.]

Art. 4579. **Inspectors; appointment, duties and salary.**—The commissioner shall have power to appoint two inspectors at a salary of not to exceed one thousand and two hundred dollars per annum each, whose duties it shall be to collect samples of foods and drugs and make such inspection of foods and drugs, and places where foods and drugs are manufactured or kept for sale, and to perform such other duties as may be prescribed and directed by the commissioner, according to his rules and regulations. [Id. sec. 16.]

Art. 4580. **Expenses of department provided for and limited.**—The actual and necessary expenses of the dairy and food commissioner and his assistants and deputies, in the performance of their official duties, shall be paid by the state. The amounts for the same shall be audited by the comptroller and [paid] upon his warrant drawn upon the state treasury; provided, that the actual and necessary expenses of the said dairy and food commissioner, and his assistants and deputies, shall never exceed four thousand dollars per year. [Id. sec. 17.]

Art. 4581. **Department located, where.**—Office room shall be furnished in the college of industrial arts located at Denton, Texas, and the necessary fixtures, apparatus and the necessary stationery, supplies and printing for the conduct of the business of the said commissioner, shall be under the supervision of the board of directors of the college of industrial arts of Texas. Provided, that the board of directors of said college shall have no power to supervise, direct, control or in any manner interfere with said dairy and food commissioner in the performance of the duties of his office, but the supervisory powers of said board shall only extend to the location of said office room for said commissioner in said college and to making arrangements and agreements with said commissioner as may be of benefit to such students. [Id. sec. 18.]

Art. 4582. **Rights and duties of commissioner.**—It shall be the duty of the dairy and food commissioner to carefully inquire into the quality of the food and drug products manufactured or sold, or exposed for sale, or offered for sale, in this state; and he may in a lawful manner procure samples of the same and make due and careful examinations, and the analysis of all or any such food and drug products, to discover if the same are adulterated, or misbranded, impure, or unwholesome, in contravention of the provisions of this chapter; and it shall be the duty of the commissioner to make complaint against the manufacturer or vendor thereof, in the proper county, and furnish the evidence thereon and thereof to obtain a conviction for the offense charged. The dairy and food commissioner, or his deputy or deputies, or any person by him duly appointed for that purpose, shall make complaint and cause proceedings to be commenced against any person for the violation of any of the laws relative to adulterated, misbranded, impure or unwholesome food; and in such case he shall not be obliged to furnish security for costs; and he shall have power in the performance of his duties to enter into any creamery, factory, store, salesroom, drug store or laboratory, or place where he has reason to believe foods or drugs are made, prepared, sold or offered for

sale or exchange, and to open any cask, tub, jar, bottle, or package, containing or supposed to contain any article of food or drug, and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The persons making such inspection shall take such sample of such article or product, and he shall mark or seal such sample and shall tender at the time of taking it to the manufacturer or vendor of such product, or to the person having the custody of the same, the value thereof, and a statement in writing of the reason for taking such sample. It shall also be the duty of the dairy and food commissioner to formulate, publish and enforce such rules and regulations as may be necessary to enforce the provisions of this chapter; and he shall adopt the standards for foods, food products, beverages, drugs, etc., and the methods of analysis authorized as official by the United States department of agriculture or the national food commission, in so far as they are applicable in the light of modern discovery and research. [Id. sec. 19.]

Art. 4583. **Unlawful for officers to issue certificates in what cases.**—It shall be unlawful for the dairy and food commissioner, or his deputy or assistants, while they hold office, to furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them, to be used as food or drug or in the preparation of foods or drugs. [Act 1909, sec. 20.]

Art. 4584. **Annual report of commissioner; contents.**—The commissioner shall make an annual report to the governor on or before the thirty-first day of August in each year, which shall be printed and published at the expense of the state; which report shall cover the entire work of his office for the preceding year, and shall show among other things the number of manufactories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered against any person or persons for the violation of the laws relative to the adulteration of foods and drugs, the number of convictions had and the amount of fines imposed therefor, together with such recommendations relative to the statutes in force as his experience may justify. [Id. sec. 21.]

Art. 4585. **Shall issue bulletins and notices of judgments; proceedings in case of seizures by commissioner.**—The commissioner is authorized to issue bulletins quarterly, or as often as in his judgment he may deem advisable, showing the work of the commissioner. And he shall give notices of the judgments of the courts, by publication in such manner as he may prescribe by the rules and regulations, and the expenses of such publication shall be paid by the state. The commissioner, his deputy, or any person by said commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food, drugs, drinks, and dairy products, substitutes thereof, or imitations thereof, kept for sale, exposed for sale, exposed for exchange, held in possession or under the control of any person which in the opinion of the said commissioner or his deputy, or such person by him duly appointed, shall be contrary to the provisions of this chapter. First, the person so making such seizure as aforesaid shall take from such goods as seized a sample for the purpose of analysis, and shall cause the remainder thereof to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized subject to such disposition as shall thereafter be made thereof according to the provisions of this chapter. Second, the person so making such a seizure shall forward the sample so taken to the commissioner for analysis, who shall make an analysis of the same and shall certify the results of such analysis to any court where the same shall be offered in evidence. Third, if upon such analysis it shall appear that said food, drugs, or dairy products are adulterated, substitutes or imitations within the meaning of this chapter, said commissioner, or his deputy or any person by him duly authorized, may make complaint before any justice of the peace

having jurisdiction where such goods were seized; and thereupon said justice of the peace shall issue his summons to the person from whom said goods were seized, directing him to appear not less than six days nor more than ten days from the date of issuing said summons and show cause why said goods should not be condemned and disposed of. If the said person from whom said goods were seized can not be found, said summons shall be served upon the person or persons then in possession of the goods. The said summons shall be served at least ten days before the time of appearance mentioned herein. If the person from whom said goods were seized can not be found and no one can be found in possession of said goods, and the defendants shall not appear on the return day, then said justice of the peace shall proceed in said cause in the same manner provided by the law where a writ of attachment is returned not personally served upon any of the defendants, and none of the defendants shall appear upon the return day. Fourth, unless cause to the contrary thereof is shown, or if said goods shall be found upon trial to be in violation of any of the provisions of this or other existing laws, it shall be the duty of said justice of the peace to render judgment that said seized property be forfeited to the state of Texas, and that the said goods be destroyed or sold by the said commissioner. The mode of procedure before said justice of the peace shall be the same, as near as may be, as in civil proceedings before justices of the peace. Either party may appeal to the county court as appeals are taken from justices courts, but it shall not be necessary for the state to give an appeal bond. Fifth, the proceeds arising from any such sale shall be paid into the state treasury and credited to the general fund; provided, that if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guaranty of purity signed by the wholesaler, jobber, manufacturer or other party from whom said articles were purchased, then the proceeds of the sale of such articles over and above the costs of seizure, forfeiture and sale shall be paid over to such owner or claimant to reimburse him to the extent of such surplus for his actual loss resulting from such seizure and forfeiture as shown by the invoice. Sixth, it shall be the duty of each prosecuting attorney when called upon by the said commissioner, or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceedings under the provisions of this chapter. [Id. secs. 23 and 24.]

Art. 4586. **Manufacture and sale of adulterated and misbranded foods prohibited.**—No person, firm or corporation shall within this state manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange, any article of food, drink or drugs which is adulterated or misbranded within the meaning of this chapter. The term "food," as used herein, shall include all articles used for food, drink, flavoring, confectionery, or condiment, by man, whether simple, mixed or compound. The term "drug," as used in this chapter, shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animal. [Id. sec. 1, p. 166.]

Art. 4587. **Drugs, confectionery and foods, when deemed adulterated.**—For the purposes of this chapter an article shall be deemed to be adulterated:

(a) In the case of drugs: (1) If, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopoeia or in such United States Pharmacopoeia as was official at the time of labeling it, or in the National Formulary, it differs from the standard of strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the eighth decennial revision of the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on

materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold.

(b) In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow or other mineral substance or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

(c) In the case of food: (1) If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; (2) if any substance has been substituted wholly or in part for the article; (3) if any valuable constituent of the article has been wholly or in part abstracted, or if the product be below that standard of quality, strength or purity represented to the purchaser or consumer; (4) if it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed; (5) if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this chapter shall be construed as applying only when said products are ready for consumption; (6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. [Id. sec. 2.]

Art. 4588. **Term "misbranded" defined.**—The term "misbranded," as used herein, shall apply to all drugs or other articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular. For the purposes of this chapter an article shall also be deemed to be misbranded:

(a) In the case of drugs: (1) if it be an imitation of or offered for sale under the name of another article; (2) if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, phenacetin, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilid or any derivative or preparation of any such substances contained therein.

(b) In the case of food: (1) If it be an imitation of or offered for sale under the distinctive name of another article; (2) if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, phenacetin, chloroform, cannabis indica, chloral hydrate or acetanilid, or any derivative or preparation of any of such substances contained therein: (3) if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; (4) if the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleter-

ious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First, in case of mixtures of compounds which may be now, or from time to time hereafter, known as articles of food, under their own distinctive names, and not an imitation of, or offered for sale under, the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends; that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided, further, that nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain unwholesome added ingredients to disclose their trade formulas, except in so far as the provisions of this chapter may require to secure freedom from adulteration or misbranding. [Id. sec. 3.]

Art. 4589. **Foodstuffs to be protected from dust, vermin, etc.**—Every dealer or peddler in slaughtered flesh, meats, fish, fowl or game for human food, at wholesale or retail, in the transportation of such food from place to place to customers, or in storing or keeping same for sale, shall protect the same from dust, flies and other vermin or substances which may injuriously affect it, by securely covering it while being so transported, stored or kept. [Act 1909, sec. 4.]

Art. 4590. **Manufacture and sale of impure cider prohibited.**—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange, any cider not produced wholly from the juice of fruit. [Act 1909, sec. 5.]

Art. 4591. **Manufacture and sale of certain foods, discolored and adulterated, prohibited.**—It shall be unlawful for any person to manufacture, sell, offer or expose for sale, or exchange, any article of food to which has been added formaldehyde, boric acid, benzoic acid or benzoates, sulphurous acid or sulphite, salicylic acid or salicylates, abradol, beta naphthol, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health; provided, that nothing in this chapter shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances, preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label; provided, further, that the oxides of sulphur may be used for bleaching, clarifying and refining food products. [Act 1909, sec. 6.]

Art. 4592. **Baking powder to be labeled, how.**—Whoever manufactures for sale within this state, or offers or exposes for sale or exchange or sells any baking powder, or compound intended for use as a baking powder, under any name or title whatsoever, shall securely affix, or cause to be securely affixed, to the outside of every box, can or package containing such baking powder or like mixture, or compound, a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than ten per cent of available carbon dioxide shall be deemed to be adulterated. [Act 1909, sec. 7.]

Art. 4593. **Sale of impure milk prohibited.**—It shall be unlawful for any person, either by himself or agent, to sell, or expose for sale or exchange, any unwholesome, watered, adulterated or impure milk, or swill milk or colostrum, or milk from cows kept upon garbage, swill or any other substance in a state of fermentation or putrefaction or other deleterious substances, or from cows kept in connection with any family in which there are infectious diseases. or

from sick or diseased cows; provided, "skim milk" may be sold if on the can or package from which milk is sold, the words, "skim milk," are distinctly painted in letters not less than one inch in length. [Act 1909, sec. 8.]

Art. 4594. **Milk inspector in cities and towns.**—The common council or commission of any city or town may appoint an inspector of milk in any such city or town, and fix his compensation. [Id. sec. 9.]

Art. 4595. **Exemptions from prosecutions.**—No dealer shall be prosecuted under the provisions of this law when he can establish a guaranty, signed by the wholesaler, jobber, manufacturer, or other party residing within this state or in the United States, from whom he purchases such article, to the effect that the same is not adulterated or misbranded within the meaning of this chapter, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such articles to such dealer; and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this chapter. [Id. sec. 10.]

CHAPTER FOUR.

EMBALMING BOARD.

Embalming board; how constituted; terms of office; qualifications, how removed4596 Board, when appointed; vacancies, when filled4597 Certificates of appointment, members qualify4598 Duties and powers of board4599 Application to engage in business, fee; skill required4600	Article. Article. Renewal of license, fee for.....4601 License to be revoked, when, how.....4602 Department to be self-sustaining; moneys received, how appropriated.....4603 Unlawful to practice without license....4604 Provisions of chapter do not apply to what4605
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Article 4596. **Embalming board; how constituted; terms of office; qualifications, how removed.**—The state board of embalming shall consist of five members to be appointed by the state board of health, and all vacancies occurring in the board shall be filled by the said board for the unexpired term. The term of each member of said board shall be for two years. The members of said board shall be practical embalmers, having experience in said business, and the care of, and the disposition of, dead human bodies. The members of said board shall be citizens of this state. The appointing board shall remove any member of said board for neglect of duty, incompetency or improper conduct. [Acts 1903, p. 123, sec. 1.]

Art. 4597. **Board, when appointed; vacancies, when filled.**—The board shall be appointed on or before the first day of June, and all vacancies occurring by the expiration of their respective terms of office shall be filled annually on the aforesaid date. [Id. sec. 2.]

Art. 4598. **Certificates of appointment; members qualify.**—The state board of health shall furnish each person appointed to serve on the state board of embalming a certificate of appointment, and such appointee shall qualify by taking the usual oath of office before any officer authorized by law to administer oaths in this state, within ten days after said appointment has been made, and this fact shall be noted on the certificate of appointment, and shall be filed with the board of embalmers. [Id. sec. 3.]

Art. 4599. Duties and powers of board.—The board of embalming shall have the power and it shall be its duty :

1. To prescribe a standard of proficiency as to the qualifications of those engaged, and who may engage, in the practice of embalming in connection with the care and disposition of dead bodies in this state.

2. To meet at least once in each year, and oftener, as the proper and efficient discharge of its duties may require. At least fifteen days' notice of the time and place of meeting of said board shall be given by publication in at least three daily newspapers published in different towns and cities of the state. Three members of the board shall constitute a quorum for the transaction of all its business and the performance of all its duties.

3. To elect a president and secretary from the members of said board, who shall serve for one year, or until their successors shall be elected and qualified.

4. To adopt a common seal.

5. To adopt rules and regulations and by-laws from time to time not inconsistent with the laws of the state or the United States, whereby the performance of all the duties of said board and the practice of embalming dead human bodies shall be regulated. [Id. sec. 4.]

Art. 4600. Application to engage in business; fee; skill required.—Every person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within the State of Texas shall make a written application to the state board of embalming for a license, accompanying the same with a license fee of five dollars, whereupon the applicant as aforesaid shall present himself or herself before said board at a time and place to be fixed by said board; and, if the board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous arterial system, the location of the heart, lungs, bladder, womb and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, brachial, radial, ulnar, femoral and tibial arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving license under the provisions of this chapter shall have said license registered in the county clerk's office in the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place of business of said person so licensed. [Id. sec. 5.]

Art. 4601. Renewal of license; fee for.—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of two dollars for the renewal of said license. [Id. sec. 6.]

Art. 4602. License to be revoked, when, how.—The state board of embalming shall be and is hereby authorized to revoke any license issued by them for good and sufficient cause, subject to the right of appeal to the state board of health, whose decision shall be final. [Id. sec. 7.]

Art. 4603. Department to be self-sustaining; moneys received, how appropriated.—All expense, salaries and per diem to members of this board shall be paid from fees received under the provisions of this chapter, and shall in no manner be an expense to the state. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the sec-

retary of said board as a special fund for meeting the expenses of the board. [Id. sec. 8.]

Art. 4604. **Unlawful to practice without license.**—It shall be unlawful for any person not a registered embalmer to embalm or pretend to practice the science of embalming in connection with the care and disposition of the dead, unless said person is a registered embalmer, within the meaning of this chapter. [Id. sec. 9.]

Art. 4605. **Provisions do not apply to what.**—Nothing in this chapter shall apply to, or in any manner interfere with, the duties of any municipal, county and state officer, or state institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. [Id. sec. 10.]

TITLE 67.

HOLIDAYS—LEGAL.

[For institution of suits on, see Art. 1816.]

What are legal holidays.....	Article. 4606	Arbor day	Article. 4607
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Article 4606. [2939] **What days are legal holidays.**—The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the third day of June, the fourth day of July, the first Monday in September, and the twenty-fifth day of December of each year, and all days appointed by the president of the United States or by the governor of this state as days of fasting or thanksgiving, and every day on which an election is held throughout the state, are declared holidays, on which all the public offices of the state may be closed, and shall be treated and considered as Sunday or the Christian Sabbath for all purposes regarding the presenting for payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. [Act March, 1893, p. 4. Amended Act 1905, p. 14.]

Art. 4607. [2940] **Arbor day.**—The twenty-second day of February of each year, the same being a legal holiday, is further set apart and designated as “Arbor Day,” to be devoted to the planting and cultivation of forest, shade and ornamental trees throughout the state, and to be observed for that purpose in such manner as may seem best to the people of each community. [Acts 1889, p. 78.]

TITLE 68.

HUSBAND AND WIFE.

Chapter.	Chapter.
1. Celebration of Marriage.	3. Rights of Married Women.
2. Marriage Contracts.	4. Divorce.

CHAPTER ONE.

CELEBRATION OF MARRIAGE.

	Article.		Article.
Who are authorized to celebrate rites.....	4608	Certain intermarriages prohibited.....	4613
Who are not permitted to marry.....	4609	Marriage by bond, etc., validated.....	4614
License	4610	Issues legitimated	4615
Consent of parent or guardian.....	4611	Cohabitation of certain persons consid- ered as marriage.....	4616
Record and return of license.....	4612		

Article 4608. [2954] **Who authorized to celebrate rites.**—All regular licensed or ordained ministers of the gospel, Jewish rabbis, judges of the district and county courts, and all justices of the peace of the several counties are authorized to celebrate the rites of matrimony between all persons legally authorized to marry. [Act Nov. 1, 1866, p. 72; Acts 1891, p. 96. P. D. 7119.]

Art. 4609. [2955] **Who not permitted to marry.**—Males under sixteen and females under fourteen years of age shall not marry. [Id.]

Art. 4610. [2956] **License.**—Any person desirous of marrying shall apply to the clerk of the county court, and shall receive from him a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority for any one of such persons to celebrate such marriage. [Act June 5, 1837. P. D. 4666.]

Art. 4611. [2957] **Consent of parent or guardian.**—No clerk shall issue a license without the consent of the parents or guardians of the parties applying, unless the parties so applying shall be in the case of the male twenty-one years of age, and in the female eighteen years of age. [P. D. 4667.]

Art. 4612. [2958] **Record and return of licenses.**—The said clerk shall record all licenses so issued by him in a well-bound book kept for that purpose; and it shall also be the duty of the persons solemnizing the rites of matrimony to indorse the same on the license and make return of the same to the office of the clerk of the county court within sixty days after the celebration aforesaid; which return shall also be recorded as aforesaid. [P. D. 4668.]

Art. 4613. [2959] **Certain intermarriages prohibited.**—It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans; and, should any person as aforesaid violate the provisions of this article, such marriage shall be null and void. [P. D. 4670. P. C. 326.]

Art. 4614. [2960] **Marriages by bond, etc., validated.**—Whereas, many persons heretofore, previous to the passage of an act approved June 5, 1837, regulating marriages, and for other purposes, had, for the want of some person legally qualified to celebrate the rites of matrimony, resorted to the practice of marrying by bond, and others have been married by various officers of justice not authorized to celebrate such marriages, and whereas, public policy and the interest of families require a further legislative action on the subject, therefore, all such marriages are declared legal and valid to all intents and purposes, and the issue of such persons are declared legitimate children and capable of inheritance. [Act Feb. 5, 1840. P. D. 4671.]

Art. 4615. [2961] **Issue legitimated.**—In cases where persons have so intermarried agreeably to the custom of the times, and where husband or wife has

since died, then and in that case the issue of such marriages are hereby legitimated. [Act Jan. 20, 1840. P. D. 4672.]

Art. 4616. [2962] **Cohabitation of certain persons considered as marriage.**—All persons who at any time heretofore have lived together as man and wife, and both of whom, by the laws of bondage, were precluded from the rites of matrimony, and continued to live together until the death of one of the parties, shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children heretofore or hereafter born of such cohabitations are declared legitimate. [Act Aug. 15, 1870, p. 127. P. D. 7120.]

CHAPTER TWO.

MARRIAGE CONTRACTS.

	Article.		Article.
What stipulation may be made.....	4617	Can not be altered after marriage.....	4619
How authenticated.....	4618	Reservation by wife to be recorded.....	4620

Article 4617. [2963] **What stipulations may be made.**—Parties intending to enter into the marriage state may enter into what stipulations they please, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into any agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any valid agreement to impair the legal rights of the husband over the person of the wife, or the persons of their common children. [Act Jan. 20, 1840. P. D. 4632.]

Art. 4618. [2964] **How authenticated.**—Every matrimonial agreement must be acknowledged before some officer authorized by law to take acknowledgments to deeds, and attested by at least two witnesses; the minor capable of contracting matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor. [P. D. 4633.]

Art. 4619. [2965] **Can not be altered after marriage.**—No matrimonial agreement shall be altered after the celebration of the marriage.

Art. 4620. [2966] **Reservation by wife must be recorded.**—When the wife, by a marriage contract, may reserve to herself any property, or rights to property, whether such rights be in esse or expectancy, such reservation, to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law. [P. D. 4635.]

CHAPTER THREE.

RIGHTS OF MARRIED WOMEN.

	Article.		Article.
Separate property	4621	Husband failing to support wife.....	4626
Community property	4622	Community property liable for debts.....	4627
Presumption as to community.....	4623	Female under twenty-one emancipated,	
Wife may contract debts, when.....	4624	when	4628
Judgments and execution in such cases.	4625	Rights of persons married elsewhere.....	4629

Article 4621. [2967] **Separate property.**—All property, both real and personal, of the husband, owned or claimed by him before marriage, that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, shall be his separate property. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, shall be the separate property of the wife; but during the marriage the husband shall have the sole management of all such property. [Act March 13, 1848. P. D. 4641. Const., art. 16, sec. 15.]

Art. 4622. [2968] **Community property.**—All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, shall be deemed the common property of the husband and wife, and during the coverture may be disposed of by the husband only. [P. D. 4642.]

Art. 4623. [2969] **Presumption as to community property.**—All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. [Act Jan. 20, 1840. P. D. 4638.]

Art. 4624. [2970] **Wife may contract debts, when.**—The wife may contract debts for necessaries furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property; and for such debts suit may be brought in the manner prescribed in article 1840. [Act March 13, 1848. P. D. 4643.]

Art. 4625. [2971] **Judgment and execution in such cases.**—Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife, at the discretion of the plaintiff. [P. D. 4644.]

Art. 4626. [2972] **Husband failing to support wife, etc.**—Should the husband fail or refuse to support his wife from the proceeds of the lands she may have, or fail to educate her children as the fortune of the wife would justify, she may, in either case, complain to the county court, which, upon satisfactory proof, shall decree that so much of such proceeds shall be paid to the wife for the support of herself and for the nurture and education of her children, as the court may deem necessary. [Act Jan. 20, 1840. P. D. 4637.]

Art. 4627. [2973] **Community property liable for debts.**—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. [Act Aug. 26, 1856.]

Art. 4628. [2974] **Female under 21 emancipated by marriage.**—Every female under the age of twenty-one years, who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age; and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age. [Act March 13, 1848. P. D. 4642.]

Art. 4629. [2975] **Rights of persons married elsewhere.**—The marital rights of persons married in other countries, who may remove to this state, shall, in regard to property acquired in this state during the marriage, be regulated by the laws of this state. [P. D. 4639.]

CHAPTER FOUR.

DIVORCE.

[For change of name, see Title 95.]

	Article.		Article.
Marriage may be annulled, when.....	4630	Legitimacy of children, etc.....	4636
Divorce may be granted in what cases.....	4631	Debts and alienations after suit.....	4637
Plaintiff must be resident in state and county	4632	Inventory and appraisement, etc.....	4638
Husband and wife may testify	4633	Temporary orders, etc.....	4639
Division of property.....	4634	Alimony	4640
Connivance and collusion.....	4635	Custody of children.....	4641
		Costs	4642

Article 4630. [2976] **Marriage may be annulled, when.**—The district court shall have power to hear and determine suit for the dissolution of marriage, where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and shall have power and authority to decree the marriage to be null and void. [Act Jan. 6, 1841. P. D. 3449]

Art. 4631. [2977] **Divorce may be granted in what cases.**—A divorce by separation from the bonds of matrimony may be decreed in the following cases:

1. Where either the husband or wife is guilty of excesses, cruel treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.
2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years with the intention of abandonment.
3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.
4. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the state prison; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the governor shall have pardoned the convict; provided, that the husband has not been convicted on the testimony of the wife, nor the wife on the testimony of the husband. [Act May 27, 1876, p. 16. P. D. 3451.]

Art. 4632. [2978] **Plaintiff must be resident in the state and county.**—No suit for divorce from the bonds of matrimony shall be maintained in the courts, unless the petitioner for such divorce shall, at the time of exhibiting his or her petition, be an actual bona fide inhabitant of the state, and shall have resided in the county where the suit is filed six months next preceding the filing of the suit. [Act May 27, 1873, p. 117. P. D. 3459.]

Art. 4633. [2979] **Husband and wife competent witnesses.**—In all suits and proceedings for divorce from the bonds of matrimony, the defendant shall not be compelled to answer upon oath, nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the verdict of a jury, if a jury shall have been demanded by either party, and if not, upon the judgment of the court affirming the material facts alleged in the petition. In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness, and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them. [Acts 1897, p. 49.]

Art. 4634. [2980] **Division of property.**—The court pronouncing a decree of divorce from the bonds of matrimony shall also decree and order a division of the estate of the parties in such a way as to the court shall seem just and right, having due regard to the rights of each party and their children, if any; provided, however, that nothing herein contained shall be construed to compel either party to divest himself or herself of the title to real estate. [P. D. 3452.]

Art. 4635. [2981] **Condonation, connivance and collusion.**—In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed. [P. D. 3460.]

Art. 4636. [2982] **Legitimacy of children; parties may marry again.**—A divorce from the bonds of matrimony shall not in any wise affect the legitimacy of the children thereof; and either party may, after the dissolution of the marriage, marry again. [P. D. 3453.]

Art. 4637. [2983] **Debts and alienations after suit filed.**—On and after the day on which the action for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife. [P. D. 3457.]

Art. 4638. [2984] **Inventory and appraisement; injunction.**—At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner. [P. D. 3458.]

Art. 4639. [2985] **Temporary orders.**—Pending any suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable. [P. D. 3454.]

Art. 4640. [2986] **Alimony.**—If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case. [P. D. 3456.]

Art. 4641. [2987] **Custody of children.**—The courts aforesaid shall have power, in all cases of separation between man and wife, to give the custody and education of the children to either father or mother, as to the said court shall seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well being of any such children may require. [P. D. 3461.]

Art. 4642. [2988] **Costs.**—The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

TITLE 69.

INJUNCTIONS.

[For injunctions to restrain infringement of trade marks, etc., see article 705.]

Article.	Article.
<p>Writs of injunction granted, when.....4643 Appeals allowed to court of civil ap- peals .....4644 Proceedings on appeal.....4645 Case to have precedence on appeal.....4646 No injunction against a judgment, ex- cept, etc.....4647 Injunction to stay execution within twelve months, unless, etc.....4648 Injunctions granted on sworn petition...4649 Judge's fiat to be indorsed on petition...4650 Notice to opposite party.....4651 Petition to be filed and cause docketed...4652 Writs, where returnable.....4653 The bond for injunction.....4654 Clerk to issue the writ.....4655 The writ and its requisites.....4656 Writs may issue in different counties...4657 To whom delivered.....4658 Service and return of writ.....4659 Duty of defendant upon service of writ...4660 Injunctions restrain attorneys, etc., as well as the party.....4661 Citation to issue to defendants.....4662 The answer .....4663 Dissolution in term time or vacation...4664 Refunding bond on dissolution.....4665 Judgment on such bond.....4666 Damages for delay.....4667 Disobedience a contempt.....4668 Procedure in case of disobedience.....4669 Persons guilty to be imprisoned.....4670 General principles of equity applicable, when .....4671</p>	<p>Injunction by state.....4672 Shall be cumulative.....4673</p> <p style="text-align: center;">Injunctions in Particular Cases.</p> <p>Unlawful sale, etc., of liquors may be enjoined .....4674 Procedure as in other cases.....4675 Persons compelled to testify.....4676 Cumulative remedy .....4677 Use or threatened for the unlawful sale of intoxicating liquors in local option territory enjoined.....4678 Who made party defendant.....4679 By whom prosecuted.....4680 Same proceedings as in other cases, ex- cept .....4681 General reputation evidence.....4682 Injunction against soliciting orders in local option districts.....4683 Injunction against the sale of non-in- toxicating liquors without license...4684 Use of premises for gaming enjoined...4685 Parties and proceedings.....4686 Suits, by whom instituted.....4687 Procedure as in other injunction cases...4688 Use of premises for bawdy houses en- joined .....4689 By whom brought, proceedings.....4690 Bucket shops enjoined.....4691 Who may enjoin.....4692 Procedure .....4693</p>

Article 4643. [2989] **Writs of injunction granted, when.**—Judges of the district and county courts shall, either in term time or vacation, hear and determine all applications and may grant writs of injunctions returnable to said courts in the following cases:

1. Where it shall appear that the party applying for such writ is entitled to the relief demanded, and such relief or any part thereof requires the restraint of some act prejudicial to the applicant.

2. Where, pending litigation, it shall be made to appear that a party doing some act respecting the subject of litigation, or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant, which act would tend to render judgment ineffectual.

3. In all cases where the applicant for such writ may show himself entitled thereto under the principles of equity, and as provided by statutes in all other acts of this state, providing for the granting of injunctions, or where a cloud would be put on the title of real estate being sold under an execution against a person, partnership or corporation, having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law. Provided, that no district judge shall have the power to grant any writ of injunction returnable to any other court than his own, unless the application or petition therefor shall state that the resident judge, that is, the judge in whose district the suit is, or is to be brought is absent from his district, or is sick and unable to hear or act upon the application, or is inaccessible, or unless such resident judge shall have refused to hear or act upon such application for the writ of injunction, or unless such judge is disqualified to hear or act upon the application; and the facts of, and relating to, such judge's

absence, or sickness and inability, or disqualification, or inaccessibility, or refusal to act, must be fully set out in the application for the writ, or in an affidavit accompanying said application; and, in case of such absence or sickness and inability or inaccessibility or disqualification of the resident judge, or in case of his refusal to hear or act upon such application, no district judge shall have the power to grant the writ when the application therefor shall have once been acted upon by a district judge of the state; provided, that when the judge applied to shall have refused to hear or act upon such application he shall indorse thereon, or annex thereto, his refusal to hear or act upon such application, together with his reason therefor; provided, that nothing herein shall apply to the granting of writs of injunction by non-resident judges to stay execution or to restrain foreclosures, or to restrain sales under deeds of trust, or to restrain trespasses, or to restrain the removal of property, or to restrain acts injurious to or impairing riparian or easement rights where proof is made to the satisfaction of such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application. A resident judge shall be deemed inaccessible, within the meaning of this act, when, by the ordinary and available means and modes of travel and communication, he can not be reached in sufficient time to effectuate the purpose of the writ of injunction sought. Whenever an application or petition for the writ of injunction shall be made to a non-resident judge upon the ground that the resident judge is inaccessible as hereinbefore defined, the party making such application, or his attorney, shall make and file with the application, as a part thereof or annexed thereto, an affidavit setting out fully the facts showing that the resident judge is inaccessible, and the efforts made by the applicant to reach and communicate with said resident judge, and the result of said efforts in that behalf; and, unless it appears from said affidavit that the applicant has made a fair and reasonable effort to procure the action of the resident judge upon said application, no non-resident judge shall have the power to hear said application upon the ground of inaccessibility of the resident judge; and should any non-resident judge hear said application upon said ground of inaccessibility of the resident judge, and should grant the writ of injunction prayed for, said injunction so granted shall be dissolved upon it being shown that the petitioner has not first made reasonable effort to procure a hearing upon said application before the resident judge. [Const., art. 5, secs. 8, 16. Amended Acts 1909, p. 354.]

Art. 4644. Appeals allowed to courts of civil appeals.—Any party or parties to any civil suit wherein a temporary injunction may be granted, refused or dissolved, under any of the provisions of this title, in term time or in vacation, may appeal from the order or judgment granting, refusing or dissolving such injunction, to the court of civil appeals having jurisdiction of the case; but such appeal shall not have the effect to suspend the enforcement of the order appealed from, unless it shall be so ordered by the court or judge who enters the order; provided, the transcript in such case shall be filed with the clerk of the court of civil appeals not later than fifteen days after the entry of record of such order or judgment granting, refusing or dissolving such injunction. [Acts 1909, p. 354, sec. 2.]

Art. 4645. Proceedings on appeal.—It shall not be necessary to brief such case in the court of civil appeals or supreme court, and the case may be heard in the said courts on the bill and answer, and such affidavits and evidence as may have been admitted by the judge granting, refusing or dissolving such injunction; provided, the appellant may file a brief in the court of civil appeals or supreme court upon the furnishing the appellee with a copy thereof not later than two days before the case is called for submission in such court,

and the appellee shall have until the day the case is called for submission to answer such brief. [Id. sec. 3.]

Art. 4646. **Case to have precedence on appeal.**—Such case shall be advanced in the court of civil appeals or supreme court on motion of either party, and shall have priority over other cases pending in such courts. [Id. sec. 4.]

Art. 4647. [2990] **No injunction against a judgment, except, etc.**—No injunction shall be granted to stay any judgment or proceedings at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against, and so much as will cover the costs. [Act May 13, 1846, p. 363. P. D. 3930.]

Art. 4648. [2991] **Injunction to stay execution within twelve months, unless, etc.**—No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time of, or after rendition of, such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the state at the time such judgment was rendered, and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment. [Id. P. D. 3931.]

Art. 4649. [2992] **Injunctions granted on sworn petition.**—No writ of injunction shall be granted, unless the applicant therefor shall present his petition to the judge, verified by his affidavit taken before some officer authorized to administer oaths, and containing a plain and intelligible statement of the grounds for such relief. [P. D. 3929.]

Art. 4650. [2993] **Judge's fiat to be indorsed on petition.**—If, upon the inspection of such petition, it shall appear to the judge from the facts stated therein that the applicant is entitled to the writ, he shall indorse on such petition or annex thereto his written order directing the clerk of the proper court to issue the writ of injunction prayed for, upon such terms and under such modifications, limitations and restrictions as may be specified in said order; and the judge shall also specify in such order the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt, the bond shall be fixed in double the amount of such judgment or debt. [P. D. 3933.]

Art. 4651. [2994] **Notice to opposite party, when.**—Upon application for any writ of injunction, if it appear to the judge that delay will not prove injurious to either party, and that justice may be subserved thereby, he may cause notice of such application to be served upon the opposite party, his agent or attorney, in such manner as he may direct, and fix a time and place for the hearing of such application.

Art. 4652. [2995] **Petition to be filed and cause docketed.**—Upon the grant of any writ of injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge granting the same, with the clerk of the proper court; and, if such writ of injunction does not pertain to a pending suit in said court, the cause shall be entered on the civil docket of the court in its regular order in the name of the party to whom the writ is granted as plaintiff and of the opposite party as defendant.

Art. 4653. [2996] **Writs, where returnable.**—Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it

is granted be an inhabitant of the state, shall be returnable to, and tried in, the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom any writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile. [Id. P. D. 3932.]

Art. 4654. [2997] **The bond for injunction.**—Upon the filing of the petition and order of the judge hereinbefore provided for, in the proper court, and before the issuance of the writ of injunction, the complainant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by such clerk, in such sum as may be affixed in the order of the judge granting the writ, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be adjudged against him, if the injunction be dissolved in whole or in part. If the state be complainant in any petition for injunction, no bond shall be required. [P. D. 3933.]

Art. 4655. [2998] **Clerk to issue the writ.**—When the petition, order of the judge and bond aforesaid are filed, it shall be the duty of the clerk to issue the writ of injunction directed in such order, in conformity with the terms thereof, and to deliver the same to the sheriff or any constable of the proper county for service and return.

Art. 4656. [2999] **The writ and its requisites.**—The writ of injunction shall be sufficient if it contains substantially the following requisites:

1. Its style shall be, "The State of Texas."
2. It shall be directed to the person or persons enjoined.
3. It must state the names of the parties to the proceeding, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
4. It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
5. It shall state the term of the court to which such writ is returnable.
6. It shall be dated and signed by the clerk officially, and attested with the seal of his office; and the date of its issuance must be indorsed thereon.

Art. 4657. [3000] **Writs may issue in different counties.**—If there be several persons enjoined, residing in different counties, a writ shall issue to each of such counties.

Art. 4658. [3001] **To whom delivered.**—The clerk issuing any such writ of injunction shall deliver the same to the sheriff or any constable of his county, if the person enjoined be a resident of such county; if the person enjoined be a resident of some other county, the clerk shall forward such writ by mail to the sheriff or any constable of such county.

Art. 4659. [3002] **Service and return of the writ.**—The officer receiving any writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy of such writ; and the original shall be returned to the court from which it issued, on or before the return day named therein, with the action of the officer indorsed thereon or annexed thereto, showing how and when he executed the same.

Art. 4660. [3003] **Duty of defendant upon service of writ.**—The party upon whom any writ of injunction is served shall obey the command thereof and refrain from the commission of the act enjoined so long as such injunction continues in force; or, if the continuance of an act or acts be enjoined, the person enjoined shall immediately cease such act or acts and thereafter refrain from their continuance so long as such injunction remains in force.

Any person violating the provisions of this article shall be dealt with as hereinafter directed.

Art. 4661. [3004] **Injunctions restrain attorneys, etc., as well as the party.**—Any injunction restrains the counselors, solicitors, attorneys, agents, servants and employes of the party, as well as the party himself.

Art. 4662. [3005] **Citation to issue to defendants.**—When any writ of injunction is issued, and such writ does not pertain to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court. But if any injunction is issued after notice to the defendant, as hereinbefore provided, no citation to such defendant shall be necessary.

Art. 4663. [3006] **The answer.**—The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of a denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath or affirmation of the defendant. [P. D. 3929.]

Art. 4664. [3007] **Dissolution in term time or vacation.**—In all cases of injunction, motions to dissolve the same without determining the merits may be heard after answer filed, in vacation as well as in term time, at least ten days' notice of such motion being first given to the opposite party or his attorney. In such cases, the proceedings upon such hearing, including the action of the judge upon the motion, shall be entered upon the minutes of the proper court by the clerk thereof, on or before the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same. [P. D. 3934.]

Art. 4665. [3008] **Refunding bond on dissolution.**—Upon the dissolution of any injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, it shall be the duty of the court or judge to require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court; which bond shall be payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs, which may be collected of him in the suit or proceeding enjoined, in the event such injunction is made perpetual on final hearing. [P. D. 3937.]

Art. 4666. [3009] **Judgment on such bond.**—In the event such injunction is perpetuated on final hearing, the court may, on motion of the complainant, enter judgment against the principal and sureties in any bond taken in accordance with the provisions of the preceding article for such amount as may be shown to have been collected from such complainant. [P. D. 3938.]

Art. 4667. [3010] **Damages for delay.**—Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction, exclusive of costs. [P. D. 3935.]

Art. 4668. [3011] **Disobedience a contempt.**—Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. [P. D. 3934.]

Art. 4669. [3012] **Procedure in case of disobedience.**—In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending, or with the district or county judge, as the case may be, in vacation, his affidavit, stating the person guilty of such disobedience, and describing the act or acts constituting the same; and there-

upon the court or judge shall issue, or cause to be issued, an attachment for such person, directed to the sheriff or any constable of the proper county, and requiring such officer to arrest the person therein named and have him before the court or judge at a time and place to be named in such writ.

Art. 4670. [3013] **Persons guilty to be imprisoned.**—On return of such attachment, the court or judge shall proceed to hear proof; and, if satisfied that such person has disobeyed the injunction either directly or indirectly, he shall be committed to jail without bail until he purges himself of such contempt, in such manner and form as may be directed by the court or judge.

Art. 4671. [3014] **General principles of equity applicable, when.**—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

Art. 4672. [3015] **Injunction by the State.**—The full right, power and remedy of injunction may be resorted to and invoked by the state at the instance of the county or district attorney or attorney general, to prevent, prohibit or restrain the violation of any revenue law of the state. [Acts of 1888, p. 10, sec. 1.]

Art. 4673. [3016] **Shall be cumulative.**—The right and remedy provided by the preceding article shall be cumulative of other laws in force in this state. [Id. sec. 2.]

INJUNCTIONS IN PARTICULAR CASES.

Article 4674. **Unlawful sale, etc., of liquors may be enjoined.**—Any person, firm or corporation in this state who may engage in, pursue, carry on, or maintain, any of the following described occupations or callings under the circumstances and conditions herein described, are hereby declared to be the creators and promoters of a public nuisance, and may be enjoined at the suit either of the county or district attorney in behalf of the state, or of any private citizen thereof.

1. Any person, firm or corporation who may engage in or pursue the business of selling intoxicating liquor without having first procured the necessary license and paid the taxes required by law.

2. Any person, firm or corporation who may, as owner, proprietor or agent, establish, manage or conduct any public place or business where intoxicating liquors are stored, kept, drunk, sold or dispensed within any county or precinct within this state, wherein the sale of intoxicating liquor has been prohibited by law.

3. Any person, firm or corporation who may, under the pretense of selling or dispensing intoxicating liquor on prescription, in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law, and who in thus selling or dispensing such intoxicating liquor violates the law; provided, if, on final hearing, such injunction is sustained, the license of such person shall be revoked, and he shall not thereafter be permitted to again pursue such business for a period of one year.

4. Any person who, as a physician, follows the business of writing and issuing prescriptions to persons contrary to law, prescribing the use of intoxicating liquors to such persons, in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law.

5. Any person who shall engage in the business of peddling or "bootlegging" intoxicating liquor in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law.

6. Any person who canvasses or solicits orders for the sale of intoxicating liquor from persons other than those engaged in the lawful sale of the same in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law. [Acts 1907, p. 166, sec. 1.]

Art. 4675. **Procedure as in other cases.**—The procedure in all cases brought under the preceding article shall be the same as in other suits for injunction, as nearly as may be; provided, that, when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. [Id. sec. 2.]

Art. 4676. **Persons compelled to testify.**—Any person may be compelled to testify and give evidence in any proceeding under the two preceding articles, but such evidence shall not be used against such person in any criminal prosecution in this state. [Id. sec. 4.]

Art. 4677. **Cumulative remedy.**—The foregoing remedy by injunction shall not be held to supersede or repeal any law now in force correcting the evils defined, but shall be cumulative of all such laws. [Id. sec. 3.]

Art. 4678. **Sale of intoxicating liquors in local option territory enjoined.**—The actual, threatened or contemplated use of any place, room, premises, building or part thereof, in any county, justice precinct, town, city or subdivision of a county, as may be designated by the commissioners' court of said county, in which the sale of intoxicating liquors has been prohibited under the laws of this state, for the purpose of selling intoxicating liquor in violation of law, or in which to keep, store or deposit any intoxicating liquor for the purpose of being sold in violation of law, or the possession of, or having under control or management at any such place, or any intoxicating liquor for the purpose and with the intent to sell the same in violation of law, shall be enjoined at the suit of the state, or of any citizen thereof. [Acts 1910, 3 S. S. p. 35, sec. 11.]

Art. 4679. **Who made party defendant.**—Any person, company, corporation or association of persons who may so use, or be about to use, or who may aid or assist in any such actual or threatened use, of such place, room, premises, building or part thereof, or any person who may have, possess or manage for any such purpose any intoxicating liquor, or who may aid or assist another in thus possessing, having or maintaining or managing intoxicating liquor for such purpose, may be made a party defendant to such suit. [Id. sec. 12.]

Art. 4680. **By whom prosecuted.**—The attorney general and the several district and county attorneys shall institute and prosecute all such injunction suits that the said attorney general or district or county attorney may deem necessary; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing contained herein shall prevent said injunction from issuing at the suit of any citizen of this state who may sue in his own name, and any such citizen shall not be required to show that he is personally injured by reason of the matters and things of which he complains. [Id. sec. 13.]

Art. 4681. **Same proceedings as in other cases, except.**—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, or where injunction is sought, as near as may be; provided, that where the suit is brought in the name of the state by any of the officers aforesaid, the petition therefor need not be verified, nor shall the state be required to pay or give security for costs or on appeal; and appeal by the state shall be perfected by giving notice thereof in open court, and all such cases shall have precedence on the docket of all courts where pending. [Id. sec. 14.]

Art. 4682. **General reputation evidence.**—In any proceeding under the provisions of the three preceding articles evidence of the general reputation of the house, place, building, premises or part thereof, or of the business, occupation or pursuit of the defendant involved, may be admitted in evidence as tending to prove the allegations of the complaint; provided, that in any investigation no person shall be exempt from giving testimony therein, but the testimony given by a witness shall not be used against him in any criminal

action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him. [Id. sec. 15.]

Art. 4683. Injunction against soliciting orders in local option districts.—The actual, threatened or contemplated pursuit of any such business mentioned in articles 7479 and 7480 of the title, "Taxation," in any local option territory, by any person or firm or association of persons or corporations, without there having first been procured a license therefor as provided in said articles, shall be enjoined at the suit of the state at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved; and the state shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this state, may be invoked and applied in any injunction proceeding instituted hereunder. [Acts 1909, p. 53, sec. 6.]

Art. 4684. Injunction against sale of non-intoxicating liquors without license.—The actual, threatened or contemplated pursuit of any such business mentioned in article 7476 of the title, "Taxation," by any such person or firm or association of persons or corporations, without there having first been procured a license therefor as provided in said article, shall be enjoined at the suit of the state at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved, and the state shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this state, may be invoked and applied in any injunction proceeding instituted hereunder. [Acts 1909, p. 51. Amended Act 1909, 2 S. S. p. 397.]

Art. 4685. Use of premises for gaming enjoined.—The habitual use, actual, threatened or contemplated, use of any premises, place, building or part thereof, for the purpose of gaming or of keeping or exhibiting games prohibited by the laws of this state, shall be enjoined at the suit either of the state or of any citizen thereof. [Acts 1905, p. 372.]

Art. 4686. Parties and proceedings.—Any person who may so use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building or part thereof, may be made a party defendant in such suit. [Id. sec. 1.]

Art. 4687. Suits, by whom instituted.—The attorney general and the several district and county attorneys shall institute and prosecute all suits under the two preceding articles that said attorney general or such district or county attorney may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name, and such citizen shall not be required to show that he is personally injured by the acts complained of. [Id. sec. 2.]

Art. 4688. Procedure in other injunction cases.—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. [Id. sec. 3.]

Art. 4689. Use of premises for bawdy houses enjoined.—The habitual, actual, threatened or contemplated use of any premises, place, building or

part thereof, for the purpose of keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, shall be enjoined at the suit of either the state or any citizen thereof. Any person who may use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building or part thereof, may be made a party defendant in such suit; provided, that the provisions of this and the succeeding article shall not apply to nor be so construed as to interfere with the control and regulation of bawds and bawdy houses by ordinances of incorporated towns and cities acting under special charters and where the same are actually confined by ordinance of such city within a designated district of such city. [Acts 1907, p. 246.]

Art. 4690. **By whom brought; proceedings as in other injunction cases.**—The attorney general and the several district and county attorneys shall institute and prosecute all suits that said attorney general or such district or county attorney may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of such officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name; and such citizen shall not be required to show that he is personally injured by the acts complained of; and the procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that, when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. [Id.]

Art. 4691. **Bucket shops may be enjoined.**—The habitual use, actual, threatened or contemplated, of any premises, place or building, for carrying on bucket shops, as defined in the penal laws of this state, or the habitual use by or permitting to remain in any bucket shop as defined, any telegraph or telephone wires or instruments, actual or threatened, under circumstances prohibited by the penal laws of this state, shall be enjoined at the suit of either the state or any citizen thereof. [Acts 1907, p. 172, sec. 11.]

Art. 4692. **Who may enjoin.**—The attorney general or the several district and county attorneys shall prosecute all suits deemed by them necessary to enjoin such use; provided, that nothing herein shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name, and such citizen shall not be required to show that he is personally injured by the acts complained of. [Id. sec. 12.]

Art. 4693. **Procedure as in other cases.**—The procedure in all cases brought under the two preceding articles of this chapter shall be the same as in other suits for injunction, as near as may be; provided, that when such suit is brought by any district or county attorney or by the attorney general, the petition for injunction need not be verified. [Id. sec. 13.]

TITLE 70.

INJURIES RESULTING IN DEATH—ACTIONS FOR.

[See "Limitations." See Articles 1838, 1895, 5686-6648.]

Article.	Article.
Action for injuries resulting in death, brought when	Executor, etc., may bring the action, when
Character of wrongful act.....	Suit does not abate by death of either party
Exemplary damages	Abates, when
Action commenced without regard to criminal proceedings	Executor, etc., of defendant made party, when
For whose benefit action to be brought.....	Damages to be apportioned by jury.....
Who may bring the action.....	

Article 4694. [3017] **Actions for injuries resulting in death, brought when.**—An action for actual damages on account of injuries causing the death of any person may be brought in the following cases:

1. When the death of any person is caused by the negligence or carelessness of the proprietor, owner, charterer, hirer, of any railroad, steamboat, stage coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, negligence or carelessness of their servants or agents; when the death of any person is caused by the negligence or carelessness of the receiver or receivers or other person or persons in charge or control of any railroad, their servants or agents; and the liability of receivers shall extend to cases in which the death may be caused by reason of the bad or unsafe condition of the railroad or machinery, or other reason or cause by which an action may be brought for damages on account of injuries, the same as if said railroad were being operated by the railroad company.

2. When the death of any person is caused by the wrongful act, negligence, unskillfulness, or default of another. [Acts of 1860, p. 32; 1887, p. 44; 1892, S. S., p. 5.]

Art. 4695. [3018] **Character of wrongful act.**—The wrongful act, negligence, carelessness, unskillfulness, or default, mentioned in the preceding article, must be of such a character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. [Id.]

Art. 4696. [3019] **Exemplary damages.**—When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. [Const., art. 16, sec. 26.]

Art. 4697. [3020] **Action commenced without regard to criminal proceedings.**—The action may be commenced and prosecuted, although the death shall have been caused under such circumstances as amounts in law to a felony, and without regard to any criminal proceedings that may, or may not, be had in relation to the homicide. [Id.]

Art. 4698. [3021] **For whose benefit action to be brought.**—The action shall be for the sole and exclusive benefit of the surviving husband, wife, children and parents of the person whose death shall have been caused, and the amount recovered therein shall not be liable for the debts of the deceased. [Id. sec. 2. P. D. 16.]

Art. 4699. [3022] **Who may bring the action.**—The action may be brought by all of the parties entitled thereto, or by any one or more of them for the benefit of all. [Id.]

Art. 4700. [3023] **Executors, etc., may bring the action, when.**—If the parties entitled to the benefit of the action shall fail to commence the same within three calendar months after the death of the deceased, it shall be the duty of the executor or administrator of the deceased to commence and prose-

cute the action, unless requested by all of the parties entitled thereto not to prosecute the same. [Id.]

Art. 4701. [3024] **Suit does not abate by death of either party.**—The action shall not abate by the death of either party to the record if any person entitled to the benefit of the action survives. If the plaintiff die pending the suit, when there is only one plaintiff, some one or more of the parties entitled to the money recovered may, by order of the court, be made plaintiff, and the suit be prosecuted to judgment in the name of such plaintiff for the benefit of the persons entitled. [Id. sec. 4. P. D. 18.]

Art. 4702. [3025] **Abates, when.**—If the sole plaintiff die pending the suit, and he is the only party entitled to the money recovered, the suit shall abate.

Art. 4703. [3026] **Executor, etc., of defendant made party, when.**—If the defendant die pending the suit, his executor or administrator may be made a party, and the suit be prosecuted to judgment as though such defendant had continued alive. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. [Id.]

Art. 4704. [3027] **Damages to be apportioned by the jury.**—The jury may give such damages as they may think proportioned to the injury resulting from such death; and the amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. [Id. sec. 2., P. D. 16.]

TITLE 71.

INSURANCE.

[For "Live Stock Insurance," see Art. 1121, Subdivision 46.]

<p>Chapter.</p> <ol style="list-style-type: none"> 1. Incorporation of Insurance Companies. 2. Life, Health and Accident Insurance Companies. 3. Investment in Texas Securities and Taxation of Gross Receipts. 4. Assessment or Natural Premium Companies. 5. Mutual Assessment Accident Insurance Companies. 6. Co-operative Life Insurance Companies. 7. Fraternal Beneficiary Associations. 	<p>Chapter.</p> <ol style="list-style-type: none"> 8. Fire and Marine Insurance Companies. 9. State Insurance Board. 10. Mutual Fire, Storm, Lightning, etc., Insurance Companies. 11. Printers' Mutual Insurance Companies. 12. Mutual Companies Insuring Against Loss by Burglary, etc. 13. Fidelity, Guaranty and Surety Companies. 14. Employers Liability Insurance Companies. 15. General Provisions.
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CHAPTER ONE.

INCORPORATION OF INSURANCE COMPANIES.

<p>Formation of company.....4705</p> <p>What the articles of incorporation shall contain.....4706</p> <p>Duty of commissioner of insurance on deposit of articles with him.....4707</p> <p>Company shall certify, under oath, that the capital is bona fide its property...4708</p> <p>Where examination is made by other than commissioner, etc.....4709</p> <p>Stock shall be divided into shares.....4710</p> <p>Capital stock shall consist of what.....4711</p> <p>Surplus money may be invested, how...4712</p> <p>May be changed and re-invested.....4713</p>	<p>Article.</p> <p>Number and qualification of directors..4714</p> <p>Election of directors.....4715</p> <p>Annual meeting for election.....4716</p> <p>Special meetings for election.....4717</p> <p>Quorum of stockholders.....4718</p> <p>Directors shall choose president and other officers.....4719</p> <p>Directors may ordain by-laws, etc.....4720</p> <p>Shall keep a record of transactions....4721</p> <p>Shall fill vacancies, and what shall constitute quorum of the board.....4722</p> <p>General incorporation law shall apply to insurance companies, unless, etc.....4723</p>
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Article 4705. [3028] **Formation of company.**—Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign articles of incorporation, and submit the same to the attorney general; and, if said articles shall be found by him to be in accordance with the law of this state, and of the United States, he shall attach thereto his certificate to that effect, whereupon such articles shall be deposited with the commissioner of insurance and banking.

Art. 4706. [3029] **What the articles of incorporation shall contain.**—Such articles shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.
2. The locality of the principal business office of such company.
3. The kind of insurance business which the company proposes to engage in.
4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

Art. 4707. [3030] **Duty of commissioner of insurance when articles are deposited with him.**—When the said articles of incorporation have been deposited with the commissioner of insurance and banking, and the law in all other respects has been complied with by the company, the commissioner

shall make an examination, or cause one to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, then the commissioner of insurance and banking shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation. [Act Feb. 17, 1875, p. 33, sec. 7.]

Art. 4708. [3031] **Company shall certify, under oath, that the capital is bona fide its property.**—The corporators or officers of any such company shall be required to certify under oath to the commissioner of insurance and banking that the capital exhibited to the person making the examination is the bona fide property of the company so examined, which certificate shall be filed and recorded in the office of the commissioner of insurance and banking. [Act Feb. 17, 1875, sec. 7.]

Art. 4709. [3032] **Where examination is made by other than commissioner.**—If the examination be made by any other person than the commissioner of insurance and banking, the finding shall be certified under the oath of the person making such examination, and such finding and certificate shall be filed and recorded in the office of the commissioner of insurance and banking. [Id.]

Art. 4710. [3033] **Stock shall be divided into shares.**—The stock of any company organized under the laws of this state shall be divided into shares of one hundred dollars each. [Id. sec. 3.]

Art. 4711. [3034] **Capital stock shall consist of what.**—The capital stock of a company shall consist—

1. In lawful money of the United States; or
2. In the bonds of this state or any county or incorporated town or city thereof, or the stock of any national bank; or
3. In first mortgages upon unincumbered real estate in this state, the title to which is valid, and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company and the policy or policies transferred to the company taking such mortgage. [Acts of 1889, p. 11.]

Art. 4712. [3035] **Surplus money may be invested, how.**—The surplus money of a company over and above its paid up capital stock may be invested in, or loaned upon the pledge of, public stocks or bonds of the United States, or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying corporations, or in bills of exchange or other commercial notes or bills, except its own stock; provided, always, that the current market value of such stocks, bonds, notes, bills, or other evidences of indebtedness, shall be at all times during the continuance of such loans at least twenty per cent more than the sum loaned thereon. [Acts 1875, p. 33.]

Art. 4713. [3036] **Company may change and re-invest its stock.**—A company may change and re-invest its capital stock in like securities, as occasion may, from time to time, require. [Id.]

Art. 4714. [3037] **Number and qualification of directors.**—The affairs of any company organized under the laws of this state shall be managed by not more than thirteen nor fewer than seven directors, all of whom shall be stockholders in the company. [Id. sec. 5.]

Art. 4715. [3038] **Election of directors.**—Within thirty days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote; and the directors then in office shall continue

in office until their successors have been duly chosen and have accepted the trust. [Id.]

Art. 4716. [3039] **Annual meetings for election of directors.**—The annual meeting for the election of directors of a company shall be held during the month of January, as the by-laws of the company may direct. [Id. sec. 9.]

Art. 4717. [3040] **Special meetings for election of directors.**—If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located, and the directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted. [Id.]

Art. 4718. [3041] **Quorum of stockholders.**—No meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present at such meeting, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company.

Art. 4719. [3042] **Directors shall choose president and other officers.**—The directors shall choose by ballot from their own number a president and such other officers as the by-laws of the company may designate, who shall perform such duties, receive such compensation and give such security as the by-laws of such company may require. [Id. sec. 10.]

Art. 4720. [3043] **Directors may ordain by-laws, etc.**—The directors may ordain and establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company. [Id. sec. 11.]

Art. 4721. [3044] **Shall keep a record of their transactions.**—It shall be the duty of the directors to keep a full and correct record of their transactions, which shall, at all times during business hours, be open to the inspection of the stockholders and other persons interested therein. [Id. sec. 11.]

Art. 4722. [3045] **Shall fill vacancies, and what shall constitute a quorum.**—The directors shall fill all vacancies which shall occur in the board or in any of the offices of the company, and a majority of the board shall constitute a quorum for the transaction of business.

Art. 4723. [3046] **General incorporation law shall apply to insurance companies.**—The laws relating to and governing corporations in general shall apply to and govern insurance companies incorporated in this state in so far as the same may not be inconsistent with the provisions of this title.

CHAPTER TWO.

LIFE, HEALTH AND ACCIDENT INSURANCE COMPANIES.

Article.		Article.	
4724	Terms defined.....	4749	Deposit of securities.....
4725	Who may incorporate.....	4750	Same.....
4726	Charter to be approved by attorney general.....	4751	Policies shall have indorsed on face, what.....
4727	Amendment of charter.....	4752	Fees for making deposits.....
4728	Examination of commission before com- mencing business.....	4753	Securities may include capital stock; se- curities to be increased.....
4729	Shall file annual statement.....	4754	Sub-standard, or extra-hazardous poli- cies.....
4730	Renewal certificate.....	4755	No commission to be paid to officers.....
4731	Copy of certificate for agents.....	4756	Co-operative companies.....
4732	To sue and be sued—commission only can enjoin.....	4757	Funds to be deposited in name of com- pany.....
4733	Laws relating to corporations shall govern.....	4758	Impairment of capital stock.....
4734	May invest in what securities.....	4759	Form of policy to be filed.....
4735	May hold real estate for what purposes and how long.....	4760	Policy to be approved by commissioners.....
4736	Directors not to do certain things.....	4761	Must have certificate of authority.....
4737	May reinsure.....	4762	Companies with \$25,000.00 capital stock.....
4738	Dividends to be paid only from profits.....	4763	Unlawful dividends.....
4739	Salaries.....	4764	Taxation of domestic insurance com- panies.....
4740	Disbursements to be made only on voucher.....	4765	Statement of foreign companies.....
4741	Policies shall contain what.....	4766	To file articles of incorporation.....
4742	Policies shall not contain what.....	4767	Paid up capital stock.....
4743	Policies of foreign companies may con- tain.....	4768	Deposits required.....
4744	Venue of suits on policies.....	4769	Alien companies to deposit.....
4745	Service of process.....	4770	Deposit liable for judgment.....
4746	Losses shall be paid promptly.....	4771	When alien company need not deposit.....
4747	Certificate shall be null and void, when.....	4772	Assets, how invested.....
4748	Business of life insurance companies limited to certain kinds of business.....	4773	Shall file power of attorney.....
		4774	Duty of commissioner in accepting service.....

Article 4724. **Terms defined.**—A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill health. When consistent with the context and not obviously used in a different sense, the term, "company," or, "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance. The term, "home," or domestic company, as used herein, designates those life, accident, or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this state. The term, "foreign company," means any life, accident or health insurance company organized under the laws of any other state or territory of the United States or foreign country. The term, "home office," of a company means its principal office within the state or country in which it is incorporated and formed. The "insured" or "policy-holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term, "net assets," is meant the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required

for the payment of losses and expenses, nor set apart for any other purpose required by law. [Acts 1909, p. 192, sec. 1.]

Art. 4725. Who may incorporate.—Any three or more citizens of this state, who shall be known as incorporators, may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company; provided, that no such company shall transact more than one of the foregoing classes of business, except in separate and distinct departments. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation before any officer authorized to take acknowledgments to deeds and file the same in the office of the commissioner of insurance and banking. Such articles of incorporation shall specify:

- (a) The name and place of residence of each of the incorporators.
- (b) The name of the proposed company, which shall contain the words, "Insurance Company," as a part thereof, and which must not so closely resemble the name of any existing company transacting insurance business in this state as to mislead the public.
- (c) The location of its home office.
- (d) The kind or kinds of insurance business it purposes to transact.
- (e) The amount of its capital stock, not less than \$100,000, all of which capital stock must be subscribed and fully paid up and in the hands of the incorporators before said articles of incorporation are filed, such capital stock to be divided into shares of one hundred dollars each.
- (f) The period of time it is to exist, which shall not exceed five hundred years.
- (g) The number of shares of such capital stock.
- (h) Such other provisions not inconsistent with the law as the incorporators may deem proper to insert therein. [Id. sec. 2.]

Art. 4726. Charter to be approved by attorney general, etc.—When such articles of incorporation are filed with the commissioner of insurance and banking, together with an affidavit made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, it shall be the duty of the commissioner to submit such articles of incorporation to the attorney general for examination; and, if he approves the same as conforming with the law, he shall so certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the commissioner of insurance and banking, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of one dollar, he shall furnish a certified copy of the same to the incorporators, upon which, they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company, and elect a board of directors not less than five, composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date annually thereafter there shall be held an annual meeting of the stockholders at the home office, and a board of directors elected for the ensuing year. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall constitute a quorum. [Id. sec. 3.]

Art. 4727. **Amendment of charter.**—At any regular meeting or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock; provided, that the capital stock shall in no case be reduced to less than one hundred thousand dollars fully paid up. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidences of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent; and every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership. [Id. sec. 3.]

Art. 4728. **Examination by commissioner before commencing business.**—When the first meeting of the stockholders shall be held and the officers of the company elected, it shall be the duty of the president or secretary to notify the commissioner of insurance and banking; and he shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof; and, if he shall find that all of the capital stock of the company, amounting to not less than one hundred thousand dollars, has been fully paid up and is in the custody of the officers, either in cash or securities of the class in which such companies are authorized by this chapter to invest or loan their funds, he shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this state as such officers may apply for and as may be authorized by its charter; which certificate shall expire on the last day of February next after the date of its issuance. Before such certificate is issued, not less than two officers of such company shall execute and file with the commissioner of insurance and banking a sworn schedule of all the assets of the company exhibited to him upon such examination, showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company and are worth the amounts stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the commissioner of insurance and banking. [Id. sec. 4.]

Art. 4729. **Shall file annual statement.**—Each life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this state, shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the commissioner of insurance and banking, a statement, accompanied with the fee for filing annual statements of ten dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount

of all policies in force; and the commissioner of insurance and banking may, from time to time, make such changes in the forms and requirements of the annual statements of companies as shall seem to him best adapted to elicit from the companies a true exhibit of their condition and method of conducting business; and such statement shall also contain and set forth an exhibit of the investments of such company; provided, that such terms and requirements shall elicit only such information as shall pertain to the business of the company. [Id. sec. 5.]

Art. 4730. **Renewal certificates.**—Whenever any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, transacting insurance business in this state, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this state in accordance with the provisions of this chapter, the commissioner of insurance and banking shall, upon receipt of a fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of February of the subsequent year. [Id. sec. 6.]

Art. 4731. **Copy of certificate for agents.**—Any such company organized under the laws of this state, having received authority from the commissioner of insurance and banking to transact business in this state, shall receive from such commissioner, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this state. [Id. sec. 7.]

Art. 4732. **To sue and be sued; commissioner only can enjoin.**—Actions may be maintained by a company organized under the laws of this state against any of its policy holders, stock holders, or other person, for any cause relating to the business of such company; and actions may also be prosecuted and maintained by any policy holder, or the heirs or legal representatives of any such policy holder, against the company for losses which accrue on any policy; but no action shall be brought or maintained by any person other than the commissioner of insurance and banking of this state for the enjoining, restraining or interfering with the prosecution of the business of the company. [Id. sec. 8.]

Art. 4733. **Laws relating to corporations shall govern.**—The laws relating to and governing corporations in general shall apply to and govern companies organized under this chapter, in so far as the same are pertinent and not in conflict with the provisions of this chapter. [Id. sec. 9.]

Art. 4734. **May invest in what securities.**—A life insurance company organized under the laws of this state may invest in or loan upon the following securities, viz.:

(a) It may invest any of its funds or accumulations in the bonds of the United States or of any state, county, or city of the United States, or the bonds of any independent or common school district, or first mortgage bonds of any dividend paying railroad or electric railway company duly incorporated under the laws of the United States, or any state thereof.

(b) It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in, and upon first liens upon real estate, the title to which is valid, and the value of which is double the amount loaned thereon; provided, that, if any part of such value is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent of the value thereof, with loss clause payable to such company. It may also make loans upon the security of or purchase its own policies, but no loan on any policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the board of directors, or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any

underwriting of the purchase or sale of securities or property, or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors. Every such company possessed of assets not authorized by this chapter shall dispose of the same within five years after July 10, 1909, unless such time is extended for good cause by the commissioner of insurance and banking. [Id. sec. 10.]

Art. 4735. **May hold real estate for what purposes and for how long.**—Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1. One building site and office building for its accommodation in the transaction of its business and for lease and rental.
2. Such as shall have been acquired in good faith by way of security for loans previously contracted or for moneys due.
3. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings.
4. Such as shall have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in subdivisions 2, 3 and 4 of this article, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within five years after the company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business; and it shall not hold such property for a longer period, unless it shall procure a certificate from the commissioner of insurance that its interests will suffer materially by the forced sale thereof; in which event, the time for the sale may be extended to such time as the commissioner shall direct in such certificate. [Id. sec. 11.]

Art. 4736. **Director not to do certain things.**—No director or officer of any insurance company transacting business in this state, or organized under the laws of this state, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan; provided, that nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. [Id. sec. 12.]

Art. 4737. **May reinsure.**—Any life insurance company, organized under the laws of this state, may reinsure in any insurance company authorized to transact business in this state, any risk or part of a risk which it may assume; provided, that no such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the commissioner of insurance and banking, and be by him approved, as protecting fully the interests of all the policy holders. [Id. sec. 13.]

Art. 4738. **Dividends to be paid only from profits.**—No life insurance company, organized under the laws of this state, shall declare or pay any dividends to its policy holders, except from the profits made by such company; provided, that this shall not prohibit the issuance of policies guaranteeing a definite payment or reduction in premiums, not exceeding the expense loading on said premiums; but, where said reduction exceeds said expense loading, the proper reserve therefor must be held by the company to provide for the deficiency so arising in the net premium; and provided, further, that this shall not apply to payments to holders of special or board contracts heretofore issued. No such life insurance company shall declare or pay any dividends

to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. [Id. sec. 14.]

Art. 4739. **Salaries.**—No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such life insurance company; provided, that the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof, or to any member of his family after his death. [Id. sec. 20.]

Art. 4740. **Disbursements to be made by vouchers only.**—No domestic life insurance company shall make any disbursement of one hundred dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher can not be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [Id. sec. 21.]

Art. 4741. **Policies shall contain what.**—No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, unless the same shall contain provisions substantially as follows:

1. A provision that all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. A provision for a grace of at least one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which provision may contain a stipulation that, if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the policy.

3. A provision that the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than two years from its date, except for non-payment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war.

4. A provision that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

5. A provision that, if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. A provision that, after three full years premiums have been paid, the company, at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the legal reserve at the end of the current policy year on the policy and on any dividend addition thereto, less than a sum not more than two and

one-half per centum of the amount insured by the policy, and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may further provide that such loans may be deferred for not exceeding six months after application therefor is made. It shall further be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the loan value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies; and no provision herein required shall compel any company to loan on any policy an amount greater than ninety-seven and one-half per centum of the face value thereof, including net dividend additions thereto.

7. A provision which, in event of default in premium payments, after premiums shall have been paid for three full years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy, and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserves, less a sum not more than two and one-half per cent of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, and may stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurances.

8. A table showing in figures the loan values, and the options available under the policies each year, upon default in premium payments during the first twenty years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available.

9. A provision that if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. A provision that, when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and the right of the claimant to the proceeds, or not later than two months after the receipt of such proof.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any of the foregoing provisions, or portions thereof, not applicable to single premium policies shall, to that extent, not be incorporated therein. [Id. sec. 22.]

Art. 4742. **Policies shall not contain what.**—No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company incorporated under the laws of this state, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may, by the terms of the policy, be deducted; provided, that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations. This provision shall not apply to purely accident and health policies. None of the foregoing provisions relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policy issued before July 10, 1909. [Id. sec. 23.]

Art. 4743. **Policies of foreign companies may contain.**—The policies of a life insurance company not organized under the laws of this state may contain any provision which the law of the state, territory, district or country, under which the company is organized, prescribes shall be in such policies when issued in this state; and the policies of a life insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district or country, contain any provision required by the laws of the state, territory, district or country in which the same are issued, anything in this chapter to the contrary notwithstanding. [Id. sec. 24.]

Art. 4744. **Venue of suits on policies.**—Suits on policies may be instituted and prosecuted against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, in the county where the home office of such company is located, or in the county where loss has occurred or where the policy holder or beneficiary instituting such suit resides. [Id. sec. 33.]

Art. 4745. **Service of process.**—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. [Id. sec. 34.]

Art. 4746. **Losses shall be paid promptly.**—In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. [Id. sec. 35.]

Art. 4747. **Certificate null and void, when.**—Should any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fail to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this state, or out of it, such officer shall immediately certify such demand and failure to the commissioner of insurance and banking; and thereupon the com-

missioner shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this state until such execution shall be fully satisfied and discharged, and until such commissioner shall renew his certificate of authority to such company. [Id. sec. 36.]

Art. 4748. **Business of life insurance companies limited to certain kinds of business.**—It shall be unlawful for any life insurance company, accident insurance company, life and accident, health and accident, and life, health and accident insurance company to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life, accident or health insurance in this state be in any wise conducted or transacted by any company which, in this or any other state or country, is engaged or concerned in the business of marine, fire or inland insurance. [Id. sec. 37.]

Art. 4749. **Deposit of securities.**—Any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this state, may, at its option, deposit with the treasurer of this state securities equal to amount of its capital stock, and may, at its option, withdraw the same, or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the commissioner of insurance and banking; and, when any such deposit is made, the treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same; and such company shall have the right to advertise such fact, or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agents of each insurance company making such deposit shall be permitted, at all reasonable times, to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the treasurer, and the commissioner of insurance and banking, of this state. The deposit herein provided for, when made by any company, shall thereafter be maintained as long as said company shall have outstanding any liability to its policy holders. For the purpose of state, county and municipal taxation, the situs of all personal property belonging to such companies shall be at the home office of such company. [Id. sec. 38.]

Art. 4750. **Same.**—Any life insurance company now incorporated, or which may hereafter be incorporated, under the laws of this state, may deposit with the commissioner of insurance and banking of the state of Texas, for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this state, it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said commissioner in trust for the purpose and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested; and, in such case, said commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company. Said commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or conveyed to, him in trust as aforesaid, the reasonable expense of such appraisement or valuation to be paid by the company. [Act 1909, p. 448, 2 S. S. sec. 1.]

Art. 4751. **Policies shall have indorsed on face, etc.**—After making the deposit mentioned above, no company shall thereafter issue a policy of in-

insurance or endowment or annuity bond, except policies of industrial insurance, unless it shall have upon its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the commissioner of insurance and banking of the state of Texas," which certificate shall be signed by such commissioner and sealed with the seal of his office. All policies and bonds of each kind and class issued and the forms thereof filed in the office of said commissioner shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of adoption of such form; and, whenever any change or modification is made in the form of contracts, policy or bond, the designating letters, figures or terms and year of adoption thereon shall be correspondingly changed. The commissioner of insurance and banking shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds that any of them have been commuted or terminated, the commissioner shall commute or cancel them upon his register; and, until such proof is furnished all registered, contracts shall be considered in force for the purposes of this chapter. The net value of every policy or annuity bond, according to the standard prescribed by the laws of this state for the valuation of policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of such liens as the company may have against it (not exceeding such value), shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time such record is made. On the first day of January of each year, or within sixty days thereafter, the commission shall cause the policies and annuity bonds of each company accepting the terms of this chapter to be carefully valued; and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such value, shall be entered upon the register opposite the record of such policy or bond, and the commissioner shall furnish a certificate of the aggregate of such value to the company. It shall be the duty of the commissioner to cancel mutilated or surrendered policies and annuity bonds issued by any such company, and register other like policies or bonds issued in lieu thereof. Each company, which shall have made the deposit herein provided for, shall make additional deposits from time to time, in amounts not less than five thousand dollars, and of such securities as are permitted by this chapter to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the policies and annuity bonds issued by said company, less such liens as the company may have against them, not exceeding such net value. So long as any company shall maintain its deposits as herein prescribed at an amount equal to, or in excess of, the net value of its policies and annuity bonds as aforesaid, it shall be the duty of said commissioner to sign and affix his seal to the certificates before mentioned on every policy and annuity bond presented to him for that purpose by any company so depositing. The commissioner shall keep a careful record of the securities deposited by each company, showing by item the amount and market value thereof. If at any time it shall appear therefrom that the value of the securities held on deposit is less than the actual value of the policies and annuity bonds issued by such company and then in force, it shall be unlawful for the commissioner to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. Any company depositing under the provisions of this chapter may increase its deposits at any time by making

additional deposits of not less than five thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of all policies and annuity bonds it has in force, less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess; and it may withdraw any of such securities at any time by depositing others of equal value and of the character authorized by this chapter in their stead; and it may collect the interest coupons, rents and other income on the securities deposited as the same accrue.

The securities deposited under this chapter by each company shall be placed and kept by the commissioner of insurance and banking of the state in some secure safe-deposit, fire-proof box or vault in the city or town in or near which the home office of the company is located; and the officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the commissioner may establish. [Id. sec. 2.]

Art. 4752. Fees for making deposits.—Every company making deposit under the provisions of this chapter shall pay to the commissioner of insurance and banking for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of twenty-five cents; and the fee so received shall be disposed of by said commissioner as follows:

1. The payment of the annual rent or hire of the safety deposit fire-proof box above provided.

2. Payment for the services of a competent and reliable representative of said commissioner, to be appointed by him, who shall have direct charge of the securities and safety box containing the same, and through whom, and under whose supervision, the insurance company may have access to its securities for the purposes above provided. The sum paid such representative shall not exceed sixty dollars per annum for each company.

3. The balance of such fees shall be paid to, or deposited with, the state treasurer to the credit of the general fund. [Id. sec. 3.]

Art. 4753. Securities may include capital stock; securities to be increased.—Any life insurance company organized under the laws of this state and making the deposit provided for by this chapter, may include, as a part thereof, securities representing its capital stock, and any deposits of its securities heretofore or hereafter made in compliance with the laws of this state representing its capital stock, and shall only be required to deposit in addition thereto the remainder of its total reserve on outstanding policies and annuity bonds after deducting therefrom the amount of its capital stock securities so deposited. Deposits of securities made hereunder to the value of the reserve on all outstanding policies and annuity bonds shall be added to, and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may reinsure or assume them; and such securities shall be held by the commissioner of insurance and banking and his successors in office in trust for the benefit of such policies and annuity bonds so long as the same shall remain in force. No company, making the deposit provided for herein, shall reinsure its outstanding business, or the whole of any one or more of its risks, except in or with a company or companies incorporated and organized under the laws of this state, or a company having permission to do business in this state. [Id. secs. 4, 5.]

Art. 4754. Sub-standard or extra hazardous policies.—If any life insurance company doing business under the laws of this state has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the commissioner of in-

insurance and banking shall in valuing such policies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. [Id. sec. 6.]

Art. 4755. **No commissions to be paid officers.**—No life insurance company transacting business in this state shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company; and, should any company violate the provisions of this article, it shall be the duty of the commissioner of insurance and banking to revoke its certificate of authority to transact business in this state. [Id. sec. 7.]

Art. 4756. **Co-operative companies.**—The provisions of articles 4750 to article 4755, inclusive, shall likewise apply to and govern co-operative life insurance companies organized under the laws of this state. [Id. sec. 8.]

Art. 4757. **Funds to be deposited in name of company.**—Any director, member of a committee, or officer, or any clerk of a home company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company. [Act 1909, p. 192. sec. 39.]

Art. 4758. **Impairment of capital stock.**—Any such insurance company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent thereof, computing its liabilities according to the terms of this chapter, shall make good such impairment within sixty days, by reduction of its capital stock (provided such capital stock shall in no case be less than one hundred thousand dollars), or otherwise; and failure to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have been made good. And provided, that the commissioner of insurance and banking may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent thereof, computing its policy liabilities according to the American experience table of mortality and four and one-half per cent interest. And provided, further, that no company shall write new business in Texas when its net surplus to policy holders is less than one hundred thousand dollars. [Id. sec. 43.]

Art. 4759. **Form of policies to be filed.**—Life insurance companies shall, within five days after the issuance of, and the placing upon the market, any form of policies of life insurance, file a copy of such form of policy with the department of insurance and banking. [Id. sec. 44.]

Art. 4760. **Policy to be approved by commissioner.**—No insurance company transacting business in this state shall hereafter be permitted to issue or sell any policy of industrial life insurance, or any policy of accident or health insurance, until the form thereof has been submitted to the commissioner of insurance and banking. If the commissioner of insurance and banking shall approve the form of such policy as complying with the requirements of the laws of this state, the same may thereafter be issued and sold. If he shall disapprove the same, any such company may institute a proceeding

in any court of competent jurisdiction to review his action thereon. [Id. sec. 45.]

Art. 4761. Must have certificate of authority.—No foreign or domestic insurance company shall transact any insurance business in this state, other than the lending of money, unless it shall first procure from the commissioner of insurance and banking a certificate of authority, stating that the requirements of the laws of this state have been fully complied with by it, and authorizing it to do business in this state. Such certificate of authority shall expire on the last day of February in each year, and shall be renewed annually so long as the company shall continue to comply with the laws of the state, such renewals to be granted upon the same terms and considerations as the original certificate. [Id. sec. 46.]

Art. 4762. Companies with \$25,000 capital stock.—Companies may be incorporated in the manner prescribed by this chapter for the incorporation of life, accident and health insurance companies generally, which shall have power only to transact business within the state of Texas, and to write insurance only on the weekly or monthly premiums plan, and to issue no policy promising to pay more than one thousand dollars in the event of the death of the insured from natural causes, nor more than two thousand dollars in the event of death of any person from accidental causes, which may issue, combined or separately, life, accident or health insurance policies with not less than an actual paid up capital of twenty-five thousand dollars; provided, that all such companies shall be subject to all the laws regulating life insurance companies in this state not inconsistent with the provisions of this article; and provided, further, that such companies shall not be permitted to invest their assets in other than Texas securities as defined by the laws of this state regulating the investments of life insurance companies. [Id. sec. 56.]

Art. 4763. Unlawful dividends.—It shall not be lawful for any insurance company organized under the laws of this state to make any dividend, except from surplus profits arising from its business; and, in estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to the provisions of this article shall subject the company making them to a forfeiture of its charter; and the commissioner of insurance shall forthwith revoke its certificate of authority; provided, that he shall give such company at least ten days notice in writing of his intention to revoke such certificate, stating specifically the reasons why he intends to revoke same. [Id. sec. 61.]

Art. 4764. Taxation of domestic insurance companies.—Insurance companies incorporated under the laws of this state shall hereafter be required to render for state, county and municipal taxation all of their real estate as other real estate is rendered; and all of the personal property of such insurance companies shall be valued as other property is valued for assessment in this state in the following manner: From the total valuation of its assets shall be deducted the reserve, being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. [Id. sec. 25.]

Art. 4765. Foreign companies, statement.—Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such

insurance in this state, shall furnish said commissioner of insurance and banking with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company, which statement shall show:

(a) The name and locality of the company.

(b) The amount of its capital stock.

(c) The amount of its capital stock paid up.

(d) The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

(e) Amount of liabilities to the company, stating the name of the person or corporation to whom liable.

(f) Losses adjusted and due.

(g) Losses adjusted and not due.

(h) Losses adjusted.

(i) Losses in suspense and for what cause.

(j) All other claims against the company, describing the same.

Provided that the commissioner of insurance and banking may require any additional fact to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year. [Act 1909, p. 192. sec. 26.]

Art. 4766. To file articles of incorporation.—Such foreign life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company shall accompany such statement with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors, and all of which shall be certified under the hand of the president or secretary of such company. [Id. sec. 27.]

Art. 4767. Paid up capital stock.—No such foreign life insurance company, accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual paid up in cash money capital invested in such securities as provided under the laws of the state, territory or country of its creation; and no mutual life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company operating on the old line or legal reserve basis, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of net surplus assets invested in securities provided for under the law of the state, territory or country of its creation. [Id. sec. 28.]

Art. 4768. Deposits required.—Whenever the existing or future laws of any other state or territory of the United States, or of any other country, shall require of life insurance companies, accident insurance companies, or life and accident, health and accident, or life, health and accident insurance companies, incorporated by this state, any deposit of securities in such other state, territory or country before transacting insurance business therein, then, and in every such case, all insurance companies of such state shall, before doing any insurance business in this state, be required to make the same deposit of securities with the treasurer of this state. [Id. sec. 29.]

Art. 4769. **Alien companies to deposit.**—No foreign life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated by or organized under the laws of any foreign government, shall transact business in this state, unless it shall first deposit and keep deposited with the treasurer of this state, for the benefit of the policy holders of such company, citizens or residents of the United States, bonds or securities of the United States or the state of Texas to the amount of one hundred thousand dollars. [Id. sec. 30.]

Art. 4770. **Deposit liable for judgment.**—The deposit required by the preceding article shall be held liable to pay the judgments of policy holders in such company, and may be so decreed by the court adjudicating the same. [Id. sec. 31.]

Art. 4771. **When alien companies need not deposit.**—If the deposit required by article 4769 has been made in any state of the United States, under the laws of such state, in such manner as to secure equally all the policy holders of such company who are citizens and residents of the United States, then no deposits shall be required in this state; but a certificate of such deposit under the hand and seal of the officer of such other state with whom the same has been made shall be filed with the commissioner of insurance and banking. [Id. sec. 32.]

Art. 4772. **Assets, how invested.**—The assets of any company not organized under the laws of this state shall be invested in securities or property of the same classes permitted by the laws of this state as to home companies or by other laws of this state in other securities approved by the commissioner of insurance and banking as being of substantially the same grade. [Id. sec. 57.]

Art. 4773. **Shall file power of attorney.**—Each life insurance company engaged in doing or desiring to do business in this state shall file with the commissioner of insurance and banking of this state an irrevocable power of attorney, duly executed, constituting and appointing the commissioner of insurance and banking of this state and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this state, by any person, or by or to or for the use of the state of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any such suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this state or to collect premiums of insurance from citizens of this state, and so long as it shall have outstanding policies in this state, and until all claims of every character held by the citizens of this state, or by the state of Texas, against such company, shall have been settled. And said power of attorney shall be signed by the president or a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this state to take acknowledgments; and the said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company; and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the commissioner of insurance and banking of this state, and shall

be recorded by him in a book kept for that purpose, there to remain a permanent record of said department. [Act 1909, p. 240, sec. 12.]

Art. 4774. **Duty of commissioner in accepting service.**—Whenever the commissioner of insurance and banking of this state shall accept service or be served with citation in any suit pending against any life insurance company in this state, as provided by the preceding article, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this state, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid; and no judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin. [Id. sec. 13.]

CHAPTER THREE.

INVESTMENT IN TEXAS SECURITIES AND TAXATION OF GROSS RECEIPTS.

	Article.		Article.
Investment in Texas securities.....	4775	Companies desiring to do business after	4783
Definition of "Texas securities".....	4776	having ceased to do so.....	4783
Investment, how made.....	4777	Failure to renew certificate may do	4784
Report showing amount of reserve.....	4778	what	4784
Report showing gross amount of re-	4779	Commissioner to revoke certificate, when	4785
ceipts	4779	and how	4785
Taxes to be paid before certificate is	4780	Penalty for failure to report, or invest-	4786
issued	4780	ment	4786
Taxes imposed herein to be sole taxes	4781	Deposit by domestic company.....	4787
imposed	4781	Not to apply to certain companies.....	4788
Companies deemed to have accepted pro-	4782	Not to apply to fraternal beneficiary	4789
visions of this chapter, when.....	4782	associations	4789
		Companies desiring to loan money only..	4790

Article 4775. **Investment in Texas securities.**—Each and every life insurance company now engaged, or that may hereafter engage, in transacting the business of life insurance in this state, shall, as a condition of its right to transact such business in this state, invest and keep invested in Texas securities, as hereinafter defined, and in Texas real estate as hereinafter provided, a sum of money equal to at least seventy-five per cent of the aggregate amount of the legal reserve required by the laws of the state of its domicile, to be maintained on account of its policies of insurance in force written upon the lives of citizens of this state, which reserve is hereinafter denominated as its "Texas Reserves." And each such company, securing a certificate of authority to do business in this state, shall be deemed to have accepted such certificate subject to all of the conditions and requirements of this chapter. [Act 1909, p. 240, sec. 1.]

Art. 4776. **Definition of "Texas securities."**—The phrase, "Texas Securities," as used in this chapter, shall be held to include bonds of the state of Texas, or of any county, city, town, school district or other municipality or subdivision, which is now or may hereafter be constituted or organized and authorized to issue bonds under the constitution and laws of this state, prom-

issory notes and other obligations, the payment of which is secured by a mortgage, deed of trust or other valid lien upon unincumbered real estate situated in this state, the title to which real estate is valid and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured and kept insured in some company authorized to transact business in this state, and the policy or policies transferred to the company taking such mortgage or lien; the first mortgage bonds of any solvent corporation, incorporated under the laws of this state and doing business in this state, which has not in five years next preceding the date of the investment by such company in such mortgage bonds, defaulted for more than three months in the payment of interest upon its bonds or indebtedness, the market value of which bonds is equal to the amount invested therein; and loans made to policy holders on the sole security of the reserve values of their policies. And the investments required by this chapter, or any part thereof, may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase at its reasonable market value of such office building already constructed and the ground upon which the same is located, in any city of the state having a population of more than four thousand inhabitants. And all real estate owned by life insurance companies in this state, on December 31, 1909, and all thereafter acquired under the provisions of this chapter, or by foreclosure of a lien thereon, shall be treated, to the extent of its reasonable market value, as a part of the investments required by this chapter. And "Texas Securities" as used in the following articles of this chapter shall be held to include every character of investment authorized by the terms of this article. [Id. sec. 2.]

Art. 4777. **Investments, how made.**—The investments required by this chapter shall be made as follows:

(a) Each life insurance company which had a certificate of authority to transact business in this state April 2, 1909, the total amount of whose investments in Texas securities as of December 31, 1908, was equal to or exceeded seventy-five per cent of the amount of its Texas reserves as of that date, shall have so invested not later than January 31, in each year, a sum of money equal to seventy-five per cent of the amount of its Texas reserves as of the preceding December 31.

(b) Each life insurance company which had a certificate of authority to transact business in this state on April 2, 1909, the amount of whose investments in Texas securities as of December 31, 1908, was less than seventy-five per cent of the amount of its Texas reserves as of said date, shall have so invested, not later than January 31 in each year, a sum at least equal to seventy-five per cent of the amount by which its Texas reserves as of December 31 preceding exceeded the amount of its Texas reserves as of December 31, 1908, added to the amount of its total investments in Texas securities as of said date; and each such company shall, in addition, have so invested not later than January 31, 1910, a sum at least equal to ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31, 1908, exceeded the amount of its investments in Texas securities as of said date, and annually thereafter it shall have invested, not later than January 31, an additional ten per cent of the amount of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of its Texas reserves.

(c) Each life insurance company not having a certificate of authority to transact business in this state on April 2, 1909, or that may thereafter discontinue writing new business under such certificate, shall, if it again obtain a certificate of authority to transact business in this state, be required to have invested in Texas securities annually as above provided, a sum equal to seventy-five per cent of its Texas reserves; provided, that if on December

31 preceding the issuance of such certificate of authority, the amount of its investments in Texas securities was less than seventy-five per cent of the amount of its Texas reserves it shall be required to have so invested annually as above provided, a sum equal to seventy-five per cent of the increase in its Texas reserves since December 31 last preceding the issuance of its certificate of authority, added to the amount of its total investment in Texas securities as of said date; and, in addition, it shall, not later than January 31 in each year after the issuance of its certificate of authority, have so invested ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31 preceding the date of said certificate exceeded the amount of its total investments in Texas securities as of that date, and shall have invested annually thereafter, not later than January 31, an additional ten per cent of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of the amount of its Texas reserves. The proportionate amount of the Texas reserves required by this section to be invested in Texas securities as of any date shall thereafter be maintained; provided, that such investment shall not be required to be made by any life insurance company after it has ceased to do the business of life insurance or to write policies of life insurance in this state. [Id. sec. 3.]

Art. 4778. Report showing amount of reserve.—That each life insurance company doing business in this state shall, not later than ten days after January 31 of each year, file with the commissioner of insurance and banking of this state, on a blank prepared and furnished by him for that purpose, a report showing the entire amount of the reserve on its entire business in force in this state on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or a vice president and the secretary of such company. Such report shall contain such other information as may be required by the commissioner to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the commissioner may, whenever he shall deem it proper, require such special or supplemental reports as he may deem necessary. [Id. sec. 4.]

Art. 4779. Report showing gross amount of receipts.—Each life insurance company not organized under the laws of this state, transacting business in this state, shall annually, on or before the first day of March, make a report to the commissioner of insurance and banking of this state, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, and which shall show the gross amount of premiums collected during the year ending on December 31, preceding, from citizens of this state, upon policies of insurance; and each such company shall pay annually an occupation tax equal to three per cent of such gross premium receipts; provided, that when the report of the investment in Texas securities, as defined by law, of any such companies as of December 31, of any year, shall show that it has invested on said date as much as thirty per cent of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate, the rate of occupation tax shall be reduced to two and six-tenths per cent; and, when such report shall show that such company has so invested on said date as much as sixty per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two and three-tenths per cent; and when such a report shall show that such company has so invested, on said date, as much as seventy-five per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two per cent; provided, that all such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this

state during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this state. [Act 1909, 1 S. S. p. 264, sec. 1.]

Art. 4780. **Taxes to be paid before certificate is issued.**—Upon the receipt of sworn statements showing the gross premium receipts of such company, the commissioner of insurance and banking of this state shall certify to the treasurer of this state the amount of taxes due by such company for the preceding year; which taxes shall be paid to the state treasurer for the use of the state, by such company. Upon his receipt of such certificate, and the payment of such tax, the treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes; and no such life insurance company shall receive a certificate of authority to do business in this state until such taxes are paid. If, upon the examination of any company, or in any other manner, the commissioner of insurance and banking shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such commissioner to file with the state treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. It shall be the duty of the state treasurer of this state if, within fifteen days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, to report the facts to the attorney general, who shall immediately institute suit in the proper court in Travis county to recover such taxes. [Id. sec. 1.]

Art. 4781. **Taxes imposed in this chapter to be sole taxes imposed.**—No occupation tax other than herein imposed shall be levied by the state or any county, city or town, upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this act upon life insurance companies shall be the sole occupation tax which any company doing business in this state under the provisions of this chapter shall be required to pay. [Act 1909, p. 240, sec. 6.]

Art. 4782. **Companies deemed to have accepted provisions of this chapter, when.**—Each life insurance company not organized under the laws of this state, hereafter granted a certificate of authority to transact business in this state, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this state under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this state, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this state, as is or may be imposed by law on such companies transacting new business within this state, under certificates of authority during such year; provided, that the rate of such tax to be so paid by any such company shall never exceed the rate imposed by this chapter upon insurance companies transacting business in this state; and each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority; and shall at all times be subject to examination by the commissioner of insurance and banking, or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this state, the expenses of such examination to be paid by the company examined; and the respective duties of the commissioner of insurance and banking in certifying the amount of such taxes, and of the state treasurer and attorney general in their collection, shall be the same as are or may be prescribed re-

specting taxes due from companies authorized to transact new business within this state. [Id. sec. 7.]

Art. 4783. **Companies desiring to do business after having ceased to do so.**—Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this state, which has heretofore ceased, or may hereafter cease, writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this state, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this state, report under oath to the commissioner of insurance and banking of this state the gross amount of premiums so collected from citizens of this state upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the state a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this state, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this state, the penalties provided for the failure to pay such taxes and make such reports in the past shall be remitted. [Id. sec. 8.]

Art. 4784. **Failure to renew certificate, may do what.**—Any company which shall fail to renew its certificate of authority or continue to write new business in this state shall, nevertheless, have the right to maintain an agent or agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter. [Id. sec. 9.]

Art. 4785. **Commissioner may revoke certificate, when and how.**—If any life insurance company, while holding a certificate of authority to transact business in this state, shall fail or refuse to comply with any of the provisions or requirements of this chapter, it shall be the duty of the commissioner of insurance and banking, upon ascertaining such fact, to notify such company by registered letter, properly addressed and mailed, or by any other form of actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this state at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served; and, if such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of the commissioner of insurance and banking to revoke the certificate of authority of such company; and, in case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the commissioner in revoking its certificate of authority to do business in this state may bring suit against him in the court of Travis county having jurisdiction thereof, to annul and vacate the order revoking such certificate. [Id. sec. 10.]

Art. 4786. **Penalty for failure to report or investment.**—If any company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the commissioner of insurance and banking under the authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this state, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such com-

pany, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of twenty-five dollars per day for each day that such company shall remain in default after the commissioner of insurance and banking shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit to be brought by the attorney general in behalf of the state in the district court of Travis county. And in any suit that may be brought to recover such penalty or penalties, there shall be a prima facie presumption, subject to rebuttal, that any default that may have occurred was intentional, and that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue. [Id. sec. 11.]

Art. 4787. **Deposit by domestic company.**—Any life insurance company, organized under the laws of this state, may, at its option, deposit with the treasurer of this state, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this state permits insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the commissioner of insurance and banking; and, when any such deposit is made, the treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the treasurer and the commissioner of insurance and banking of this state. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policy holders in this state. [Id. sec. 14.]

Art. 4788. **Not to apply to certain companies.**—The provisions of this chapter requiring investments in Texas securities shall not apply to any life insurance company, the total amount of whose Texas reserves does not exceed five thousand dollars, or to any such company doing only a reinsurance business in this state, but all of the other provisions of this chapter shall apply to such companies. [Id. sec. 16.]

Art. 4789. **Not to apply to fraternal beneficiary associations.**—The provisions of this chapter shall not be held to apply to fraternal beneficiary associations as defined by the laws of this state. [Id. sec. 17.]

Art. 4790. **Companies desiring to loan money only.**—Any life insurance company not desiring to engage in the business of writing life insurance in this state, but desiring to loan its funds in this state, may obtain a permit to do so by complying with the laws of this state relating to foreign corporations engaged in loaning money in this state, without being required to secure a certificate of authority to write life insurance in this state. [Id. sec. 18.]

CHAPTER FOUR.

ASSESSMENT OR NATURAL PREMIUM COMPANIES.

Foreign assessment companies.....	Article. 4791	| Shall not apply to mutual benefit asso- ciations	Article. 4793
Fees	4792		4793

Article 4791. **Foreign assessment companies.**—Companies or associations organized under the laws of any other state of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, having cash assets of a sum not less than one hundred thousand dollars, invested as required by the laws of this state regulating other insurance companies, shall be licensed by the commissioner of insurance and banking to do business in this state, and be subject only to the provisions of this chapter; provided, however, that such company or association shall first file with the commissioner of insurance and banking a certified copy of its charter, a written agreement, appointing the commissioner of insurance and banking, and his successor in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying, and for the twelve months next preceding has paid, the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending on the thirty-first day of December preceding; a certified copy of its constitution and by-laws, and a copy of its policy and application; a certificate from the proper authority in its home state that said company or association is legally entitled to do business in such home state, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. It shall be the duty of the commissioner of insurance and banking to issue a license to any company or association complying with the provisions of this chapter; and every such company or association shall annually thereafter, before such license is renewed, file with the commissioner of insurance and banking on or before the first day of March, a statement under oath of its president and secretary, or like officers, of its business for the year ending December 31 preceding. [Acts of 1889, p. 98, sec. 1.]

Art. 4792. **Fees.**—Every such company or association shall pay to the commissioner of insurance and banking, for the use of the state, the following fees: For filing copy of its charter, twenty-five dollars; for filing statement preliminary to admission, twenty dollars; for filing each annual statement after admission, twenty dollars; for license to company or association, one dollar. [Id. sec. 2.]

Art. 4793. **Shall not apply to mutual benefit associations.**—The provisions of this chapter shall in no wise apply to mutual benefit organizations doing business in this state through lodges or councils, such as the Order of Chosen Friends, Knights of Honor, or kindred organizations. [Id. sec. 3.]

CHAPTER FIVE.

MUTUAL ASSESSMENT ACCIDENT INSURANCE HOME COMPANIES.

Article.	Article
Incorporation of	Books and papers subject to inspection
Charter, requirements of.....4794	of members
Application to accompany charter, and	Commissioner to examine financial condi-
what it shall show.....4796	tion annually
Complete and ready for business, when..4797	Statement to be filed, filing fees, etc.....4802
What constitutes business of mutual	Certificate of membership; reserve fund.....4804
assessment companies	Notices of assessment must show, what.....4805
What such companies may or may not	May change name of beneficiary.....4806
do	Policy shall specify what; liability on.....4807
Notice of by-laws, how given.....4800	Charter forfeited for not complying with
	provisions of this chapter.....4808

Article 4794. **Incorporation of.**—Any number of persons, not less than five, may organize a corporation for the purpose of transacting the business of accident insurance, upon the co-operate or mutual assessment plan, without capital stock, by complying with the provisions of this chapter; provided, that all such persons shall be bona fide citizens and residents of the state of Texas. [Act 1903, p. 174, sec. 1.]

Art. 4795. **Charter, requirements of.**—Such persons must sign and acknowledge, before an officer duly authorized to take acknowledgments of deeds, a written charter setting forth:

First. The name of such corporation, which name must not so resemble the name of any other company engaged in the insurance business in this state as to cause a probability of confusion.

Second. The number of its directors, and the names and residences of those who are to act as such for the first year.

Third. The location of its principal office, which must be within the state of Texas.

Fourth. It shall state that said corporation shall have no capital stock, and shall give the purpose for which same is organized, and the plan upon which it proposes to do business, by stating that its said business shall be conducted upon the assessment plan, without lodges.

Fifth. The term for which it is to exist, which shall not be for more than fifty years. [Id. sec. 2.]

Art. 4796. **Application to accompany charter, what it shall show.**—Said charter shall be presented to the attorney general of this state, accompanied by affidavits of all said incorporators, showing that they are bona fide citizens of this state, by bona fide applications for insurance in said company, from not less than two hundred applicants, for not less than one hundred thousand dollars insurance, by an affidavit by one of its incorporators, showing that each of said applicants has deposited with applicant at least eighty cents on each one thousand dollars insurance so applied for by him, and by a certificate of some solvent bank, showing that all such advance funds are deposited therein to be turned over to the treasurer of such corporation when organized. Said attorney general shall carefully examine all said instruments; and, if he finds the same are in conformity with the requirements of this chapter, he shall give his approval, and file the same with the commissioner of insurance and banking. [Id. sec. 3.]

Art. 4797. **Complete and ready for business, when.**—When said charter has been filed with the commissioner, with the approval of the attorney general, accompanied by a filing fee of twenty dollars, the commissioner shall record the said charter and certificate of the attorney general in a book kept for that purpose, and shall, upon the receipt of fee for certified copy of charter of one dollar, furnish a certified copy of such charter and certificate of the attorney general to the corporators, and shall return to said corporators all such ap-

plications for membership, also a certificate that such charter has been filed and recorded in his office, and that said company is duly incorporated under the laws of the state of Texas, and authorized to transact the business set forth in its charter, stating same; upon the filing and recording of which charter, said association shall become a body politic and corporate, with the right to transact its said business in this state and elsewhere, according to the provisions of this chapter, to hold property and to alienate same, to contract, sue and be sued under its corporate name, and by that name shall have succession, and may by its board of directors make by-laws not inconsistent with law, and shall carry on its business subject to the provisions of this chapter. [Id. sec. 3a.]

Art. 4798. **What constitutes business of mutual assessment companies.**—Any corporation which issues any certificate, policy or other evidence of interest to its members, whereby, upon his death or total disability, any money is to be paid by such corporation to such member, or beneficiary designated by him, which money is derived from voluntary contributions or from admission fees, dues and assessments, or any of them, collected, or to be collected, from the members thereof, and interest and accretions upon, and wherein the paying of such money is conditioned upon the same being realized in the manner aforesaid, and wherein the money so realized is applied to the uses and purposes of said corporation and the expense of the management and prosecution of its business, and which has no subordinate lodges or similar bodies, shall be deemed to be engaged in the business of mutual assessment accident insurance as contemplated by this chapter, and shall be subject only to the provisions of this chapter. [Id. sec. 4.]

Art. 4799. **What such companies may or may not do.**—Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits; and the salaries of all officers shall be designated in its by-laws, and such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, to the amount of insurance held. [Id. sec. 5.]

Art. 4800. **Notice of by-laws, how given.**—Every such corporation must, before the adoption of any by-laws or amendments thereto, cause the same to be mailed to all the members and directors of such association, together with the notice of the time and place when the same will be considered, and same shall be so mailed at least ten days before the time for such meeting; provided, that the provisions of this article shall not apply to by-laws adopted within sixty days after the incorporation of such company. [Id. sec. 6.]

Art. 4801. **Books and papers subject to inspection of members.**—All books and papers of such corporation shall, at all reasonable times, be open for examination by members and their representatives. [Id. sec. 7.]

Art. 4802. **Commissioner to examine financial condition annually.**—The commissioner of insurance and banking shall annually or as often as he deems it necessary, in person or by one or more examiners, commissioned in writing, visit each and every such corporation and examine its financial condition and its ability to meet its liabilities. He shall have free access to all books and papers of the corporation, or agents thereof, and shall have power to examine under oath the officers, agents and employes of such corporation. He may revoke or modify any certificate of authority issued by him, when any conditions prescribed by law for granting it no longer exist. The expense of every such examination shall be paid by the corporation so examined. [Id. sec. 7a.]

Art. 4803. **Statement to be filed; filing fees, etc.**—Every such corporation shall, on the first day of January of each year, or within sixty days thereafter, make and file with the commissioner of insurance and banking of this state a report of its affairs and operations during the year ending on the

thirty-first day of December immediately preceding. Such report shall be upon blank forms to be provided by such commissioner, and shall be verified by the oath of the secretary of such corporation, and shall contain answers to the following questions:

1. Number of certificates or policies issued or members admitted during the year.

2. Amount of indemnity affected thereby.

3. Number of death losses.

4. Number of death losses paid.

5. Number of other losses.

6. Number of other losses paid.

7. The amount received from each assessment in each class.

8. Total amount paid for losses.

9. Number of death claims for which assessments have been made.

10. Number of death claims compromised or resisted, and brief statement of reasons.

11. Number of other claims for which assessment has been made.

12. Number of other claims compromised or resisted, and brief statement of the reasons.

13. Does company charge annual dues, and, if so, how much?

14. Total amount received and the disposition thereof.

15. Does the company use moneys received for payment of claims to pay expense of the company in whole or in part, and, if so, state the amount so used.

16. Give total amount of salaries paid officers, and name of each salaried officer and the amount paid him.

17. Does the company guarantee fixed amount to be paid, regardless of amounts realized from assessments, dues, admissions, fees, etc.

18. If so, state the amount guaranteed and the security therefor.

19. Has the company a reserve fund?

20. If so, how is it created and for what purpose, the amount thereof and in what form and how invested?

21. Has the company more than one class of members?

22. If so, how many and what, and give amount of indemnity in each.

23. Give number of members in each class.

24. State when the company was organized.

25. Number of policies or memberships lapsed during the year.

26. Number of policies of each class at beginning and at the end of the year.

27. All assets applicable to payment of insurance, other than reserve fund, and how invested.

28. Amount received from all sources for payment of losses, and the disposition thereof; and, in case such corporation fails or refuses to make such report in full within said time, its charter and franchise shall be forfeited, as provided in article 4808. The following fees shall be paid annually: Filing annual statement, ten dollars; certificate of authority to corporation, one dollar; each certified copy thereof, one dollar. [Id. sec. 8.]

Art. 4804. Certificate of membership; reserve funds.—Each certificate of membership, policy or other contract of insurance issued by such company shall bear on its face in red letters the following words: "The payment of the benefit herein provided for is conditioned upon its being collected by this company from assessments and other sources, as provided in its by-laws;" provided, that nothing in this chapter shall be construed to prevent the creation of a reserve fund by any such organization, which fund, or its accretions, or both, are to be used only for the payment of assessments or death losses, or benefits in case of physical disability, as provided in the by-laws of such

corporation; provided, further, that at least sixty per cent of all amounts realized from assessments shall be used only for the payment of losses as they occur, or the balance thereof remaining after paying such losses transferred to such reserve fund; provided, further, that no part of such reserve fund shall be invested, except by order of the board of directors, in property or securities approved by such board. [Act 1905, p. 311, sec. 9.]

Art. 4805. Notices of assessment must show what.—Each notice of assessments made by such corporation upon its members, or any of them, shall truly state the cause and purpose of such assessment, amount paid on the last claim paid, the cause of disability or death, the name of the member for whose death or disability such payment was made, the maximum face value of the certificate or policy, and, in case of disability, the maximum amount provided for in such policy or certificate for such disability, and, if not paid in full, the reason therefor. [Act 1903, p. 174, sec. 10.]

Art. 4806. May change name of beneficiary.—Any member of such corporation shall have the right at any time, with the consent of such corporation, to change the beneficiary in his policy or certificate, without requiring the consent of such beneficiary; and such corporation shall give consent under such regulations as may be prescribed in its by-laws. [Id. sec. 11.]

Art. 4807. Policy shall specify what; liability on.—Every policy or certificate issued by any such corporation shall specify the sum of money which it promises to pay upon the contingency insured against, and the number of days after the receipt of satisfactory proof of the happening of such contingency at which such payment shall be made; and, upon the happening of such contingency, such corporation shall be liable for the payment of such amount in full at the time so specified, subject to such legal defenses as it may have against same; provided, that, if the sum realized by it from assessments made in accordance with its by-laws to meet such payment, together with such other sums as its by-laws may provide shall be used for that purpose, shall be insufficient to pay such sum in full, for which it is so liable, then the payment of the full amount so realized shall discharge such corporation from all liability, by the reason of the happening of such contingency, and in that event such corporation shall be liable only for the amount so actually realized. [Id. sec. 12.]

Art. 4808. Charter forfeited for not complying with provisions of this chapter.—If any corporation not incorporated under this chapter shall engage in any branch of mutual assessment accident insurance, as herein defined, or if any corporation organized under the provisions of this chapter shall transact business in any manner except as herein authorized, such corporation shall, in either event, be subject to the forfeiture of its charter and franchises; and the attorney general of this state shall immediately institute suit to forfeit its charter and dissolve it. [Id. sec. 13.]

CHAPTER SIX.

CO-OPERATIVE LIFE INSURANCE COMPANIES.

Article.	Article.		
Articles of incorporation, commissioner shall examine	4809	Medical examination	4818
Officers, directors and policy holders, their powers and duties	4810	Premiums, where to be paid and notice of	4819
Investment and disposition of funds; not to hold real estate, except	4811	Loan value; non-forfeitable after three years	4820
Shall not borrow money or create debts, except	4812	Annual certificates and statements	4821
Policies to be valued by commissioner	4813	Agents shall have certificates	4822
Net premium to be computed	4814	Annual examination and statement	4823
May set aside reserve	4815	Additional examination; may suspend certificates, receiver	4824
Shall make apportionment of surplus	4816	Taxes, how calculated; authorized to deposit securities	4825
Transact business only in Texas and form of policy	4817	General laws regulating deposits applicable to	4826

Article 4809. **Articles of incorporation; commissioner shall examine.**—Nine or more persons, residents of the state of Texas, may form a co-operative life insurance company for the purpose of insuring the lives of individuals on the mutual, level premium, legal reserve plan, subject to the conditions and limitations prescribed in this chapter, by executing and acknowledging before some officer authorized to take acknowledgments to conveyances of real estate, articles of incorporation for that purpose. Such articles shall set forth:

1. The name and residence of each of the incorporators.
2. The name of the proposed company, which shall contain the words, "Co-operative Life Insurance Company," as a part thereof, and which shall not be so similar to that of any other life insurance company or association transacting business in this state as to mislead the public.
3. The location of the principal office from which the business of the company is to be transacted.
4. The number of directors and the name and place of residence of each of those who are to serve until the first regular election of directors, as provided by this chapter.

Such articles of incorporation shall be filed with the commissioner of insurance and banking, who shall immediately submit them to the attorney general for his examination and approval as complying in all respects with the law. If the attorney general approve them, he shall so certify thereon in writing, and return them to the commissioner of insurance and banking, who shall file the same in his office and issue to the company a certificate of authority, to which shall be attached a certified copy of the articles of incorporation, authorizing it to receive applications for insurance as provided in this chapter, and to collect premiums thereon, and to issue receipts therefor; which certificate shall expressly state that such company is not authorized to issue policies of insurance or transact any business other than that specifically authorized therein until it has received bona fide applications for insurance on the lives of at least two hundred individuals for not less than one thousand dollars each, which applications have been approved by a competent physician and on which the first annual premiums at adequate rates have been paid to the company, nor until these facts shall have been fully shown to the commissioner of insurance and banking, and he shall have issued to the company a certificate of authority to transact business as a co-operative life insurance company. If this showing is not made within six months after the date upon which such articles of incorporation are filed with the commissioner of insurance and banking, it shall be his duty to cancel the certificate of authority of such company to receive applications for insurance, and to notify each incorporator of such action. When the commissioner of insurance and banking shall be notified that any such company has complied with all

the foregoing provisions of this article, he shall make, or cause to be made, at the expense of such company, an examination thereof; and, if he shall find that the law has been in all respects fully complied with, it shall be his duty to issue to it a certificate of authority to transact the business of a co-operative life insurance company, in accordance with the terms of this chapter. [Act 1909, p. 285, sec. 1.]

Art. 4810. Officers, directors and policy holders, their powers and duties.—The business of a co-operative life insurance company shall be controlled and directed by a board of directors consisting of not less than five nor more than nine members, who shall be elected annually as provided in this chapter, those to serve until the first annual election to be named in the charter, and who shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. Such board of directors shall elect the officers of the company, which shall be a president, and such number of vice presidents as the by-laws may provide, a secretary, a treasurer, a medical director, and such other officers as the by-laws of the company may provide for, and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the society until the date of its first annual meeting, as provided by this chapter, shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a co-operative life insurance company. There shall be an annual meeting of all the policy holders of each co-operative life insurance company at the home office of such company on the second Tuesday in January after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which by-laws for the government of the company not inconsistent with the provisions of this chapter or with the laws of this state may be adopted, and at which the existing by-laws may be repealed or amended. At such annual meeting, every policy holder shall be entitled to one vote for each five hundred dollars of insurance held by him; and any policy holder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual meeting. The president, secretary and treasurer shall each give a bond for the protection of the company and its policy holders in amount and with securities to be approved by the commissioner of insurance and banking, conditioned for the faithful performance of their respective duties. [Id. sec. 2.]

Art. 4811. Investment and disposition of funds: not to hold real estate, except.—Co-operative life insurance companies shall invest their funds only in bonds of the state of Texas, or of some county, city, town, school district, or other subdivision, organized, or which may hereafter be organized, and authorized, or which may hereafter be authorized, to issue bonds under the constitution and laws of this state, or in mortgages upon improved, unincumbered real estate, the title to which is valid, situate within the state of Texas, worth double the amount of the loan thereon exclusive of buildings, unless such buildings are insured in some fire insurance company, authorized to transact business under the laws of this state, and the policy or policies transferred to the company, or in not more than one office building located in some city or town of this state in which the home office of such company is located, the actual value of which is not less than the amount invested therein. All moneys of any such company coming into the hands of any officer thereof or subject to his control, when not invested as prescribed in this article, shall be deposited in the name of such company in some bank or banks in this state which are subject to either state or national regulation and supervision, and which have been approved by the commissioner of in-

insurance and banking as depositories therefor. No co-operative life insurance company shall purchase or hold real estate except the building in which it has its home office and the land upon which it stands, or such as it shall acquire in good faith through foreclosure sale or otherwise in satisfaction of debts contracted or loans made in the course of its dealings. [Id. sec. 3.]

Art. 4812. **Shall not borrow money or create debts, except.**—No co-operative life insurance company shall have the power to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account, except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall in any event be subject to execution upon a judgment therefor. [Id. sec. 4.]

Art. 4813. **Policies to be valued by commissioner.**—The commissioner of insurance and banking shall annually make valuations of all outstanding policies of co-operative life insurance companies as of December 31 of each year, in accordance with the one year preliminary term method based upon the American Experience Table of Mortality, and three and one-half per cent interest per annum. [Id. sec. 5.]

Art. 4814. **Net premiums to be computed.**—The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of this article, and no portion of such net premium collected upon any policy, and no portion of the gross premium collected upon any policy, except the expense loading, shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policy holders, loans to policy holders, or for the purposes of such investments of the company as are prescribed in this chapter. [Id.]

Art. 4815. **May set aside reserve.**—Every co-operative life insurance company may maintain and set aside, before declaring any dividends to policy holders, in addition to an amount equal to the net value of its policies, computed as required by this chapter, a contingency reserve not exceeding the following respective percentage of said net values, to-wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof, or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per cent for each one hundred thousand dollars of said net values up to one million dollars; and, thereafter, one-half of one per centum for each additional one million dollars; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases, such company may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. [Id. sec. 6.]

Art. 4816. **Shall make apportionment of surplus.**—Every co-operative life insurance company organized under this chapter shall make an annual apportionment and accounting of divisible surplus to each policy holder after the end of the second policy year on all policies issued; and each such policy holder shall be entitled to and credited with or paid, in a manner hereafter provided, such a portion of the entire divisible surplus as has been contributed thereto by his policy. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, every such company shall well and truly ascertain the surplus earned by it during such year; and, after setting aside from such surplus the contingency reserve provided in this chapter, it shall apportion to its policies upon which all premiums due and payable for the

first two years thereof have been paid, the proportion of the remainder of such surplus which has been contributed by each such policy, and shall immediately submit a detailed report of such apportionment under the oath of its president or secretary to the commissioner of insurance and banking. If such commissioner shall find such apportionment to be equitable and just to the policy holders and to be in accordance with the provisions of this chapter, he shall approve the same, and it shall become effective; and, if he shall not approve such apportionment, he shall make such changes therein as he shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by the commissioner shall become effective. The dividends declared as aforesaid shall be applied toward the payment of any premium or premiums upon such policy which shall come due more than thirty days after such apportionment shall become effective. [Id. sec. 7.]

Art. 4817. **Transact business only in Texas; form of policy.**—Co-operative life insurance companies are authorized to transact business only within the state of Texas, and shall issue no policies other than whole life or twenty-payment life policies on the annual dividend plan; and the forms of all policies issued by any such company shall be prescribed by the commissioner of insurance and banking; and all such policies shall have plainly printed both on the face and the reverse side thereof the words, "The form of this policy is prescribed by the commissioner of insurance and banking of the state of Texas;" and it shall be the duty of the commissioner to revoke the certificate of authority of any company which shall issue any policy except upon such form so prescribed. All such policies may provide for not more than one year preliminary term insurance. No such company shall issue any policy or policies by which it shall be bound for more than five thousand dollars upon any one life at any time when the amount of its total insurance in force is less than ten million dollars. [Id. sec. 8.]

Art. 4818. **Medical examination.**—No co-operative life insurance company shall enter into any contract of insurance upon the life of any person without having previously made, or caused to be made, a detailed medical examination, prescribed by its medical director and approved by its board of directors, of the insured by a duly qualified and licensed medical practitioner, and without his certificate that the insured was in sound health at the date of examination. [Id. sec. 9.]

Art. 4819. **Premiums, when to be paid, and notice of.**—The policies issued by a co-operative life insurance company may provide that the premiums thereon may be paid annually, semi-annually, quarterly or monthly; and, in the event that such premiums are payable other than annually, no deduction shall be made from the amounts due on any policy in the event that the death of the policy holder shall occur prior to the completion of a full policy year. It shall be the duty of the company to mail from its home office to each policy holder a notice of the date upon which each premium is to become due at least thirty days prior to such date if the premium is payable annually, semi-annually, or quarterly, and at least ten days prior to such date if the same is payable monthly; provided, that local agents may be authorized and empowered by the board of directors to collect premiums and to give the notice required by this article. [Id. sec. 10.]

Art. 4820. **Loan value; non-forfeitable after three years.**—After three full years premiums have been paid upon any policy in a co-operative life insurance company, the owner thereof shall be entitled, on proper assignment of such policy and on the sole security thereof, to borrow from the company a sum not greater than the reserve value thereof, and apply the same in payment of any premiums due or to become due upon such policy. In the

event of default in the payment of any premium after three full years premiums have been paid upon any policy, the owner, within one month after any default, may elect to accept the value of such policy in cash, or to have the insurance continued in force from the date of default, without future participation and without the right to loans, for its face amount less any indebtedness to the company thereon, or to purchase non-participating paid-up insurance, payable at the same time and on the same conditions as such policy. The cash value will be the reserve at the date of default computed in accordance with the provisions of this chapter, less such surrender charge as may be provided in the policy, not exceeding two and one-half per centum of the amount insured thereby and less any existing indebtedness to the company on such policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The terms for which the insurance will be continued, or the amount of the paid-up policy, will be such as the cash value will purchase as a net single premium at the attained age of the insured according to the American Experience Mortality Table and interest at the rate of three and one-half per cent per annum. If the owner shall not, within one month from such default, surrender the policy to the company at its home office for a cash surrender value or paid-up insurance, the company shall continue the insurance as above provided. [Id. sec. 11.]

Art. 4821. **Annual certificates and statements.**—The original certificate of authority to transact the business of a co-operative life insurance company, issued to any such company by the commissioner of insurance and banking, shall expire on March 1 next succeeding the date of its issuance. Each such company is required to render annually, under oath by its president or a vice-president and its secretary or treasurer, and file not later than February 15 of each year, in the office of the commissioner of insurance and banking, a statement, in such form and upon such blanks as may be prescribed by the commissioner of insurance and banking, accompanied by a filing fee of ten dollars, showing the condition of the company on the thirty-first day of December next preceding, which shall include a statement in detail showing the class and character of its assets and liabilities on said date, the amount and character of business transacted, moneys received and disbursed during the preceding calendar year and the number and amount of its policies in force on said date, and such other facts as may be required by the commissioner of insurance and banking. When such annual statement is filed with the commissioner of insurance and banking, upon receipt of a fee of one dollar, if he is satisfied that the company has in all respects complied with the laws of the state, he shall issue a certificate of authority to such company for the year beginning March 1 after the filing of such statement. [Id. sec. 12.]

Art. 4822. **Agents shall have certificates.**—No agent or other person shall solicit or receive applications for insurance in a co-operative life insurance company without a certificate of authority from the commissioner of insurance and banking, which shall expire on March 1 next after the date of its issuance. Such certificates of authority shall not be issued by such commissioner, except upon application therefor, signed by the president or secretary of the company, which application shall state that the contract between the company and such agent has been made in writing, and that a true copy of such contract is attached to and made a part of such application, and that such contract fully shows the entire compensation that such agent is to receive, directly or indirectly, on account of any services to be rendered by him for such company; and no such certificate of authority shall be issued by such commissioner, unless it shall be shown that the compensation to be paid such agent, together with all other expenses of any sort likely to be incurred in connection with or attributable to the obtaining of new insurance through

such agent, shall not exceed eighty per centum of the expense loading in the premiums to be collected therefor. [Id. sec. 13.]

Art. 4823. Annual examination and statement.—It shall be the duty of the commissioner of insurance and banking to have made, at least once in each calendar year, a thorough and full examination of the affairs of each cooperative life insurance company, the report of which examination shall be made to such commissioner under oath, which shall be accompanied by a list of all policy holders as shown by the books of the company, together with the postoffice address of each; and it shall be the duty of the commissioner of insurance and banking, if he shall approve the report of such examination, after having given the officers of the company an opportunity to be heard, to mail a printed copy of such report to each such policy holder. The expense of each such examination and of mailing the copies of such reports to the policy holders shall be borne by the company examined. [Id. sec. 14.]

Art. 4824. Additional examination; may suspend certificates; receiver.—If at any time the commissioner of insurance and banking deems it necessary to make an additional examination of any such company, he may do so; and, if as a result of any such examination or from other information, he shall have the opinion that the operations of the company are unsafe or hazardous to the policy holders' interests, or in violation of any law of this state, he shall suspend its certificate of authority, and direct its officers to call a special meeting of its policy holders and direct them to cease the further issuance of policies until such meeting is held. At such meeting of the policy holders, the commissioner of insurance and banking shall present the facts for such action as the policy holders may deem advisable. If, in the opinion of the commissioner of insurance and banking, such action of the policy holders when taken will not fully protect the interests of all policy holders, he shall apply to the district court of the county in which the home office of the company is situated, or to the judge thereof, in vacation, for the appointment of a receiver to take temporary charge of the business and affairs of such company, who shall receive the compensation allowed by law to state bank examiners, and who shall have all power and authority of the board of directors to manage and control the business and affairs of such company, subject to the orders of the district court or judge in vacation, until the reasons for his appointment shall, in the opinion of the judge appointing him, have been removed. At any time when the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and three and one-half per cent interest per annum, shall be in excess of its assets, the company shall cease the issuance of new policies until the impairment in its reserves shall be made good. Whenever the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and four and one-half per cent per annum, exceed its assets, the commissioner of insurance and banking may request the attorney general to file suit in the name of the state in the district court of the county in which such company is located for the appointment of a receiver to wind up its affairs, and such action may be maintained. In any such action, such district court, or judge thereof, in vacation, shall have the power, if in his opinion the interests of the policy holders of such company require it, to enter an order providing for the re-insurance of all outstanding risks of such company in some other life insurance company authorized to do business in this state upon such terms and conditions as may be approved by the commissioner of insurance and banking, and by such court, or the judge thereof, in vacation; and such court or judge may for that purpose direct the conveyance of the entire assets of any such company, or of any portion thereof, to such re-insuring company in consideration of such re-insurance. [Id. sec. 15.]

Art. 4825. **Taxes, how calculated; authorized to deposit securities.**—For the purposes of state, county and city taxation, the amount of the reserve and contingency reserve of all co-operative life insurance companies shall be treated as debts due by them to their policy holders; and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. [Id. sec. 16]

Art. 4826. **General law as to deposits applicable to.**—The provisions of article 4749 to article 4750, inclusive, in chapter 2 of this title, relating to the deposit of securities by insurance companies, shall likewise apply to and govern co-operative life insurance companies organized under the provisions of this chapter. [Acts 1909, p. 448, 2 S. S. sec. 8.]

CHAPTER SEVEN.

FRATERNAL BENEFICIARY ASSOCIATIONS.

Article.	Article.		
Defined	4827	Place of meeting, location of office	4845
Lodge system defined	4828	No personal liability	4846
Representative form of government defined	4829	Cannot waive provisions of law	4847
Exemptions	4830	Separate jurisdiction, provisions	4848
Benefits	4831	Constitution and by-laws, amendments	4849
Benefits confined to whom	4832	Annual reports	4850
Qualifications for membership	4833	Examination of domestic associations	4851
Certificate	4834	Application for receiver, etc.	4852
Funds	4835	Examination of foreign associations	4853
Investment of funds	4836	Revocation of license	4854
Annual sworn statement	4837	Exemption of certain associations	4855
Distribution of funds	4838	Exempt from taxation	4856
Organization	4839	Shall secure additional members or forfeit permit	4857
Powers retained, reincorporation amendments	4840	Commissioner to issue certificates to agents	4858
Transfer of membership	4841	Local companies exempt from chapter, shall file statement	4859
Annual license	4842	Associations exempt from all insurance laws	4860
Admission of foreign association	4843	May issue term payment certificates	4861
Powers of attorney and service of process	4844		

Article 4827. **Defined.**—Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with a ritualistic form of work and representative form of government, and which may make provision for the payment of death benefits, is hereby declared to be a fraternal beneficiary association. [Act 1909, p. 357, sec. 1.]

Art. 4828. **Lodge system defined.**—Any association having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members shall be elected in accordance with its constitution, laws, rules and regulations, and initiated in accordance with the prescribed ritualistic ceremonies in lodge sessions, which subordinate lodges or branches shall be required by the laws of such association to hold regular or stated meetings at least once in each month, shall be deemed to be operating under the lodge system. [Id. sec. 2.]

Art. 4829. **Representative form of government defined.**—Any association shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of the representatives elected by the members, or by dele-

gates elected, directly or indirectly, by the members, together with such other members as may be prescribed by its constitution and by-laws; provided, that the elective representatives shall constitute a majority in number and have not less than a majority of the votes, nor less than the votes required to amend its constitution and by-laws; and provided, further, that the meetings of the supreme or governing body and the election of officers shall be held as often as once in four years. [Id. sec. 3.]

Art. 4830. **Exemptions.**—Except as herein provided, such associations shall be governed by this chapter, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose; and no law hereafter passed shall apply to them, unless they be expressly designated therein. [Id. sec. 4.]

Art. 4831. **Benefits.**—Every association transacting business under this chapter shall provide for the payment of death benefits, and may provide for benefits payable to its members on the death of either husband or wife, and may provide for the payment of benefits in case of temporary or permanent disability, either as the result of disease, accident or old age; provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for the erection and payment of monuments at the graves of their deceased members. [Id. sec. 5.]

Art. 4832. **Benefits confined to whom.**—The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree ascending or descending, step-father, step-mother, step-children, children by legal adoption, or a person or persons dependent upon the member; provided, that, if after the issuance of the original certificate the member shall become dependent upon the charity of an individual or of an institution, he shall have the privilege, with the consent of the association, to make such individual or institution his beneficiary. Within the above restrictions, each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the association; and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any association may, by its laws, limit the scope of beneficiaries within the above classes. [Id. sec. 6.]

Art. 4833. **Qualifications for membership.**—Any association may admit to beneficial membership any person over sixteen and under sixty years of age who has been examined by a competent physician, and whose examination has been supervised and approved in accordance with the laws of the association; provided, that any beneficiary member of such association who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such association from accepting general or social members. [Id. sec. 7.]

Art. 4834. **Certificate.**—Every certificate issued by any association shall specify the maximum amount of benefit provided thereby, and the conditions governing the payment thereof, and shall provide that the certificate, the charter, or articles of association, the constitution and laws of the association and the application for membership and medical examination signed by the applicant, shall constitute the contract between the association and the member; and copies of the same, certified by the secretary of the association or corresponding officer, shall be received in evidence of the terms and conditions of the contract; and any changes, additions or amendments to said charter or articles of association, constitution or laws, duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries and shall govern and control the contract in all

respects the same as though such changes, additions or amendments had been made prior to, and were in force at the time of the application for membership; provided, it shall never be necessary for any such association to accompany its contract, policy or certificate with the copy of the application of such policy, contract or certificate, nor with a copy of the questions and answers thereto. All benefit certificates shall from the date of their issuance be non-contestible on account of any statement or representation made by said applicant for membership, either in his application or otherwise, or his medical examination, unless such representation shall be material to the risk assumed; and the burden of proof shall be upon the defendant to affirmatively establish such defense. [Amended Acts 1909, 2 S. S., p. 443, sec. 8.]

Art. 4835. Funds.—Any association may create, maintain, disburse and apply a reserve, emergency or surplus fund, in accordance with its constitution and laws not inconsistent with the provisions of this chapter. Any such reserve, emergency or surplus funds shall be held, invested and disbursed for the use and benefit of the association; and no such association shall be permitted to use any portion of such funds for any purpose, except the payment of death or disability benefits. Provided, that a separate fund created for the purpose of paying the assessments of a certain class of members, may be used for that purpose and no other. The funds from which benefits shall be paid, and the funds from which the expenses of the association shall be defrayed, shall be derived from the periodical or other payments by the members of the association and accretions of said funds; and every contract hereafter made between such association and its members shall provide that, if such regular payments are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its constitution and laws, extra assessments may be levied upon the members to meet such deficiency. [Act 1909, p. 357, sec. 9.]

Art. 4836. Investment of funds.—Any such association may invest its funds in real estate for office purposes, and may hold or sell and convey any real estate acquired by foreclosure or received in satisfaction of loans. It may also invest its funds in government, state, provincial, county or municipal bonds, or bonds of any township, park or school district having taxing powers: provided, such bonds shall be a direct obligation on all the taxable property within such municipality or district, or irrigation, paving or drainage district bonds; provided, such obligation shall be a direct obligation on all real estate within such district, or first lien or ground rents upon improved real estate, not exceeding fifty per cent of the market value thereof. [Id. sec. 10.]

Art. 4837. Annual sworn statement.—Not later than March the first of each calendar year, the officer or officers, board or committee, or other body charged or authorized by the laws or rules or regulations of such association with the duty of investing the funds of such association, shall either jointly or severally make, execute and file with the commissioner of insurance and banking a sworn statement that within their knowledge no part of the money collected by or on behalf of such association for mortuary or disability purposes, and no part of the reserve, emergency or surplus fund, nor the net accretions of either or any of said funds has been used for expenses, or for any purpose other than those permitted by this chapter, during the preceding year. Provided, that any association that provides in its laws for using any portion of the first year's assessments, received from new members, for expenses, shall not be held or considered to be acting contrary to or in violation of this article. [Id. sec. 12.]

Art. 4838. Distribution of funds.—Every provision for payment by members of such an association in whatever form made, shall distinctly state the purpose of the same, and the proportion thereof which may be used for ex-

penses; and no part of the money collected for mortuary or disability purposes, and no part of the reserve, emergency or surplus funds, or the net accretions of either or any of said funds, shall be used for expenses. [Id. sec. 13.]

Art. 4839. **Organization.**—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal beneficiary association, as defined by this chapter, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of association, in which shall be stated:

1. The proposed corporate name of the association, which shall not so closely resemble the name of any association or insurance company already transacting business in this state as to mislead the public or lead to confusion.

2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this chapter; provided, that any lawful social, intellectual, educational, moral or religious advantages may be set forth among the purposes of the association and the mode in which its corporate powers are to be exercised.

3. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the association for the first year, or until the ensuing election, at which all such officers shall be elected by the supreme legislative or governing body.

4. Such articles of association, and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor, and literature to be issued by such association, and a bond in the sum of five thousand dollars with a corporate surety, approved by the commissioner of insurance and banking, and authorized to carry on a surety business within the State of Texas, conditioned upon the return of the advance payments, as provided in this article to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance and banking, who may require such further information as he deems necessary; and, if the purposes of the association conform to the requirements of this chapter, and all provisions of the law have been complied with, the commissioner of insurance and banking shall so certify and retain and record the articles of association in a book to be kept for that purpose and furnish the incorporators a preliminary certificate authorizing said association to solicit members as hereinafter provided. Upon receipt of said certificates from the commissioner of insurance and banking, said association may solicit members for the purpose of completing its organization, and shall collect from each applicant the amount of not less than one death benefit assessment or payment, in accordance with its tables of rates, as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected; but no association shall incur any liability other than for such advanced payments, nor issue any benefit certificate, nor pay, or allow, or offer, or promise to pay, or allow, to any person, any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such association, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the commissioner of insurance and banking, under oath of the president and secretary, or corre-

sponding officers of such association, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which applicant is a member, amount of benefits to be granted, rate of regular payments or assessments, nor until it shall be shown to the commissioner of insurance and banking, by the sworn statement of the treasurer or corresponding officer of such association, that at least two hundred applicants have each paid in cash at least one regular monthly payment or assessment as herein provided per one thousand dollars of indemnity to be effected, which payments shall amount to one assessment to aggregate not less than five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses. Said advanced payments shall, during the period of organization, be held in trust for, and, if the organization is not completed within one year, as hereinafter provided, returned to said applicants. Such association shall provide in its constitution or laws that no benefit in excess of one thousand dollars shall be payable by it until it shall have one thousand bona fide paying benefit members, and no such association shall be authorized to issue one benefit certificate for more than said sum until it has secured such members. The commissioner of insurance and banking may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the association has complied with all the provisions of law, he shall issue to such association a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such association at the date of such certificate. The commissioner of insurance and banking shall cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate. No preliminary certificate granted under the provisions of this article shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the commissioner of insurance and banking upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of association and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such association shall have completed its organization and commenced business, as herein provided. When any domestic association shall have discontinued business for the period of one year, its charter shall become null and void. [Id. sec. 14.]

Art. 4840. **Powers retained; re-incorporation; amendments.**—Any association engaged in transacting business on the tenth day of July, A. D. 1909, in the state, may exercise all the rights conferred by this chapter, and all the rights, powers and privileges then exercised or possessed by it under its charter of articles of association, not inconsistent with this chapter, or it may be reincorporated hereunder. But no association at said date organized and doing business in this state shall be required to reincorporate hereunder, nor shall it be required to adopt the provisions prescribed herein for new associations, in order to avail itself of the privileges of this chapter, and any such association may amend its articles of association from time to time in the manner provided herein, or its constitution or laws, and all such amendments shall be filed with the commissioner of insurance and banking, and shall become operative upon such filing unless a later time be provided in such amendments or in its articles of association, constitution or laws. [Id. sec. 15.]

Art. 4841. **Transfer of membership.**—No domestic association shall transfer its membership or funds to any association not authorized by the commissioner of insurance and banking to transact business in this state, nor shall any such association transfer its membership or funds to any licensed association, un-

less the said contract of transfer has been approved by a two-thirds vote of the members of the supreme body of the association, whose membership is proposed to be transferred, and by a two-thirds vote of the trustees or board having charge of the association proposing to take such membership. [Id. sec. 16.]

Art. 4842. **Annual license.**—Associations mentioned in article 4827 of this chapter may continue such business until the first day of March, A. D. 1910; and the authority of such association shall thereafter be renewed annually upon compliance with this chapter, but in all cases to terminate on the last day of the succeeding February. For each such license or renewal, the association shall pay the commissioner of insurance and banking ten dollars. A duly certified copy of such license shall be prima facie evidence that the licensee is a fraternal beneficiary association within the meaning of this chapter. [Id. sec. 17.]

Art. 4843. **Admission of foreign associations.**—No foreign association transacting business in this state on the tenth day of July, 1909, and organized prior to said date, which was not then authorized to transact business in this state, shall transact business therein without a license from the commissioner of insurance and banking. Any such association shall be entitled to a license to transact business within this state, upon filing with the commissioner of insurance and banking a duly certified copy of its charter or articles of association; a copy of its constitution or laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner of insurance and banking, as hereinafter provided; a statement under oath of its president and secretary, or corresponding officer, in the form required by the commissioner of insurance and banking, duly verified by an examination made by the supervisory insurance official of its home state, of its business for the preceding year; a certificate from the proper official in its home state, province or country, that the association is legally organized; a copy of its contract, which must show that benefits are provided for by assessment upon, or other payments, by persons holding similar contracts; and upon the furnishing the commissioner of insurance and banking such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such association to do business in this state, until the last day of the succeeding February, and such license shall, upon compliance with the provisions of this chapter, be renewed annually, but in all cases to terminate on the last day of the succeeding February. Any foreign association organized after said tenth day of July, 1909, desiring admission to this state, in addition to the foregoing requirements of this article, shall have the further qualifications required of domestic associations, organized under this chapter, and have its assets invested as required by the laws of this state. For each such license or renewal, the association shall pay the commissioner of insurance and banking ten dollars. When the commissioner of insurance and banking refuses to license any association, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the association, upon request; and the action of the commissioner of insurance and banking shall be reviewable by proper proceedings in any court of competent jurisdiction within this state; provided, however, that nothing contained in this or the preceding article shall be taken or construed as preventing any such association from continuing in good faith all contracts made in this state during the time such association was legally authorized to transact business therein. [Id. sec. 18.]

Art. 4844. Power of attorney and service of process.—Every association, domestic or foreign, shall, before being licensed, appoint in writing the commissioner of insurance and banking and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it, which is served upon such attorney, shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment certified by said commissioner of insurance and banking shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service may only be made upon such attorney, must be made in duplicate and shall be deemed sufficient service upon such association; provided, however, that no such service shall be valid or binding against any such association when it is required thereunder to file its answer, pleading, or defense in less than thirty days after the date of such service. When legal process against any such association is served upon said commissioner of insurance and banking, he shall forthwith forward, by registered mail, one of the duplicate copies, prepaid and directed to its secretary or corresponding officer. The plaintiff in such process so served shall pay to the commissioner of insurance and banking for the use of the state, at the time of such service, a fee of two dollars, which shall be recovered by him as part of the taxable costs, if he prevails in the suit. [Id. sec. 19.]

Art. 4845. Place of meeting; location of office.—Any domestic association may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such association has subordinate branches; and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state. [Id. sec. 20.]

Art. 4846. No personal liability.—Officers and members of the supreme, grand or any subordinate body of any such incorporated association shall not be individually liable for the payment of any disability or death benefit provided for in the laws and contracts of such associations, but the same shall be payable only out of the funds of such association, and in the manner provided by its laws. [Id. sec. 21.]

Art. 4847. Cannot waive provisions of law.—No subordinate body, or any of its officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the association, and the same shall be binding on the association and each and every member thereof and their beneficiaries. [Id. sec. 22.]

Art. 4848. Separate jurisdiction, provisions.—All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this state on the tenth day of July, 1909, as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single state organization, and all reports required by the provisions of this chapter, shall be made and furnished by the officers of such supreme state governing body, and shall embrace and contain the transactions, liabilities and assets of such state organization. [Id. sec. 23.]

Art. 4849. Constitution and laws; amendments.—Every association transacting business under this chapter shall file with the commissioner of insurance and banking a duly certified copy of all amendments of, or additions to, its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws, and of additions or amendments thereto, certified by the secretary or corresponding officer of the association, shall be prima facie evidence of the legal adoption thereof. [Id. sec. 24.]

Art. 4850. **Annual reports.**—Every association transacting business in this state shall annually, on or before the first day of March, file with the insurance commissioner, in such form as he may require, a statement under oath of its president and secretary, or corresponding officer, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date. However, if any such association has had its books and accounts audited within the time inquired about by some auditor of recognized honesty and ability, in some other state, and whose honesty and ability is recognized and approved by the commissioner of Texas, and if said auditing and report is approved by the insurance commissioner of some other state, then a certified copy of said auditing and report, under oath, shall be accepted by the commissioner of this state as to all matters contained therein. The insurance commissioner may at other times require any further statement he may deem necessary to be made relating to such associations. But such insurance commissioner shall neither make, nor permit to be made from any information so obtained, any valuation of its outstanding benefit certificates, unless requested to make such valuation by the association. [Id. sec. 25.]

Art. 4851. **Examination of domestic association.**—The commissioner of insurance and banking, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic association. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the association and may summon and qualify as witness under oath and examine its officers, agents and employes or other persons, in relation to the affairs, transactions and conditions of the association. The expense of such examination shall be paid by the association examined, upon a sworn itemized statement thereof being presented by the commissioner of insurance and banking, or his authorized representative, a copy of which statement shall be filed in the office of said commissioner; provided the expense of such examination shall be limited to fifty dollars. Whenever after examination, or from other information, the commissioner is satisfied that any domestic association is insolvent, as insolvency is herein defined, or has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contract in good faith, or is transacting business fraudulently, or whenever any domestic association, after the existence of one year or more, shall have a membership of less than five hundred, or votes to discontinue business, the commissioner of insurance and banking may present the facts relating thereto to the attorney general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction; and such court shall thereupon notify the officers of such association of a hearing; and, unless it shall then appear that some special and good reason exists why such association should not be closed; said association shall be enjoined from carrying on any further business, and some person shall be appointed receiver of such association, and shall proceed at once to take possession of the books, papers, moneys and other assets of the association, and shall forthwith, under the direction of the court, proceed to close the affairs of the association and to distribute its funds to those entitled thereto. No such proceeding shall be commenced by the attorney general against such association until after notice has been duly served on the chief executive officer of the association and a reasonable opportunity given to it on a date to be named in said notice, which shall not be less than thirty days after service of notice, to show cause why such proceedings should not be continued. No such receiver shall receive compensation for his services greater than that allowed by law to state bank examiners. Pending, during or after an examination or investigation of any such

association, whether domestic or foreign, the commissioner of insurance and banking shall make public no statement, report or finding, nor shall he permit to become public any statement, report or finding, affecting the status, standing or rights of any such association until a copy thereof shall have been served upon the president or secretary, or corresponding officer, of such association, nor until such association shall have been afforded a reasonable opportunity to answer any such statement, report, or finding, and to make such showing in connection therewith as it may desire. If such statement, report or finding shall not be withdrawn after such hearing, it shall not thereafter be made public except in connection with the answer or explanation of the association concerned. [Id. sec. 26.]

Art. 4852. **Application for receiver, etc.**—No application for injunction or other proceeding for the dissolution of, or the appointment of a receiver for, any such domestic association, or branch thereof, shall be entertained by any court in this state, unless the same is made by the attorney general. [Id. sec. 27.]

Art. 4853. **Examination of foreign associations.**—The commissioner of insurance and banking, or any person whom he may appoint, may examine any foreign association transacting, or applying for admission to transact, business in this state. The commissioner may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the association, and may summon and qualify as witnesses under oath and examine its officers, agents, employes, and other persons, in relation to the affairs, transactions and conditions of the association. He may, in his discretion, accept in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such association is organized. The expenses of such examination shall be paid by the association examined, upon a sworn itemized statement thereof being presented by the commissioner of insurance and banking, or his authorized representative, a copy of which statement shall be filed in the office of said commissioner. If any such association or its officers refuse to submit to such examination, or to comply with the provisions of this article relating thereto, the authority of such association to transact business in this state shall be revoked until satisfactory evidence is furnished the commissioner of insurance and banking relating to the condition and affairs of the association; and, during such revocation, the association shall not transact any business in this state; provided, no such revocation shall be made until thirty days written notice shall be given to such association at its home office; provided, that the total cost of this examination shall never in any one year exceed the sum of fifty dollars. [Id. sec. 28.]

Art. 4854. **Revocation of license.**—When the commissioner, on investigation, is satisfied that any foreign association transacting business under this chapter, is insolvent, or has exceeded its powers, or has failed to comply with any provision of this law, or to pay off and satisfy any execution that may lawfully issue on any final judgment against it within sixty days after the officer holding such execution has demanded payment thereof, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the president and secretary, or other officers corresponding thereto, of his findings, and state in writing the grounds of his dissatisfaction, and, after not less than ten days notice, require said association, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of the commissioner of insurance and banking, or the association does not present good and sufficient reason why its authority to transact business in this state

should not at that time be revoked, he may revoke the authority of the association to continue business in this state. All decisions and findings of the commissioner of insurance and banking made under the provisions of this article may, by proper proceedings in any court of competent jurisdiction, as provided in article [4843], be reviewed. [Id. sec. 29.]

Art. 4855. **Exemption of certain associations.**—Nothing contained in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the Supreme Lodge Knights of Pythias); nor the Junior Order of United American Mechanics (exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United American Mechanics); nor to societies which limit their membership to a particular vocation; nor to similar associations which do not issue insurance certificates; nor to an association of local lodges of an association doing business in this state, which provide death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding five hundred dollars in any one year to any one person, or both; nor to any contract or reinsurance of, or between, such local lodges of such association doing business on such plan in this state, nor to domestic associations, which limit their membership to the employes of a particular city or town, designated firm, business house or corporation; nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefit of more than one hundred and fifty dollars to any one person in any one year; provided, always, that any such domestic order or association which has more than five hundred members and provides for death or disability benefits, and any such domestic lodge, order, or association which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this article, but shall comply with all the requirements of this chapter. The commissioner of insurance and banking may require from any association such information as will enable him to determine whether such association is exempt from the provisions of this chapter. [Id. sec. 30.]

Art. 4856. **Exempt from taxation.**—Every fraternal beneficiary association, organized or licensed under this chapter, is hereby declared to be a charitable and benevolent institution; and all of its funds and assets shall be exempt from any state, county and municipal tax other than taxes on real estate and office equipment. [Id. sec. 31.]

Art. 4857. **Shall secure additional members or forfeit permit.**—All associations, domestic or foreign, which were doing business in this state on July 10, 1909, and which are not by the terms of this act exempted from its provisions, and having less than three hundred bona fide paying benefit members, and less than three hundred thousand dollars insurance in force upon their lives, shall, within twelve months from said date, secure at least three hundred such members, upon whose lives said amount of insurance shall be in force; or failing therein, it shall be the duty of the commissioner of insurance and banking to revoke the license of such association, which shall do no further business in the state until it shall have procured bona fide applications for insurance on said number of lives upon which one full monthly assessment has been paid in accordance with the constitution and laws of such association. [Id. sec. 32.]

Art. 4858. **Commissioner to issue certificates to agents.**—All certificates of authority for agents or solicitors shall be issued by the commissioner upon application made therefor by any of the general officers of the association, or by any agent whom the properly authorized governing body of the association has, by resolution filed with the commissioner of insurance and bank-

ing, duly empowered to make such application; and all such certificates shall be revoked by the commissioner, upon the request of the association, and may be revoked for cause upon like ground and in like manner as the certificates of authority of agents for life insurance companies under the laws of this state. All such certificates shall be renewed annually, and shall expire on the last day of February of each year, and a fee of one dollar shall be paid for the use of the state for the issuance of each such certificate. [Id. sec. 33.]

Art. 4859. Local companies exempt from chapter shall file statement.—The provisions of this chapter shall not apply to incorporated or unincorporated mutual relief, or benefit, or burial associations, operating upon the assessment plan, whose business is confined to not more than one county in the state, or to a territory in two or more adjacent counties included within a radius of not more than twenty-five miles surrounding the city or town in which its principal office is to be located, which is designated in its charter, which are hereby denominated local mutual aid associations, providing that such associations are in no manner, directly or indirectly, connected, federated or associated with any such association, and do not, directly or indirectly, contribute to the expense or support of any other such association, or to the officers, promoters or managers thereof. And provided, that no person or officer shall receive from said association any payment on account of organization or other expenses or salaries not a bona fide resident of such county in which such association is domiciled. The association above mentioned shall annually, on or before March 1, file a statement with the commissioner of insurance and banking, which shall be signed and sworn to by the president, secretary and treasurer, or the officer holding positions corresponding thereto. Such statement shall show whether the association has, during the preceding year, done any business outside of the county in which it is domiciled, and shall state whether or not said association is associated, federated, or directly or indirectly, connected with any other, and shall show what, if anything, has been contributed during the preceding year by said association, or the members, to any person or officer or director thereof for salaries, commissions or promotion expenses, and the name and residence of the party or parties receiving the same. The commissioner of insurance and banking may, at his option, and it shall be his duty, if not satisfied with said statement, to demand other and additional statements, and examine the books, papers and records of said association, either himself or by some other suitable person authorized by him. Should it appear to the commissioner of insurance and banking that any such local mutual aid association is not carrying on business as set forth in this article, and is not entitled to the exemption therein set forth, such association shall be subject to and comply with all provisions of this chapter as a fraternal beneficiary association. Every such local association claiming to be entitled to the benefit of the exemption created by this article shall plainly state upon its certificates, applications and all advertising matter, in a conspicuous manner, that said association is a local mutual aid association, or same shall be deemed subject to all provisions of this chapter concerning fraternal beneficiary associations. [Id. sec. 34.]

Art. 4860. Associations exempt from all insurance laws.—All associations or organizations expressly exempted from the provisions of this chapter, or any portion thereof, shall be deemed exempt from all provisions of the insurance laws of this state which are not made specially applicable thereto. [Id. sec. 35.]

Art. 4861. May issue term payment certificates.—Any association doing business under the provisions of this chapter may issue term payment certificates upon the death of members within the term for which said payments

are limited, or limited payment, full life certificates payable at death; provided, that the contract with the member shall provide that if such limited or term payments are not sufficient to meet the liabilities of the association for death benefits as same accrue, additional assessments may be made for this purpose. [Id. sec. 36.]

CHAPTER EIGHT.

FIRE AND MARINE INSURANCE COMPANIES.

	Article.		Article.
Marine, fire and other than life and health insurance companies, may do what	4862	Unlawful dividends	4867
Commissioner may permit capital stock of company to be reduced, when.....	4863	Penalty for making unlawful dividends.	4868
When company is called upon to make good its capital stock, shall do what..	4864	Insurance companies shall not purchase or hold real estate, except.....	4869
Stockholders failing to pay when called upon, what course shall be taken.....	4865	Shall file bond.....	4870
Company may create and dispose of new stock, when.....	4866	May deposit securities in lieu of bond...	4871
		Annual statement of company.....	4872
		What the annual statement shall exhibit.	4873
		Policy shall be considered a liquidated demand	4874
		Reinsurance	4875

Article 4862. [3074] **Marine, fire and other than life or health insurance companies, may do what.**—It shall be lawful for any insurance company doing business in this state under the proper certificate of authority, except a life or health insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire, and to take all kinds of insurance on goods, merchandise or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property, by means of any loan or loans which it may have made on bottomry or respondentia, and generally to do and perform all other matters and things proper to promote these objects. [Act Feb. 17, 1875, p. 34, sec. 8.]

Art. 4863. [3077] **Commissioner may permit capital stock of company to be reduced, when.**—Whenever the joint stock of any fire, fire and marine, or marine insurance company of this state becomes impaired, the commissioner of insurance and banking may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment; but in fixing such reduced capital no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets; and no part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one hundred thousand dollars. [Act Aug. 21, 1876, p. 222, sec. 8, subdivision 11.]

Art. 4864. [3078] **When company is called upon to make good its capital stock, shall do what.**—Any fire, marine, or inland, insurance company having received notice from the commissioner of insurance and banking to make good its whole capital stock within sixty days, shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company. [Id. sec. 221.]

Art. 4865. [3079] **Stockholder failing to pay when called upon, what course shall be taken.**—In case any stockholder of such fire, marine, or inland insurance company shall neglect or refuse to pay the amount so called

for, after notice personally given, or by advertisement for such time and in such manner as said commissioner shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificate for such number of shares as such defaulting stockholders may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares, for which new certificates are issued, to be ascertained under the direction of said commissioner, and the company shall pay for the fractional parts of shares. [Id. sec. 8.]

Art. 4866. [3080] **Company may create and dispose of new stock, when.**—It shall be lawful for such fire, marine, or inland insurance company to create new stock and dispose of the same, and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company. [Id.]

Art. 4867. [3087] **Unlawful dividends.**—It shall not be lawful for any life, health, fire, marine, or inland insurance company organized under the laws of this state to make any dividend, except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine, or inland transportation risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. [Id. sec. 15.]

Art. 4868. [3088] **Penalty for making unlawful dividends.**—Any dividends made contrary to the provisions of the preceding article shall subject the company making it to a forfeiture of its charter, and the commissioner of insurance and banking shall forthwith revoke its certificate of authority. [Id.]

Art. 4869. [3076] **Insurance companies shall not purchase or hold real estate, except, etc.**—No fire, marine, or inland insurance company organized under the laws of this state shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All lands purchased or held in violation of this article shall be forfeited to the state. [Id. sec. 16.]

Art. 4870. **Shall file bond.**—Every fire insurance company, not organized under the laws of this state, applying for a certificate of authority to transact any kind of insurance in this state, shall, before obtaining such certificate, file with the commissioner of insurance and banking a bond, with good and sufficient surety or sureties, to be approved by the commissioner of insurance and banking, payable to the commissioner of insurance and banking, and his successors in office, in a sum equal to twenty-five per cent of its premiums collected from citizens or upon property in this state during the preceding cal-

endar year, as shown by its annual report for such year; provided, however, the bond in no case shall exceed fifty thousand dollars, nor be less than ten thousand dollars, conditioned that said company will pay all its lawful obligations to citizens of this state. Such bonds shall be subject to successive suits by citizens of this state so long as any part of the same shall not be exhausted, and the same shall be kept in force unimpaired until all claims of citizens of this state arising out of obligations of said company have been fully satisfied. Such bonds shall provide that, in the event the company shall become insolvent or cease to transact business in this state, at any time when it has outstanding policies of insurance in favor of citizens of this state, or upon property in this state, the commissioner of insurance and banking shall have the power, after having given ten days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this state for the assumption and reinsurance by it of all the insurance risks outstanding in this state of such company which is insolvent, or which has ceased to transact business in this state, which contract shall also provide for the assumption by such reinsuring company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this state; and in the event of the commissioner making any such contract, and if the same shall be approved as reasonable by the attorney general and the governor of this state, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this article, deposit securities of any kind, in which it may lawfully invest its funds with the state treasurer of this state upon such terms and conditions as will in all respects afford the same protection and indemnity as is herein provided for to be afforded by said bond. [Acts 1909, p. 182, sec. 1.]

Art 4871. May deposit securities in lieu of bond.—Every fire insurance company, not organized under the laws of this state, hereafter issuing, or causing or authorizing to be issued, any policy of insurance other than life insurance, shall first have filed with the commissioner of insurance and banking during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such commissioner in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this state arising out of any policies or contracts issued by such fire insurance company; which such bond shall be subject to successive suits by citizens of this state so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company. This article shall not apply to any person, firm or corporation, or association, doing an inter-insurance, co-operative or reciprocal business. [Id. sec. 3.]

Art. 4872. [3083] Annual statement of company.—It shall be the duty of the president or of the vice-president and secretary of each fire, marine or inland insurance company doing business in this state, annually, on the first day of January of each year, or within sixty days thereafter, to prepare under oath and deposit with the commissioner of insurance and banking of this state a full, true and complete statement of the condition of such company on the last day of the month of December preceding. [Act Feb. 17, 1875, p. 37, sec. 17.]

Art. 4873. [3084] What the annual statement shall exhibit.—The annual statement required by the preceding article shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residences of the officers.
3. The amount of capital stock of the company.

4. The amount of capital stock paid up.

5. The property or assets held by the company, viz.: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this state, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stock of this state, of the United States, of any incorporated city of this state, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.

6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the causes thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired fire risks and one hundred per cent of the premium on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.

7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses and other charges of officers, agents, clerks and other employes; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk, naming the risk.

10. The amount of risks written during the year then ending.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. It shall be stated whether or not dividends are declared on premiums received for risks not terminated. [Id.]

Art. 4874. [3089] **Policy shall be considered a liquidated demand.**—A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the

full amount of such policy; provided, that the provisions of this article shall not apply to personal property. [Acts 1879, ch. 73, p. 83.]

Art. 4875. [3075] **Reinsurance.**—No fire, fire and marine, marine or inland insurance company doing business in this state shall expose itself to any one risk, except when insuring cotton in bales and grain, to an amount exceeding ten per cent of its paid up capital stock, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this state.

2. Every fire, fire and marine, marine or inland insurance company doing business in this state may reinsure the whole or any part of any policy obligation in any other insurance company legally authorized to do business in this state. The commissioner of insurance and banking shall require every year from every insurance company doing business in this state a certificate sworn to before an officer legally qualified to administer oaths in the state of Texas, to the effect that no part of the business written by such company in this state has been reinsured in whole or in part by any company, corporation, association or society not authorized to do business in this state. Every insurance company doing business shall also furnish the commissioner of insurance and banking with a list of all reinsurances during the year in authorized companies, showing the name, amount and premium effected in each company.

3. Any insurance company authorized to transact the business of fire, fire and marine, marine and inland insurance in this state, failing to comply with the provisions of this article, shall forfeit its authority to do such business for a period of one year; and it is hereby made the duty of the commissioner of insurance and banking to investigate any complaint as to violation of said article; and, upon satisfactory proof that any company authorized to transact the business of fire, fire and marine, marine or inland insurance in this state has violated the provisions of this article, the said commissioner shall revoke the certificate of authority of the offending company.

4. The commissioner of insurance and banking, upon the payment of license fee of twenty-five dollars, issue to an agent who is regularly commissioned to represent one or more fire, fire and marine insurance companies authorized to do business in this state, a certificate of authority to place excess lines of insurance in companies not authorized to do business in this state; provided, that the party desiring such excess insurance shall first file with the commissioner of insurance and banking an affidavit that he has exhausted all the insurance obtainable from companies duly authorized to do business in the state.

5. Before receiving license provided for in section 4 of this article, party applying for same shall file with the commissioner of insurance and banking a bond in the sum of one thousand dollars, payable to the governor of the state, for the faithful observance of the provisions of this article. Said bond to be approved by the commissioner, and to be for the benefit of the state of Texas.

6. Every agent so licensed shall report, under oath, to the commissioner of insurance and banking, within thirty days from the first day of January and July of each year, the amount of gross premiums received by him for such excess insurance, and shall pay the said commissioner a tax of five per cent thereon. The agent procuring a license as provided in this article shall keep a separate record of all transactions herein provided open at all times to the inspection of the commissioner, or his legally appointed representative. In default of the payment of any sums which may be due the state under this article, the said commissioner may sue for the same in any court of record in this state. [Act Feb. 17, 1875, p. 34, sec. 8. Amended Acts 1905, p. 112.]

CHAPTER NINE.

STATE INSURANCE BOARD.

Article.	Article.
Companies deemed to have accepted provisions of law.....	Duties of board to establish uniform policies.....
4876	4891
State insurance board, appointment, etc.....	Certain provisions in policies void.....
4877	4892
Compensation, etc.....	Co-insurance clauses.....
4878	4893
Insurance board to fix rates, etc.....	Rights of persons to petition insurance board.....
4879	4894
Secretary and fire marshal.....	Regulations of hearings, insurance board.....
4880	4895
Duties of fire marshal.....	Insurance companies not to do certain things.....
4881	4896
Same.....	Unlawful to accept rebate.....
4882	4897
When state fire marshal is unable to act.....	Law not applicable to collection of premiums.....
4883	4898
Action of fire marshal not to affect policies, etc.....	Commissioner of insurance may revoke authority of company, when.....
4884	4899
Statement to be made to insurance board.....	Unlawful for agent or company to evade law.....
4885	4900
Board to prepare basis of schedules of rates.....	Persons testifying in trials of violation of this law, not to be prosecuted.....
4886	4901
Companies to file schedules of specific risks; rates to be approved by board.....	Law not to apply to certain companies.....
4887	4902
Policyholders to be furnished with analysis of rates.....	Companies to bear expense of board.....
4888	4903
Present rates continued until rates have been determined and filed.....	Unconstitutionality of part of law not to affect whole law.....
4889	4904
Authority to revise general basis schedules.....	
4890	

Article 4876. **Companies deemed to have accepted provisions of law.**—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name, issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this state, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this state or to some foreign country, whether such company is organized under the laws of this state or under the laws of any other state, territory or possession of the United States, or foreign country, or by authority of the federal government, now holding a certificate of authority to transact business in this state, or hereafter granted authority to transact business in this state, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this chapter and that it agrees to transact business in this state subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this chapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the share end of all marine risks insured against loss by fire. [Act 1910, 4 S. S., p. 195.]

Art. 4877. **State insurance board; appointment, etc.**—That there may be reasonable and just insurance rates in Texas, there is hereby created a board to be known as the "state insurance board," which shall be composed of the commissioner of insurance and banking, who shall be chairman thereof, and two members who shall be appointed by the governor, by and with the consent of the senate, subject to removal as provided for removal of state officers by article 6027 of the Revised Statutes of Texas; the members of said board, other than the commissioner of insurance and banking, shall be appointed as herein provided; one of said members shall be appointed for a term ending February 1, 1911, and biennially thereafter; the other of said members of said board shall be appointed for a term ending February 1, 1912, and biennially thereafter. The commissioner of insurance and banking, for the purpose of this law, may be referred to as the commissioner of insurance.

Art. 4878. **Compensation, etc.**—The members of said board, other than the commissioner of insurance and banking, shall each receive as compensation for their services the sum of twenty-five hundred dollars per annum; and the commissioner of insurance and banking shall receive as compensation or salary for his services under this law, the sum of five hundred dollars per annum, in addition to his compensation as now fixed by law. Such salaries of the said two appointed members of said board and the said five hundred dollars salary of the commissioner of insurance and banking, together with the necessary compensation of experts, the clerical force, and other persons employed by said board, and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this chapter, shall be paid by warrants drawn by the comptroller upon the state treasurer, upon the order of said board; provided, that the total amount of all salaries and said other expenses shall not exceed the sum of twenty-five thousand dollars annually.

Art. 4879. **Insurance board to fix rates, etc.**—The state insurance board shall have the power and authority, and it shall be its duty, to prescribe, fix, control and regulate rates of fire insurance, as provided in this chapter. It shall make and prescribe general basis schedules, together with rules and regulations for determining maximum specific rates therefrom, and furnish each insurance company now doing business in this state, or which may hereafter be granted a certificate of authority to do business in this state, a copy of such general basis schedules; and the said board shall also have authority to alter or amend such general basis schedules in accordance with the provisions of this chapter. Said board shall also supervise, control and regulate rates of insurance, and shall have authority to alter and revise and to raise and lower such rates, and to alter and revise, raise and lower such general basis schedules, or any part thereof, and decide all questions required, authorized or permitted to be passed upon by said board under the provisions of this chapter. Said board shall also have authority to employ clerical help, experts, inspectors, and such other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this chapter, not to exceed the sum of twenty-five thousand dollars per annum, including salaries of the members of the board, and all other expenses, to be paid out of the state treasury. It shall be the duty of said board to ascertain, as soon as practicable, the annual fire loss in this state; to obtain, to make and maintain a record thereof and collect such data and information with respect thereto as will enable said board to classify the fire losses of this state, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will be of assistance in determining equitable insurance rates, methods of reducing such fire losses, and reducing the insurance rates of the state.

Art. 4880. **Secretary and fire marshal.**—For the purpose of facilitating the work of said board, one of the appointed members thereof shall be selected by the board as its secretary, who shall perform the duties which shall appertain to that position, and whose official title shall be "secretary of the state insurance board;" the other of said appointed members thereof shall be selected by said board as fire marshal of the state insurance board, and his official title shall be "fire marshal of the state insurance board;" but the said members, so selected as secretary and fire marshal as aforesaid, shall receive no compensation for filling their respective positions other than their salaries as members of the state insurance board, and shall perform the duties of these respective positions at the will of the board, but their expenses incurred in performing the duties of these positions shall be paid as provided in this chapter.

Art. 4881. **Duties of fire marshal.**—It shall be the duty of the fire marshal of the state insurance board, who for the purpose of this law, may be referred to as the state fire marshal, at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or district judge, or of the sheriff or county attorney of any county, where a fire occurs within the district or county of the officer making such request, or of any fire insurance company, or its general, state or special agent, interested in a loss, or of a policy holder sustaining a loss, or upon the direction of the state insurance board, to forthwith investigate, at the place of such fire, the origin, cause and circumstances of any fire occurring within this state, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the state insurance board, and shall also furnish in writing, to the county or district attorney of the county in which such fire occurred, all the information and evidence obtained by him, including a copy of all the pertinent testimony taken in the case.

Art. 4882. **Same.**—The state fire marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents, and to enter at any reasonable time any buildings or premises where a fire has occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin, and circumstances of such fire. And he may enter and examine at any reasonable time any building, structure or place, for the purpose of ascertaining the fire hazard, and may remove, or require the owner or occupant to remove or safely store combustible material, dangerously exposed or improperly placed therein, and to remove any unnecessary exposure to fire hazard found therein. The said state fire marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article; and in such case he shall not be required to give bond.

Art. 4883. **When state fire marshal is unable to act.**—If for any reason the state fire marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town, or some other suitable person, to act for him; and such person so designated shall have the same authority as is herein given the state fire marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as may be allowed by the state insurance board. If the investigation of a fire is made at the request of an insurance company, or at the request of a policy holder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the fire marshal, clerical expenses, witnesses' and officers' fees incident and necessary to such investigation shall be paid by such insurance company, or such policy holder, or such city or town, as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the state insurance board. Provided, the party or parties, company or companies, requesting such investigation, shall, before such investigation is commenced, deposit with the state insurance board an amount of money in the judgment of said board sufficient to defray the expenses of said fire marshal in conducting such investigation.

Art. 4884. **Action of fire marshal not to affect policies, etc.**—No action taken by the state fire marshal shall affect the rights of any policy holder or any company, in respect to a loss by reason of any fire so investigated, nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance

company, its officers, agents or adjusters, nor by any policy holder or any one representing him, made with reference to the origin, cause or supposed origin or cause, of a fire to the fire marshal, or to any one acting for him, or under his directions, be admitted in evidence or made the basis for any civil action for damages.

Art. 4885. Statement to be made to insurance board.—The said board is authorized and empowered to require sworn statements from any insurance company affected by this law, and from any of its officers, directors, representatives, general agents, state agents, special agents and local agents, of the rates and premiums collected for fire insurance on each class of risks on all property in this state during any or all years for the five years next preceding the first day of January, 1910, and of the causes of fires, if such be known, if they are in possession of such data and information, or can obtain it at a reasonable expense; and said board is empowered to require such statements for any period of time after the first day of January, 1910; and said board is empowered to require such statements, showing all necessary facts and information to enable said board to make, amend and maintain the general basis schedules provided for in this chapter, and the rules and regulations for applying same, and to determine reasonable and proper maximum specific rates, and to determine and assist in the enforcement of the provisions of this chapter. The said board shall also have the right, at its discretion, either personally or by some one duly authorized by it, to visit the offices, whether general, local or otherwise, of any insurance company doing business in this state, and the home office of said company outside of this state, if there be such, and the office of any officers, directors, general agents, state agents, local agents, or representatives, of such company, and there require such company, its officers, agents or representatives, to produce for inspection by said board or any of its duly authorized representatives, all books, records and papers of such company or such agents and representatives; and the said board, or its duly authorized agents or representatives, shall have the right to examine such books and papers and make, or cause to be made, copies thereof, and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose; and any company, its officers, agents or representatives failing to make such statements and reports herein referred to, and failing or refusing to permit the examination of books, papers and records as herein required, when so called upon, or declining or failing to comply with any provision of this article, shall be subject to the penalties provided for in article 4900.

Art. 4886. Board to prepare basis of schedules of rates.—Said board is empowered, and it is made its duty, to prepare a system of general basis schedules, together with rules for applying the same, for determining fire insurance rates on property in this state; the said general basis schedules and the rules for applying the same to be at all times reasonable; the said board may employ and use any facts and information in the possession of or in the records of the present state fire rating board, as well as all facts obtainable from and concerning fire insurance companies transacting business in this state, showing the experience of said companies, and charges for premiums on fire insurance, and generally as to the transaction of their said business during the years named in article 4885, or during any other period of time, in order to devise and fix reasonable general basis schedules and rules for applying the same for determining the maximum specific rates. The said board, in preparing such general basis schedules showing the rates on all classes of risks insurable by any company in this state, shall show all charges, credits, terms, privileges and conditions which in anywise affect such rates, or the application of such rates to specific risks, or the cost of insurance; provided, that such schedules and the rules for applying the same shall be furnished by said board to any

and all insurance companies affected by this chapter applying therefor; and the same shall be furnished to any citizen of this state applying therefor upon the payment of the actual cost thereof; that such general basis schedules, and the rules prescribed with reference thereto, shall not take effect until said board shall have entered an order or orders fixing the same, and shall have given notice to all insurance companies affected by this law, authorized to transact business in this state.

Art. 4887. Companies to file schedules of specific risks; rates to be approved by board.—After the adoption and promulgation of the general basis schedules and the rules and regulations for applying the same, as herein provided for by the board, every insurance company writing fire insurance policies within this state, shall, within a reasonable time, file with the state insurance board its application of said general basis schedules to the specific risks of the state, and the specific rates obtained thereby in accordance with the several provisions of this chapter; and provided, further, that any one or more insurance companies may employ, for the application of such general basis schedules and the making of such specific rates, the service of such experts as they may deem advisable for such purpose; but the contract or contracts of employment of such experts shall first be submitted to the state insurance board for its approval; provided, further, that the state insurance board shall have authority, and it shall be the duty of said board, personally or by its agents, to inspect and supervise the work of said experts in the application of said general basis schedules in the determination of specific rates, which rates shall be the maximum insurance rates that may be charged for insurance in this state; provided, further, that any company may write insurance at a lower rate than the maximum on any risk or class of risks in any particular locality; and provided, further, that any company making any such reduction shall forthwith file with the state insurance board a statement of such reduction, showing the maximum rate and the reduced rate thereon, such statement to be on forms prescribed by the board and signed by the state or general agent of such company, which statement, when so filed, shall be subject to the inspection of the public. The state insurance board, upon the filing of such statement, shall file a certified copy thereof with the city secretary of any city, town or village of such locality, if there be such, or if there be no such officer, then the board shall file a certified copy thereof with the county clerk of the county of such locality, which said statement, when so filed, shall be subject to public inspection. The county clerk or city secretary aforesaid shall receive as compensation the sum of ten cents for each such statement filed by him, which shall be paid to him by the state insurance board of funds which shall be deposited with the state insurance board for such purpose by any such company; provided, further, that said company or companies shall file with the board copies of all maps and copies of the analysis of all applications of said general basis schedules to the specific risks of this state, if required to do so by the board. And it shall be the duty of the expert or experts representing the insurance companies, or any insurance company in this state, to furnish, at the date of the inspection, to the owners of all risks inspected for the purpose of applying the general basis schedules provided for in this chapter, a copy of such inspection report showing all defects that operate as charges to increase the insurance rate. The maximum specific rates so made by a company or companies for any city, town, village or locality, shall not take effect, and such company or companies shall not write insurance thereunder, until such maximum specific rates shall have been approved by the board. The board shall have the authority to reject said maximum specific rates so made, or any part, or to alter, amend, modify or change the same; or to permit such maximum specific rates to become effective for a limited time, or any modification or change thereof for a limited

time, in its discretion; provided, however, that the said board shall have authority, in its discretion, to permit the said company or companies to apply the said schedules of basis rates to risks other than mercantile and special hazards without having first submitted the maximum specific rates so made to said board for approval. But such rates that the board may permit any company or companies to apply without the board's approval shall always be subject to review by the board, and by the proper showing of any policy holder or policy holders may be reduced. It is further provided that all changes made by any company in the maximum specific rates made by it in applying the general basis schedules shall be subject to the review of the board for its approval or disapproval, and shall be reported to the board in such manner and form as may be prescribed by the board. Provided, further, that any insurance company or companies, affected by this law, shall have the right at any time to petition the board for an order changing or modifying the general basis schedules, or the application of the general basis schedules to the specific risks; and the board shall consider such petition as provided in this chapter, and enter such order as the board may deem just and equitable to such company or companies, to competing companies and to the public. Provided, further, also, that any company, or any policy holder affected by this law, shall have the right to apply to the board for an order reducing the maximum specific rates of insurance on property within this state; and the board shall consider such application and enter such order with reference thereto as it may deem just and equitable to such company, to competing companies and to the public. The board shall also have the power and authority to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, also for all added fire-fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village, or locality, and also to give credit for a good fire record of each city, town, village or locality. The board shall also have the power and authority to compel any company to give any or all policy holders credit for any and all hazards that said policy holder or policy holders, may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard; and said company or companies shall return to such policy holder or policy holders such proportional part of unearned premiums charged for such hazards that may be reduced or removed.

Art. 4888. Policy holders to be furnished with analysis of rates.—After the approval by the board of the maximum specific rates made by the insurance companies hereunder, thereafter when a policy of insurance is written the policy holder shall be furnished by the company with a copy of the analysis of his maximum specific rates showing the items of charge and credit which determine the rate, unless such policy holder has theretofore been furnished with such analysis of his rate. It is also further provided that the general basis schedules and all maximum specific rates and local tariffs, filed in accordance with the provisions of this chapter, shall be open to the inspection of the public, and each local agent shall have and exhibit to the public copies thereof relative to all risks upon which he is authorized to write insurance.

Art. 4889. Present rates continued until rates have been determined and filed.—Until the general basis schedules, herein provided for, shall have been promulgated by the board, and the maximum specific rates thereunder determined, all companies subject to the provisions of this chapter shall write insurance at the rates now in force in this state, including the reductions heretofore ordered by the state fire rating board, in localities where such specific rates have been determined and filed with the board; provided, the general basis schedules from which such specific rates have been made, and such specific rates shall be subject to the authority of the board under this chapter.

Provided, further, however, that wherever such specific rates have not been determined, then the board shall designate at what rate the company shall write insurance; provided, however, that all rates under this article shall be maximum rates, and the companies shall have the right to write insurance below such rates by complying with the terms and conditions of article 4887.

Art. 4890. Authority to revise general basis schedules.—The said board shall have authority, upon reasonable notice not exceeding thirty days of its intention to do so, to alter, amend or revise said general basis schedules promulgated by it, or the specific maximum rates approved or ordered by it, as herein provided, and to give reasonable notice of such alteration, amendment or revisions to the public, or to any company or companies affected thereby. Such altered, amended or revised schedules or maximum rates shall be the schedules or maximum rates to be thereafter charged for insurance by any company in this state; provided, that the board may order changes to be made to meet unusual conditions in any particular locality, should such conditions exist or arise, by giving similar notice to the public, or to any company affected thereby. Provided, the changes or amendments made to the general basis schedules shall apply only to policies of insurance written after the order of the board making such changes or amendments becomes effective. Provided, further, that no policy existing prior to the taking effect of such changes or amendments to the general basis schedules shall be affected by such changes or amendments, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be affected by such changes or amendments, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates applicable under the changed or amended general basis schedules.

Art. 4891. Duties of board to establish uniform policies.—It shall be the duty of the state insurance board to make, promulgate and establish uniform policies of insurance applicable to the various risks of this state, copies of which uniform policies shall be furnished each company doing business in this state, or which may hereafter do business in this state. That after such uniform policies shall have been established and promulgated, and furnished the respective companies doing business in this state, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; and all companies which may commence business in this state, after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies. The said insurance board shall also prescribe all standard forms, clauses and endorsements used on, or in connection with, insurance policies. All other forms, clauses, and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the board. The board shall also have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice and proceeding in accordance with article 4895.

Art. 4892. Certain provisions in policies void.—Any provision in any policy of insurance issued by any company subject to the provisions of this chapter, to the effect that if said property is incumbered by a lien of any character, or shall after the issuance of such policy become incumbered by a lien of any character, that such incumbrance shall render such policy void, shall be of no force and effect, and any such provision within or placed upon any such policy shall be absolutely null and void.

Art. 4893. Co-insurance clauses.—No company subject to the provisions of this chapter may issue any policy or contract of insurance covering property in this state, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than that expressed

in such policy, nor in any way providing that the assured shall be liable as co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy; and any such clause or provision shall be null and void and of no effect; provided, that it may be optional with the assured to accept a policy or contract of insurance containing a co-insurance clause or provision when a reduction in the rate of insurance on the property described in such policy is the consideration named in such clause, and when so accepted, the co-insurance clause or provision shall be binding on the assured.

Art. 4894. Rights of persons to petition insurance board.—Any citizen or number of citizens of this state, or any policy holder or policy holders, or any insurance company affected by this law, or any board of trade, chamber of commerce, or other civic organization, or the civil authorities of any town, city or village, shall have the right to file a petition with the insurance board, setting forth any cause of complaint that they may have as to any order made by this board, or any schedule promulgated by this board, or as to any specific rate approved by this board, and that they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; that upon the filing of such petition, the party complained of, if other than the board, shall be notified by the board of the filing of such petition, and a copy thereof furnished the party or parties, company or companies, of whom complaint is made; and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition, and the board shall hear and determine said petition; but it shall not be necessary for the petitioners, or any one of them, to be present to present the cause to the board, but they shall consider the testimony of all witnesses, whether such witnesses testify in person, or by deposition, or by affidavits; and, if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said board.

Art. 4895. Regulations of hearings, insurance board.—The state insurance board shall give the public, and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the state, and such notice to the insurance company or companies to be affected thereby shall be by letter deposited in the postoffice, addressed to the state or general agent of such company or companies, if the address of such state or general agent be known to the board, or, if not known, then such letter shall be addressed to some local agent of such company or companies, or, if the address of a local agent be unknown to the board, then by publication in one or more of the daily papers of the state; and the board shall hear all protests or complaints from any insurance company or any citizen or any city, town or village, or any commercial or civic organization, as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it, or the injustice of any order or decision by it; and, if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision, shall be dissatisfied with any regulation, schedule or rate adopted by such board, such company or person, commercial or civic organization, city, town or village, shall have the right, within thirty days after the making of such regulation, or order, or rate, or schedule, or within thirty days after the hearing above provided for, to bring an action against said board in the district court of Travis county to have such regulation, or order, or schedule, or rate, vacated or modified, and shall set forth in a petition therefor the principal ground or

grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit, the issue shall be formed and the controversy tried and determined as in other civil cases; and the court may set aside and vacate or annul any one or more, or any part of any of the regulations, schedules, orders or rates promulgated or adopted by said board, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraining, directly or indirectly, the enforcement of any schedule, rate, order or regulation of said board shall be granted. Provided, that in such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate, which in the judgment of the court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the commissioner of insurance and banking a good and sufficient bond, to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the commissioner of insurance and banking whatever difference in the rate of insurance it may be finally determined to exist between the rate as fixed by said board complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit; and the said commissioner of insurance and banking, when he receives such difference in money, shall transmit the same to the parties entitled thereto. Whenever any action shall be brought by any company under the provisions of this article within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action, until the final determination of the same. Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said board under the provisions of this chapter until all of the remedies provided herein shall have been exhausted by the party complaining. If any insurance company affected by the provisions of this chapter shall violate any of the provisions hereof, the commissioner of insurance shall, by and with the consent of the attorney general, cancel its certificate of authority to transact business in this state.

Art. 4896. Insurance companies not to do certain things.—No company shall engage or participate in the insuring or reinsuring of any property in this state against loss or damage by fire, except in compliance with the terms and provisions of this chapter, nor shall any such company knowingly write insurance at any rate higher than the maximum rates herein provided for, and it shall be unlawful for any company so to do; and it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to accrue thereon or in commissions or division of commissions, or any position, or any valuable consideration, or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly, as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company, or other corporation, partnership or individual, or any dividends or profits accrued, or to accrue, thereon or anything of value whatsoever, not specified in the policy; but nothing in this article or in this chapter shall be construed to prohibit a company from sharing its profits with its policy holders; provided, that such agreement as to profit-sharing shall be placed on or in the face of the policy, and such profit-sharing shall be uniform and shall not discriminate between

individuals or between classes; provided, however, that no part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination; provided, however, that if any agent or company shall issue a policy without authority, and any policy holder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policy holders thereunder in the same manner and to the same extent as if said company had been authorized to issue said policy, although the company issued said policy in violation of the provisions of this chapter. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this chapter.

Art. 4897. **Unlawful to accept rebate.**—No person shall knowingly receive or accept from any insurance company, or from any of its agents, sub-agents, brokers, solicitors, employes, intermediaries or representatives, or any other person, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued, or to accrue, thereon, or any valuable consideration, position or inducement not specified in the policy of insurance; and any person so doing shall be guilty of a violation of the provisions of this article, and shall be punished as provided in the Penal Code.

Art. 4898. **Law not applicable to collection of premiums.**—The provisions of this law shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policy holders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this chapter.

Art. 4899. **Commissioner of insurance may revoke authority of company, when.**—The commissioner of insurance, upon ascertaining that any insurance company or officer, agent or representative thereof, has violated any of the provisions of this chapter may, at his discretion, and with the consent and approval of the attorney general, revoke the certificate of authority of such company, officer, agent or representative; but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent or representative, to the infliction of any other penalty provided by this chapter; and provided, that any action, decision or determination of the commissioner of insurance and banking and the attorney general in such cases shall be subject to the review of the courts of this state as herein provided.

Art. 4900. **Unlawful for agents or company to evade law.**—Any insurance company affected by this law, or any officer or director thereof, or any agent or person acting for, or employed by, any insurance company, who, alone or in conjunction with any corporation, company or person, who shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing prohibited or declared to be unlawful by this chapter, or who shall wilfully omit or fail to do any act, matter or thing required to be done by this chapter, or shall cause or wilfully suffer or permit any act, matter or thing directed not to be done, or who shall be guilty of any wilful infraction of this law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code.

Art. 4901. **Persons testifying in trials of violation of this law, not to be prosecuted.**—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of any other person or company charged with violating any of the provisions of this chapter on the ground that it may incriminate him under the laws of this state; but no person shall be prosecuted, or subjected to any penalty or forfeiture, for or on ac-

count of any transaction, matter or thing concerning which he may testify or produce evidence under this chapter, except for perjury in so testifying.

Art. 4902. **Law not to apply to certain companies.**—This chapter shall not apply to purely mutual or to purely profit-sharing fire insurance companies, incorporated or unincorporated under the laws of this state, and carried on by the members thereof solely for the protection of their property and not for profit; nor to purely co-operative inter-insurance and reciprocal exchanges carried on by the members thereof solely for the protection of their property and not for profit.

Art. 4903. **Companies to bear expense of board.**—Not later than March 15 of each year, it shall be the duty of the commissioner of insurance, for the purpose of reimbursing the state for the amount to be so expended during the current year in carrying out the provisions of this chapter, to collect from each insurance company affected by this law, which transacted business in this state during the preceding calendar year, or any portion thereof, the proportion of said twenty-five thousand dollars which the gross premiums collected by said company during such year from persons or upon property located in this state bears to the aggregate amount of gross premiums so collected during such year by all insurance companies affected by this law transacting business in this state; provided, that, in computing such gross premium receipts, there shall be deducted therefrom the amount paid out for reinsurance and for return premiums on canceled policies. If, at the end of any year, it shall be found that the aggregate amount expended in carrying out the provisions of this chapter during such year has been less than twenty-five thousand dollars, the amount remaining unexpended shall be applied in the reduction of the amount to be collected from said companies for the succeeding year. The amount due under the provisions of this article by each company shall be certified by the commissioner of insurance to such company, and he shall revoke the certificate of authority of any company which shall fail to pay the same within thirty days after the receipt of such certificate; provided, that the collections from insurance companies provided for in this article shall not be made for any year during which any such company shall be liable under the laws of this state to the payment of an occupation tax at a rate of two and one-half per cent or more of the gross premiums received, less deductions for reinsurance and return premiums on canceled policies.

Art. 4904. **Unconstitutionality of part of law not to affect whole law.**—If any part of this chapter be, for any reason, held unconstitutional, it shall not affect any other portion or part of the same.

CHAPTER TEN.

MUTUAL FIRE, STORM AND LIGHTNING INSURANCE COMPANIES.

Article.	Article.
Incorporation of, and by what law regulated	Permit canceled and charter forfeited, when
4905	4913
Application for permit, etc.	Tax on gross premiums
4906	4914
Conditions, etc., for obtaining charter, and fee	Funds set apart for payment of losses, etc.
4907	4915
Organization, and qualification of officers and directors	What mutual companies subject to this chapter
4908	4916
Funds to be invested, how	Local companies shall report annually and pay fee
4909	4917
Procedure in case of failure to pay loss	Venue of suits against
4910	4918
Funds, how used and disposed of	
4911	
Who are members, their right to vote, etc.	
4912	

Article 4905. **Incorporation of, and by what law regulated.**—Any number of persons, not less than seven, who shall be resident citizens of the state of Texas, and freeholders in the state, may form and incorporate a company for the purpose of mutual insurance against loss or damage by fire, lightning and storms; provided, that every company incorporated under the provisions of this article, shall embody the word, "mutual," in its title, which shall appear upon the first page of every policy and renewal receipt, and shall state in the body of the policy, that it is subject to assessment to pay all losses occurring during the life of the policy. Every such company so organized shall be amendable to, and subject to, the provisions of all laws of this state governing stock fire insurance companies in so far as they are applicable, and not in conflict with the provisions of this article as hereinafter provided, and shall make the reports to the commissioner of insurance and banking required of other fire insurance companies. [Act 1903, p. 166, sec. 1.]

Art. 4906. **Application for permit, etc.**—When any number of persons, not less than seven, desire to organize a mutual insurance company, as herein provided, they shall make application to the commissioner of insurance and banking for permission to solicit insurance on the mutual plan, stating the name of the company, the purposes for which company is to be organized, classifying the risks which the company purposes to insure against loss or damage by fire, storm and lightning, and stating the first assessment to be levied on each class of risks. Upon receipt of said application, the commissioner of insurance and banking shall issue to said applicants a permit to solicit insurance on the mutual plan in accordance with the terms of the application, but not to issue policies of insurance. Said mutual company shall take from each applicant an obligation specifying the property to be insured and the amount to be paid, as the first assessment on delivery of the policy, and a non-negotiable promissory note for such sum and payable upon the state of Texas granting to said mutual insurance company a charter authorizing it to do business in this state. [Id. sec. 2.]

Art. 4907. **Conditions, etc., for obtaining charter, and fees.**—No such company shall be granted a charter by the secretary of state, or be authorized to issue policies, until applications have been secured for insurance with such company from at least one hundred applicants, citizens of this state, each owning real estate within this state to the value of at least one thousand dollars, the first assessment or premium on which shall amount to at least ten thousand dollars, and for which notes of solvent parties, founded on actual bona fide applicants for insurance, payable upon the granting a charter by the state to said mutual insurance company, which said notes and applications shall be submitted to the commissioner of insurance and banking, who, upon payment of a fee of twenty-five dollars, shall have examined into the genuineness of the applications and the solvency of the notes; and, if he

finds that the applications are genuine and the notes executed by solvent parties, he shall certify to that fact; and the secretary of state shall, upon proper application, to which shall be attached the certificate of the commissioner of insurance and banking, permit said company to incorporate, and issue to it a charter. A certified copy of the charter shall be filed with the commissioner of insurance and banking, who, upon the payment of the fees required by law, shall issue to said mutual company a license to solicit business and issue policies against loss by fire, storm and lightning. Every person making application for insurance in such company and signing a note, shall be liable upon the note upon the granting of a charter by the state, and, if payment is refused, suit may be brought on same in any court in this state having jurisdiction of the amount; and said mutual insurance company shall be entitled to recover, in addition to the face of the note, interest on said amount at the rate of six per cent per annum from date of the issuance of the charter, and ten per cent on amount due as penalty for attorney fees. [Id. sec. 3.]

Art. 4908. **Organization and qualifications of officers and directors.**—Upon the issuance of a charter by the secretary of state, such mutual insurance companies shall effect an organization by the election of a board of directors, consisting of not less than seven persons, all of whom shall be residents of this state, and whose term of office shall not be less than one year nor more than five years, as provided by the by-laws of said company. Said board of directors shall elect a president, secretary and treasurer, and such other officers as the by-laws may provide, whose term of office shall not be longer than five years. The president shall be required to execute a bond in the sum of two thousand dollars, the secretary a bond in the sum of two thousand dollars, conditioned for the faithful performance of their duty, and the treasurer shall execute a bond in the sum of at least ten thousand dollars, conditioned for the faithful performance of his duty, and that he will account for all moneys that may come into his hands. Said bonds shall be payable to the commissioner of insurance and banking of Texas and his successors in office, and shall be signed by two or more good and solvent sureties, or be executed by a guaranty company authorized to do business in this state, and shall be approved by said commissioner of insurance and banking. [Id. sec. 4.]

Art. 4909. **Funds to be invested, how.**—Upon receipt of license, said mutual company shall issue policies at once on the application submitted to the commissioner of insurance and banking for inspection, and collect the amount due on the notes representing the first assessment on the policies issued. Sixty per cent of the amount so collected (it being not less than six thousand dollars) shall be invested by the duly authorized officers of said mutual company in first mortgage bonds on lands in this state, at not exceeding sixty per cent of the value of said lands, or in bonds of this state, or any county in this state, or in the bonds of any city, town or school district or corporation, provided said bonds have been approved by the attorney general, and deposit the said securities with the treasurer of this state within ninety days after the issuance of charter, in trust for the policy holders for such mutual company; but such company may collect and receive the interest and dividends thereon, and use such interest and dividends in defraying the expenses and paying the losses of said mutual company. Said mutual company may withdraw said securities on depositing with said treasurer other securities of like character and value, but no security shall be estimated above the par value of the same. [Id. sec. 5.]

Art. 4910. **Procedure in case of failure to pay loss.**—Upon the issuance of every policy, the first assessment shall be collected, according to the table of rates furnished the commissioner of insurance and banking in the application; and the directors shall, as often as may be necessary, and in the by-laws of

said company be authorized, after receiving notice of loss under any policy upon which the company is liable, or the rendition of any judgment against such company on account of loss under any policy issued, settle and determine the sum to be paid by the several members holding policies in said company, and notify each member of the amount required to be paid by him; and each such notification shall contain a statement of the disposition of the previous assessment. Should any company incorporated under the provisions of this chapter within sixty days after the rendition of any judgment against such company, fail to pay same, upon request of the party obtaining the judgment, the commissioner of insurance and banking shall furnish to him a list of the securities held in trust by the state treasurer for such company, and all such securities shall be subject to garnishment. [Id. sec. 6.]

Art. 4911. **Funds, how used and disposed of.**—No assessment, other than the first assessment collected upon the issuance of the policy, shall be assessed or collected by any mutual insurance company other than for the payment of losses by fire or lightning or storm, or when ordered by the commissioner of insurance and banking for the purpose of making good any deficit in the reserve fund required to be kept on deposit in the office of the state treasurer. After the issuance of the policies and the collection of the assessments first in this chapter provided for, requiring the investment of six thousand dollars as a reserve fund out of all assessments collected, at least fifty per cent of each and every assessment collected shall be used exclusively for the payment of losses and for no other purpose; ten per cent thereof shall be used in increasing the reserve fund until said company shall have on deposit with the state treasurer one hundred thousand dollars in securities; the remainder of such assessment may be used in paying necessary expenses, if authorized by the board of directors, assessments to bear equally on all members in proportion to the amount of insurance and classification of risk. [Id. sec. 7.]

Art. 4912. **Who are members, their right to vote, etc.**—Every person effecting insurance in any mutual insurance company shall become, and is hereby declared to be, a member of such mutual company during the period of his insurance and entitled to one vote for each policy he holds, and shall be notified of the time and place of its meetings by a written notice, or by an imprint on the back of each policy and renewal certificate. Members may vote by proxies dated and executed within twelve months of the date of meeting, and returned and recorded on the books of the company one day or more before the meeting at which they are to be used. [Id. sec. 8.]

Art. 4913. **Permit canceled and charter forfeited, when.**—An examination shall annually, and at such other times as he deems proper, be made by the commissioner of insurance and banking into the affairs of said company, and of the securities held in trust by the state treasurer; and, if it shall appear that the amount of securities on deposit is less than the amount herein required to be on deposit, he shall at once notify the officers of said company, and unless the amount of the deficiency is placed on deposit with the state treasurer in money or securities as herein provided within sixty days, the permit issued by him to said company shall be canceled; and he shall report the same to the attorney general, who shall at once bring suit to forfeit the charter of such company; and such company shall not be authorized to levy or collect assessments on premiums after the institution of such suit. The securities in the hands of the state treasurer, over and above the amount necessary to pay losses already incurred, shall be by the commissioner of insurance and banking, divided among the policy holders at the date of forfeiture in proportion to the amount of insurance then held by them. [Id. sec. 9.]

Art. 4914. **Tax on gross premiums.**—Each and every mutual insurance company, operating under this chapter, shall pay to the insurance and bank-

ing commissioner annually on the thirty-first day of December, one-half of one per cent of all the gross premiums received during the year; and no other tax shall be required of such mutual insurance companies, their officers and agents, except such fees shall be paid to the commissioner of insurance and banking as is required by law. [Id. sec. 10.]

Art. 4915. **Funds set apart for payment of losses, etc.**—All mutual insurance companies heretofore incorporated under the laws of this state, and those incorporated by virtue of this chapter, shall set aside sixty per cent of all gross premiums received as a fund for the payment of losses, which fund shall be kept separate from all the funds of said companies, and set aside five per cent of all gross premiums received, as a reserve fund to be invested as hereinbefore provided; the remainder of the gross premiums received may be used in paying the expenses of such corporation, provided same is necessary; but, in the event more money is received from such source in any one year than is necessary to pay expenses of the company, such surplus shall be appropriated annually on the thirty-first day of December to the reserve fund. And should any mutual insurance company on the thirty-first day of December of each and every year have on hand any funds, other than is necessary to pay losses already incurred, such surplus shall be invested in securities as hereinbefore provided, and deposited with the state treasurer as part of the reserve fund, until such reserve fund shall amount to one hundred thousand dollars. [Id. sec. 11.]

Art. 4916. **What mutual companies subject to this chapter.**—Every mutual insurance company, organized under the laws of this state, shall conform to the provisions of this chapter; provided, that local mutual insurance companies organized, or hereafter organized, to transact business in only one county in the state, such county being its domicile; or any mutual fire, storm or lightning insurance society or association that has been incorporated under the laws of the state, or that may hereafter be incorporated under the provisions of this chapter, that does not solicit insurance by or through agents or solicitors of any kind in any manner whatsoever, or to pay any one a commission, fee or compensation of any nature for the procurement of any insurance, but conducts its business in the various localities by and through local chapters, councils or societies, a quorum of not less than five, or whose members meet at their respective places of meeting at regular intervals for the purpose of transacting such business; that make due election to membership by a secret ballot cast by the members of the local chapter, council or society, who shall have jurisdiction over such candidate a prerequisite to becoming one of the policy holders; that has a representative form of government and does not permit any voting by proxy; that binds and holds every one of its policy holders, by an instrument in writing duly signed and delivered, liable on every policy issued by such association or society, in which contract such members bind themselves respectively to pay any and all unpaid premiums, assessments or dues for which they may become liable during the life of any policy that they may hold in such association or society, and default of such payment all costs of court incurred in collecting same, including a reasonable attorney's fee, and who have filed and may file with the commissioner of insurance and banking a copy of their constitution and by-laws as well as any additions and amendments thereto that have been made, and may be made, from time to time, within thirty days after such addition or amendments have been adopted or enacted; and that collects separate premiums or assessments to pay losses, and separate premiums or assessments to pay operating expenses and salaries, the amount of which latter assessments or premiums collected during any calendar year shall not exceed twenty-five cents on each one hundred dollars of insurance in force during such year, unless a special occasion arises, in which event such assessment

or premiums may be increased to thirty-five cents on each one hundred dollars, after having obtained the consent and approval of the commissioner of insurance and banking to do so, and the bond of whose treasurer shall be fixed in amount and approved as to sureties by the commissioner of insurance of the state of Texas and approved by him, shall not be required to create any reserve fund, nor deposit securities with the state treasurer, nor be subject to the provisions of this chapter, other than they shall make annual reports to the commissioner of insurance and banking, as provided in the succeeding article. [Id. sec. 12.]

Art. 4917. **Local companies shall report annually and pay fee.**—All mutual fire and tornado insurance companies, which transact business in only one county, shall report annually, on or before the first day of February, to said commissioner of insurance and banking, on blanks prepared by him, and pay to said commissioner, as a fee for filing the same, the sum of five dollars; and such associations shall not be required to pay the annual franchise tax collected of other corporations under the laws of this state. [Acts 1909, p. 219, sec. 10.]

Art. 4918. **Venue of suits against.**—Any person having a claim or demand against any such mutual insurance company incorporated or acting under this chapter may sue said company in any court of competent jurisdiction in any county in this state wherein resides one or more of the members of said company. [Act 1903, p. 166, sec. 13.]

CHAPTER ELEVEN.

PRINTERS' MUTUAL FIRE AND STORM INSURANCE COMPANIES.

	Article.		Article.
How incorporated	4919	} Shall report annually and pay fee.....	4921
Certificate to do business, how obtained.	4920		

Article 4919. **How incorporated.**—Private corporations may be created within this state by the voluntary association of three or more persons for the organization of printers' mutual fire and storm insurance associations without an authorized or subscribed capital stock, and for the purpose of insuring against loss by fire or storm only such property as may be owned and operated for the purpose of publishing daily, weekly or other periodical newspapers, or such as may be incident thereto or conducting job printing offices. [Acts 1905, p. 225.]

Art. 4920. **Certificate to do business, how obtained.**—Before beginning operations, the company provided for in this chapter must obtain from the commissioner of insurance and banking a certificate of authority such as is issued to mutual fire and tornado insurance companies doing business in this state, first making a showing to said commissioner that the company has fully complied with all the requirements of law applicable to such mutual fire and tornado insurance companies; provided, that no officers of printers' mutual fire and storm insurance associations shall be required to give a bond, except the treasurers thereof, who shall annually file a bond with good securities and in amount to be approved by said commissioner. [Id. Amended Acts 1909, p. 219, sec. 2.]

Art. 4921. **Shall report annually and pay fee.**—All printers' mutual fire and storm insurance associations, which transact business in only one county,

shall report annually, on or before the last day of February, to said commissioner on blanks prepared by him, and pay to said commissioner as a fee for filing the same the sum of five dollars; and such associations shall not be required to pay the annual franchise tax collected of other corporations under the laws of this state. [Id. sec. 1a.]

CHAPTER TWELVE.

MUTUAL COMPANIES INSURING AGAINST LOSS BY BURGLARY, ETC.

What companies entitled to license.....	Article. 4922	Policy holders	Article. 4925
Certain conditions; premium contracts to constitute part of assets.....	4923	Commissioner agent for service of process	4926
Must file copy of charter and statement; impaired reserve, etc.; line of business; must set aside reserve.....	4924	Statement submitted and license issued annually	4927

Article 4922. **What companies entitled to license.**—Any insurance company organized and incorporated on the mutual plan, under the laws of this state or any other state, for the purpose of insuring against loss or damage resulting from burglary and robbery, or any attempt thereat, and securing against the loss of money and securities in course of transportation, when shipped by registered mail, shall be authorized, admitted and licensed to do business in this state, as provided in this chapter. [Acts 1899, p. 107, sec. 1.]

Art. 4923. **Certain conditions; premium contracts to constitute part of assets.**—Before any such company shall be authorized to transact business in this state, except to solicit and receive applications for insurance and portions of premiums thereon, as provided in this chapter, it shall have in force five hundred or more policies on which the premiums shall have been paid in cash, or shall be evidenced by the written contracts of the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, and the cash and contracts for premiums shall amount in the aggregate to a sum of not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the assets of the company. [Id. sec. 2.]

Art. 4924. **Must file copy of charter and statement; impaired reserve, etc.; line of business; must set aside reserve.**—And every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice-president and secretary of the company, for which he or they may act, stating the name of the company and place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank or in the hands of agents, the amount of real estate and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company, also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount re-

sisted by the company as illegal and fraudulent, and all other claims existing against the company; and for a company organized under the laws of any other state, a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any such company whose reinsurance reserve, as required in this chapter is impaired to the extent of twenty per cent thereof, while such deficiency shall continue. Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this chapter directly or indirectly, in taking risks or transacting the business of burglary and robbery insurance, or the insuring of the safe shipping of money and securities by registered mail in this state, without procuring from the insurance commissioner a certificate of authority stating that such company has complied with all the requirements of this chapter which apply to such companies, and as to companies organized under the laws of any other state, there shall be added the name of the attorney appointed to act for the company.

Any company organized, admitted and licensed to transact business in this state under this chapter shall confine its line of business to that stated in the first article of this chapter, and shall confine its business in this state to banks, bankers, loan companies and county treasurers, and shall not issue any policy or policies to any person, firm or corporation in this state other than banks, bankers, loan companies and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent of its premiums, whether collected in cash or represented by the obligations of the policy holders, as written in its policies. [Id. secs. 3 and 4.]

Art. 4925. Policy holders.—Policy holders of any company organized and admitted to transact business in this state under this chapter shall be held liable to pay the membership fee and premium on their insurance as paid, or contracted to be paid, at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premiums agreed upon may be collected in cash at the time the policy is issued or evidenced by a written obligation of the policy holder as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. [Id. sec. 5.]

Art. 4926. Commissioner agent for service of process.—It shall not be lawful for any insurance company, association or partnership incorporated by, or organized under, the laws of any other state of the United States for any of the purposes specified in this chapter, directly or indirectly, to take risks or transact any business of insurance in this state by any agent or agents in this state until it shall first appoint an attorney in this state, who shall be the commissioner of insurance and banking, on whom process of law can be served, and file in the office of the commissioner of insurance and banking a written instrument duly signed and sealed, certifying such appointment; and any process issued by any court of record in this state, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed a sufficient service of the process upon said company; but service of process upon such company may also be made in any other manner provided by law. [Id. sec. 6.]

Art. 4927. Statement submitted and license issued, annually.—The statement and evidences of new membership, assets, and investments required by article 4924 of this chapter shall be renewed from year to year in such manner and form as may be required by said insurance commissioner, with an additional statement of the amount of premiums received in this state during the preceding year, so long as such agency continues;

and the said insurance commissioner, on being satisfied that the membership, assets, securities and investments remain secure, as hereinbefore mentioned, shall furnish a renewal of the certificate as aforesaid. [Id. sec. 7.]

CHAPTER THIRTEEN.

FIDELITY, GUARANTY AND SURETY COMPANIES.

	Article.		Article.
May act as surety, trustee, executor, etc.	4928	May be sued on bond, where.....	4934
Surety company's bond is a legal bond, when	4929	Defaulting company, claims paid, how....	4935
Requirements to be complied with; minimum capital; securities to be deposited	4930	Who are agents.....	4936
Certificate to issue, when.....	4931	Penalty for accepting corporation which has not complied with the law.....	4937
Certificate may be surrendered, how.....	4932	Cancellation of bond; statement of cause	4938
May withdraw from bond.....	4933	Authority revoked, when.....	4939
		Charged with public use.....	4940

Article 4928. **To act as surety, etc.**—Private corporations may be created to act as trustee, assignee, executor, administrator, guardian or receiver, when designated by any person, corporation or court so to do, and to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employes, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of, any trust, public or private, under appointment by any court or tribunal, or under contract between private individuals or corporations; also on any bond or bonds that may be required to be filed in any judicial proceeding; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the state and municipal corporations or counties, or between private corporations and individuals; to act as executor and testamentary guardian when designated as such by decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; provided, that when any executor's, administrator's, or guardian's bond, or any bond required to be filed in any judicial proceeding, may be signed as surety by any corporation organized by authority of this article, and if such corporation shall be deemed and considered by the officer charged by law with the duty of accepting and approving such bond as sufficient security for the amount of such bond, such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other sureties than such corporation, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this article; provided, that nothing herein shall be construed to permit any corporation to go upon any bond of any state or county official in this state; provided, that each corporation organized under this article shall publish in some newspaper of general circulation in the county where such company is organized, on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities, that a copy of this statement be filed with the commissioner of insurance, statistics and history [commissioner of insurance and banking], and a fee of twenty-five dollars is paid to that officer for filing the same, and that an examination of its affairs be made at any time by the com-

missioner of insurance, statistics and history [commissioner of insurance and banking], such examination to be at the expense of the company; provided, the guaranty and fidelity companies organized under the provisions of this article shall have a paid up capital stock of not less than one hundred thousand dollars, and shall keep on deposit with the state treasurer money, bonds, or other securities, in an amount not less than fifty thousand dollars, said securities to be approved by the commissioner of agriculture, insurance, statistics and history [commissioner of insurance and banking], and that this amount be kept intact at all times. [Acts 1897, p. 128, sec. 37. Amended Acts 1903, p. 197, sec. 1.]

Art. 4929. Surety company's bond is a legal bond, when.—Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules or regulations of a municipality, board, body, organization, court, judge, or public officer, required or permitted to be made, given, tendered or filed, with the surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company, qualified as hereinafter provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guaranty shall be in all respects a full and complete compliance with every requirement of every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification; provided, that nothing herein shall be construed to permit any corporation to become a surety upon the official bond of any state or county official in this state; and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guaranty, when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation. [Acts 1897, p. 244, sec. 1.]

Art. 4930. Requirements to be complied with.—Such company, to be so qualified to so act as surety or guarantor, must comply with the requirements of every law of this state applicable to such company doing business therein; must be authorized under the laws of the state where incorporated, and under its charter, to become surety upon such bond, undertaking, obligation, recognizance or guaranty; must have a fully paid up and safely invested and unimpaired capital of at least one hundred thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this chapter shall be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per centum of the current annual premiums on each outstanding bond, undertaking, recognizance and obligation of like character in force; must file with the commissioner of insurance, statistics, history and agriculture [commissioner of insurance and banking] a certified copy of its certificate of incorporation, a written application to be authorized to do business under this chapter, and also, with such application, and in each year thereafter, a statement verified under oath made up to December 31, preceding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, [recognizances and obligations of like character in force upon which it is surety; the amount of liability for unearned portion thereof estimated at the rate of fifty per centum of the current annual premiums on each such bond, undertaking, recognizance and obligation in force, stating also the amount of its outstanding debts of all kinds, and such further facts as may be by the laws of this state required

of such company in transacting business therein; and, if such company be organized under the laws of any other state than this state, it must also have on deposit with a state officer of one of the states of the United States, not less than one hundred thousand dollars in good securities, deposited with, and held by, such officer for the benefit of the holders of its obligations; must also appoint an attorney in this state upon whom process of law can be served, which appointment shall continue until revoked or another attorney substituted, and must file with the commissioner of insurance, statistics and history and agriculture [commissioner of insurance and banking] written evidence of such appointment, which shall state the residence and office of such attorney; and such service of process may also be made upon the commissioner of insurance of this state, by virtue of his office, and shall be as effective as if made upon said attorney; and must also have on deposit with the treasurer of this state at least fifty thousand dollars in good securities, worth at par and market value at least that sum, of the value of which securities the commissioner of insurance shall judge, held for the benefit of the holders of the obligations of such company; said securities so deposited with said treasurer to remain with him in trust to answer any default of said company as surety upon any such bond, undertaking, recognizance or other obligation, established by final judgment upon which execution may lawfully be issued against said company; said treasurer and his successors in office being hereby directed to so receive and hereafter retain such deposit under this act, in trust, for the purposes hereof; such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and, from time to time, to withdraw such securities, or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said treasurer; and such securities and substitutes therefor shall be at all times exempt from, and not subject to, levy under writ or process of attachment; and, further, shall not be sold under any process against such company until after thirty days notice to said company, specifying the time, place and manner of such sale, and the process under which, and purposes for which, it is to be made, accompanied by a copy of such process; provided, however, that whenever any such company, domestic or foreign, has been engaged in this state in the business contemplated by this act, has made deposit in this state, in trust or otherwise, of securities, to answer any default of such company upon any such bond, undertaking, recognizance, guaranty or stipulation, such securities so deposited shall be by the trustee or custodian thereof transferred and delivered to said treasurer of this state in trust for the same purposes under and subject to all the rights and equities of all parties interested, and to the terms and provisions of this act; and thereupon such deposit shall remain in trust under and subject to the terms and provisions of this act; and, whenever such deposit has been made with a trustee by order of any court or other authority, it shall be the duty of the court or other authority, by order or otherwise, to direct such transfer to said treasurer; and, in case such deposit is less than the sum of fifty thousand dollars, then] said company must deposit with said treasurer securities sufficient to increase said deposit to said sum of fifty thousand dollars, as required by this chapter; provided, domestic corporations chartered for the purpose of doing business under this chapter within this state alone shall be required to deposit securities as hereinbefore provided for to the amount of twenty-five thousand dollars. [Id. sec. 2.]

Art. 4931. **Certificate to issue, when.**—The commissioner of insurance and banking, upon due proof by any such company of its possessing the qualifications in this chapter specified, shall issue to such company a certificate setting forth that such company has qualified, and is authorized for the ensuing year to do business under this chapter, which said certificate shall be evidence of

such qualification of such company, and of its authorization to become and to be accepted as sole surety on all bonds, undertakings, recognizances and obligations required or permitted by law or the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer, and the solvency or credit of such company for all purposes, and its sufficiency as such surety. [Id. sec. 3.]

Art. 4932. **Certificate to be surrendered, how.**—Any such company, domestic or foreign, may at any time surrender to the commissioner of insurance and banking its said certificate of qualification, and shall thereupon cease to engage in said business of suretyship; and such company shall thereupon be entitled to the release and return of its said deposit as aforesaid, in manner following: Said company shall file with said commissioner of insurance and banking a statement in writing, under oath, giving the date, name, and amount of all its then existing obligations of suretyship in this state, briefly stating the facts of each case to said commissioner, who, after examination of the facts, shall require said company to file with the treasurer of this state a bond, payable to the state, in a sum equal to the whole amount of its liability in this state, under its contracts, conditioned for the faithful performance and fulfillment of all its outstanding obligations, or it may, at its option, reinsure its risks in some surety company authorized to do business in this state, or cancel all bonds on which it is liable, and return a pro rata of the premium received thereon, whenever such cancellation and return can be done without impairing its obligation to third parties. [Id. sec. 4.]

Art. 4933. **May withdraw from bond.**—Any surety company may withdraw from the bond of any trustee, guardian, assignee, receiver, executor, administrator or other fiduciary, in like manner and by like proceeding as is now provided by law in the case of individual sureties. [Id. sec. 5.]

Art. 4934. **May be sued on bond, where.**—If any suit shall be instituted upon any bond or obligation of any surety company, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause; and service therein shall be made, either upon the attorney for said company, by this chapter required to be appointed, or upon the commissioner of insurance and banking; and such service shall be to all intents valid and effectual as service upon said company. And such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing any business in any county shall be deemed an acceptance of the provisions of this chapter. [Id. sec. 6.]

Art. 4935. **Defaulting company; claims paid, how.**—Should any company of the character named or enumerated in this chapter fail or refuse to pay any loss by it incurred in this state within sixty days after its liability thereupon shall have been by suit finally determined, upon satisfactory proof, to the treasurer of this state, of such liability and of its non-payment, said treasurer shall, out of the deposits so made with him, as by this chapter provided, pay said loss, and, when he shall have done so, he shall, at once, certify to the commissioner of insurance and banking the fact of such default on the part of said company; whereupon said commissioner shall forthwith cancel and annul the certificate of authority of such company to do business in this state; provided, that such payment shall not operate to release the company from payment of any balance which it still may owe after such payment by the treasurer of this state has been made. [Id. sec. 7.]

Art. 4936. **Who are agents.**—Any person who solicits business for or on behalf of such corporation, or makes or transmits for any person other than himself, any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit same, or who shall receive or transmit same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant

for guaranty or security than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment of such corporation, or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agent of such corporation so far as relates to all the liabilities and penalties prescribed by this chapter. [Id. sec. 8.]

Art. 4937. Penalty for accepting corporation which has not complied with law.—Any person, association of persons, or corporations, who shall accept any corporation created for the purposes, or either of them, mentioned in article 4928, without such corporation having previously complied with the provisions and requirements of this chapter and having received from the commissioner of insurance and banking the certificate of authority provided for in this chapter shall forfeit as a penalty the sum of five hundred dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction. [Id. sec. 9.]

Art. 4938. Cancellation of bond; statement of cause.—When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and, if such action be based in whole or in part on information, all such information; and any such corporation failing or refusing to furnish any such written statement within thirty days after a request therefor, shall be liable to such person injured in the sum of five hundred dollars, in addition to all other damages caused thereby, which may be sued for and recovered in any court of competent jurisdiction. [Id. sec. 10.]

Art. 4939. Authority revoked, when.—If any such corporation shall fail or refuse to comply with the provisions of this chapter, the commissioner of insurance and banking shall revoke the certificate of authority issued said corporation. [Id. sec. 11.]

Art. 4940. Charged with public use.—Corporations created for the purposes mentioned in article 4928 are hereby declared to be charged with a public use. [Id. sec. 12.]

CHAPTER FOURTEEN.

EMPLOYER'S LIABILITY INSURANCE COMPANIES.

Reserve, how reported and calculated...	Article. 4941	Commissioner may accept certificate, when	Article. 4942
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Article 4941. **Reserve, how reported and calculated.**—Every insurance company which has for ten years or more undertaken to insure persons, firms or corporations against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said persons, firms or corporations are respectively responsible, shall, on or before the first day of October in each year, render to the insurance commissioner a statement in writing of its business transacted in the United States, which shall show separately for each of the five calendar years constituting the first half of the period of ten years next preceding the thirty-first day of December of the year in which the statement is made:

1. The number of persons reported injured under all its forms of liability policies, whether such injuries were reported to the home office of the company or to any of its representatives, and whether such injury resulted in loss to the company or not.

2. The amount that, on or before the thirty-first day of August of the year in which the statement is made, had been paid on account or in consequence of all injuries so reported, including therein all payments on suits arising from such injuries.

3. The number of suits or actions under such policies on account of injuries reported which have been settled, either by payments or compromise.

4. The amount paid in settlement of such suits or actions on or before the thirty-first day of August of the year when the statement is made, including therein all payments made on account or in consequence of injuries from which the suits arose, whether prior to or later than the date when the suits were brought. Every such company shall, in its financial statements hereafter made in this state, use the experience so ascertained for computing its outstanding losses under all its forms of liability policies, irrespective of the date when the policies were issued. The average cost per suit of settling such cases, as computed by the data required in this article, shall be multiplied by the number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date on which the condition of the company is to be ascertained and shown, which suits or actions are being defended for or on account of a holder of any such policy, also the average cost on account of each injured person, determined as aforesaid from the company's experience, shall be multiplied by the number [of injuries reported within the eighteen months prior to] making the statement of the company's condition, whether such injuries were reported to the home office of the company or to any of its representatives. From the sum of these two products so ascertained there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount so deducted to be taken as of the date at which the said statement is made. The sum remaining after making this deduction shall be charged as the liability of the company on account of outstanding losses. Any admitted company issuing liability contracts, which, by reason of its limited experience in liability underwriting, cannot furnish the information required by this article shall, nevertheless, until it is able to comply with said requirements, be charged with a liability for outstanding losses upon all kinds of its liability policies an amount not less than the amount resulting from the following process:

The number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date of making up the statement, whether such injuries were reported to the home office of the company or to any of its representatives, which are being defended on account of the holder of any policy, shall be multiplied by the average cost per suit as shown by the average experience of all other admitted liability companies ascertained from the data required by this article, also the number of injuries reported under said policies at any time within eighteen months of making up the statement, whether reported to the home office of the company or to any of its representatives, and whether such injuries resulted in loss to the company or not, shall be multiplied by the average cost for each injured person as shown by the average of said experience of all other admitted liability companies, ascertained from the data required by this article. From the sum of these two products there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made. A sum not less than the amount remaining after this deduction shall be charged as a liability for outstanding losses to liability companies covered by the provisions of this paragraph. The average cost for suits and for injured persons required by this paragraph shall, on or before the first day of December of each year, be furnished by the insurance commissioner to every such company which has not had an experience of ten years in liability underwriting. Besides the reserve provided for in this article, each such company shall be charged as a liability with all unpaid losses of which the company received notice on or before December 31, and all other debts and liabilities. If the capital stock of any such company, computing its liabilities in accordance with the provisions of this article, shall be at any time impaired to the extent of twenty per cent thereof, it shall be the duty of the commissioner of insurance and banking to give notice to the company to make good its whole capital stock within sixty days; and, if this is not done, he shall require the company to cease to do business within this state, and shall thereupon, in case the company is organized under the authority of the state, immediately institute legal proceedings to wind up the affairs of such company. [Acts 1909, p. 193, sec. 54.]

Art. 4942. **Commissioner may accept certificate, when.**—The commissioner of insurance and banking, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other state charged with the duty of supervising such company as to any such company organized under the laws of such state; provided, such certificate shows that such liability has been computed in accordance with the provisions of the preceding article.

CHAPTER FIFTEEN.

GENERAL PROVISIONS.

Article.	Article.
Must publish certificate of commissioner. 4943	Shall not misrepresent terms of policies. 4958
Companies organized in this state; un- lawful dividend 4944	Policy shall not be defeated. 4959
Association of companies not permitted to do business until. 4945	Insurance shall be unlawful unless au- thorized by commissioner of insurance. 4960
Notice to be published, etc. 4946	Who are agents. 4961
Misrepresentation must be material to avoid contract 4947	Taxes to be assessed against, when; penalty, etc. 4962
No defense based upon misrepresentation valid, unless 4948	Policies to be issued only through resi- dent agents, except. 4963
Shall not constitute defense unless shown 4949	Affidavit to be filed before certificate will issue 4964
Policies governed by laws of Texas, not- withstanding stipulation to the con- trary 4950	Agents prohibited from paying com- missions to non-residents 4965
Policies of insurance to be accompanied by copies of questions, etc. 4951	Penalty for violation. 4966
No level premium policies shall be issued 4952	Commissioner authorized to examine books, witness, etc.; to discover viola- tions 4967
Policies shall contain entire contract. 4953	Solicitor deemed agent of company. 4968
Companies shall not discriminate. 4954	What persons debarred from acting as agent 4969
Shall apply to all companies. 4955	Company to notify commissioner of ap- pointment of general agent. 4970
Corporations may be incorporated to transact one or more kinds of insur- ance business 4956	Revocation of agent's authority, grounds for 4971
Chapter not to apply to fraternal bene- ficiary associations 4957	Foreign corporations held to accept pro- visions of this title. 4972

Article 4943. [3086] **Must publish certificate of commissioner.**—It shall be the duty of every insurance company doing business in this state, whether life, health, fire, marine or inland, to publish annually, within thirty days after the issuance thereof, a certificate from the commissioner of insurance and banking that such company has in all respects complied with the laws in relation to insurance.

Art. 4944. [3087] **Companies organized in this state; unlawful dividend.**—It shall not be lawful for any life, health, fire, marine or inland insurance company, organized under the laws of this state, to make any dividend except from the surplus profits arising from its business; and, in estimating such profits, there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine or inland transportation risks and policies; which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved.

Art. 4945. [3081] **Association of companies not permitted to do business, until.**—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this state until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the commissioner of insurance and banking to do business in this state.

Art. 4946. [3082] **Notice to be published, etc.**—Whenever, by any provision of this title, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in the state, and which have a general circulation in the state.

Art. 4947. **Misrepresentation must be material to avoid contract.**—Any provision in any contract or policy of insurance issued or contracted for in this state, which provides that the answers or statements made in the application for such contract, or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case. [Acts 1903, p. 94, art. 3096aa.]

Art. 4948. **No defense based upon misrepresentation valid, unless, etc.**—In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this state, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the misrepresentations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect article 3096aa [4947].

Art. 4949. **Shall not constitute defense, unless shown, etc.**—Any provision in any contract or policy of insurance issued or contracted for in this state, which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made, and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled, and caused to waive or lose some valid defense to the policy. [Id. art 3096cc.]

Art. 4950. **Policies governed by laws of Texas, notwithstanding stipulation to the contrary.**—Any contract of insurance payable to any citizen or inhabitant of this state by any insurance company or corporation doing business within this state shall be held to be a contract made and entered into under and by virtue of the laws of this state relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this state, or at the home office of the company or corporation issuing the same. [Id. art. 3096dd.]

Art. 4951. **Policies of insurance to be accompanied by copy of questions, etc.**—Every contract or policy of insurance issued or contracted for in this state shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause

making such policy indisputable after two years or less, provided premiums are duly paid; provided, further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this state shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance, when premiums due on such contract for the said term of two years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. [Id. art. 3096eee.]

Art. 4952. **No level premium policies shall be issued.**—No level premium policy of life insurance shall be issued or sold by any company in this state after December 31, 1909, which provides for more than one year preliminary term insurance. [Acts 1909, p. 192, sec. 16.]

Art. 4953. **Policies shall contain entire contract.**—Every policy of insurance issued or delivered within this state on or after the first day of January, 1910, by any life insurance company doing business within this state, shall contain the entire contract between the parties, and the application therefor may be made a part thereof. [Id. sec. 17.]

Art. 4954. **Companies shall not discriminate.**—No insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured) of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance, or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this state, and the said agent shall, as an additional penalty, forfeit his license to do business in this state for one year; provided, the company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. [Id. sec. 19.]

Art. 4955. **Shall apply to all companies.**—All the provisions of the laws of this state applicable to the life, fire, marine, inland, lightning, or tornado insurance companies, shall, so far as the same are applicable, govern and apply to all companies transacting any other kind of insurance business in this state,

so far as they are not in conflict with provisions of law made specially applicable thereto. [Id. sec. 55.]

Art. 4956. **Corporations may be incorporated to transact one or more kinds of insurance business.**—Corporations may be incorporated, under the laws of this state, to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements, as prescribed by law for the incorporation of life insurance companies; provided, that no such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid up capital stock of less than two hundred thousand dollars. [Id. sec. 62.]

Art. 4957. **Chapter does not apply to fraternal beneficiary companies.**—None of the terms or provisions of this chapter shall apply to, nor in any wise affect, fraternal beneficiary associations as defined by the laws of this state, nor apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provision of this title. [Id. sec. 65.]

Art. 4958. **Shall not misrepresent terms of policies, etc.**—No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon. [Id. sec. 67.]

Art. 4959. **Policy shall not be defeated.**—No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed. [Id. sec. 68.]

Art. 4960. [3061] [2943] **Insurance unlawful unless authorized by commissioner of insurance.**—It shall not be lawful for any person to act within this state, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this state or out of it, without first procuring a certificate of authority from the commissioner of agriculture, insurance, statistics and history [commissioner of insurance and banking].

Art. 4961. [3093] **Who are agents.**—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter; provided, that the provisions of this chapter shall not apply to citizens of this state who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in

which the adjustment is made; provided, further, that the provisions of this chapter shall not apply to practicing attorneys at law in the state of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. [Acts of 1879, S. S., p. 32.]

Art. 4962. [3094] Taxes to be assessed against, when.—Whenever any person shall do or perform within this state any of the acts mentioned in article 4961 for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this state, and shall be subject to the same taxes, state, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes. [Id. sec. 3.]

Penalty, etc.—Any person who shall do any of the acts mentioned in article 4961 for or on behalf of any insurance company without such company has first complied with the requirements of the laws of this state, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. [Id. sec. 4.]

Art. 4963. Policies to be issued only through resident agents, except.—Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this state, is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a non-resident of the state of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in the state of Texas, except through regularly commissioned and licensed agents of such companies in Texas; provided, however, that this law shall not apply to property owned by the railroad companies or other common carriers, and provided, further, that upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides. [Acts 1903, p. 232, sec. 1.]

Art. 4964. Affidavit to be filed before certificate will issue.—Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance companies is issued authorizing it to transact business in this state, the insurance commissioner shall require in every case, in addition to the other requirements already made and provided by the law, that each and all such insurance companies herein mentioned shall file with him an affidavit that it has not violated any provision of this law. [Id. sec. 2.]

Art. 4965. Agents etc., prohibited from paying commissions to non-residents.—Any person, agent, firm or corporation licensed by the commissioner of insurance to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the state of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons, in the state of Texas, to any person, persons, agent, firm or corporation that is a non-resident of the state of Texas, or to any person or persons, agent, firm or corporation not duly licensed by the commissioner of insurance and banking of the state of Texas as a fire, fire and marine.

marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent. [Id. sec. 3.]

Art. 4966. **Penalty for violation.**—Whenever the commissioner of insurance and banking shall have or receive notice or information of any violation of any of the provisions of this law, he shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions aforesaid, he shall immediately revoke its license for not less than three months, nor more than six months for the first offense, and, for each offense thereafter, for not less than one year; and, if any person, agent, firm or corporation licensed by the commissioner of insurance and banking as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any of the provisions of this law, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one year from date of such revocation. [Id. sec. 4.]

Art. 4967. **Commissioner authorized to examine books, witnesses, to discover violations.**—For the purpose of enforcing the provisions of this law, the commissioner of insurance and banking is hereby authorized and it is made his duty, at the expense of the company investigated, to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employes thereof under oath, as to violations of this law, and he is further hereby empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life [fire], fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the state of Texas, to appear before the commissioner of insurance and banking when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of this law. [Id. sec. 5.]

Art. 4968. **Solicitor deemed agent of company.**—Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy. [Acts 1909, p. 192, sec. 18.]

Art. 4969. **What persons debarred from acting as agent.**—No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in this state. No life insurance company shall, after June 30, 1903, be granted a certificate of authority to transact business in this state, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, in [any] percentage or portion of the premium or other income of such life insurance company for any period. No person shall hereafter be granted a certificate of authority

as the agent of any life insurance company, who, after June 30, 1903, enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period. [Id. sec. 42.]

Art. 4970. **Company to notify commissioner of appointment of general agent.**—Every such foreign company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this state, and such officer or agent shall promptly notify the commissioner in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the commissioner shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this state, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the commissioner for cause or canceled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually. [Id. sec. 47.]

Art. 4971. **Revocation of agent's authority, grounds for.**—Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the commissioner upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policy holder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof, collected by him on any policy of insurance or application therefor. The commissioner shall publish such revocation in such manner as he deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this state for a period of one year. [Id. sec. 48.]

Art. 4972. [3096ee] **Foreign corporations held to accept provisions of this title.**—The provisions of this title are conditions upon which foreign insurance corporations shall be permitted to do business within this state, and any such foreign corporations engaged in issuing insurance contracts or policies within this state shall be held to have assented thereto as a condition precedent to its right to engage in such business within this state. [Act 1903, p. 94.]

TITLE 72.

INTEREST.

Article.	Article.		
Definition of interest.....	4973	Contracts for a greater rate than ten per cent void.....	4980
Legal interest.....	4974	Judgments to bear six per cent when not otherwise stipulated.....	4981
Conventional interest.....	4975	Double the amount of usurious interest recovered, when.....	4982
Distinction between the two.....	4976	Usury, how pleaded.....	4983
Six per cent in absence of agreement.....	4977		
Six per cent on open accounts where no rate is agreed upon.....	4978		
Ten per cent may be stipulated for.....	4979		

Article 4973. [3097] **Definition of "interest."**—"Interest" is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money.

Art. 4974. [3098] **"Legal interest."**—"Legal interest" is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest.

Art. 4975. [3099] **"Conventional interest."**—"Conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum.

Art. 4976. [3100] **Distinction between legal and conventional recognized by law.**—The distinction between legal and conventional interest shall be known and recognized by the laws of this state. [Act of Jan. 18, 1840. P. D. 3939.]

Art. 4977. [3101] **Six per cent the legal rate.**—On all written contracts ascertaining the sum payable, when no specified rate of interest is agreed upon by the parties to the contract, interest shall be allowed at the rate of six per cent per annum from and after the time when the sum is due and payable. [Acts of 1892, S. S., pp. 4, 5.]

Art. 4978. [3102] **Six per cent on open accounts, when.**—On all open accounts, when no specified rate of interest is agreed upon by the parties, interest shall be allowed at the rate of six per cent per annum from the first day of January, after the same are made. [Id. sec. 2.]

Art. 4979. [3103] **Ten per cent the conventional rate.**—The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent per annum on the amount of the contract. [Id.]

Art. 4980. [3104] **Contracts for greater per cent void.**—All written contracts whatsoever, which may in any way, directly or indirectly, violate the preceding article by stipulating for a greater rate of interest than ten per cent per annum shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. [Id.]

Art. 4981. [3105] **Judgments, rate of interest on.**—All judgments of the several courts of this state shall bear interest at the rate of six per cent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. [Id.]

Art. 4982. **May recover double usurious interest paid.**—If usurious interest, as defined by the preceding articles, shall hereafter be received or collected upon any contract, either written or verbal, the person or persons paying same, or their legal representatives, may, by action of debt, instituted in any court of this state having jurisdiction thereof, in the county of the defendant's residence, or in the county where such usurious interest shall

have been received or collected, or where said contract has been entered into, or where parties paying same reside when such contract was made, within two years after such payment, recover from the person, firm or corporation receiving the same double the amount of such usurious interest so received and collected. [Acts 1907, p. 277.]

Art. 4983. [3107] **Usury, how pleaded.**—No evidence of usurious interest shall be received on the trial of any case, unless the same shall be specially pleaded and verified by the affidavit of the party wishing to avail himself of such defense.

TITLE 73.

IRRIGATION.

Chapter.		Chapter.
1. Regulating the Mode of Irrigation.		2. General Provisions.
		3. Irrigation Districts.

CHAPTER ONE.

REGULATING THE MODE OF IRRIGATION.

	Article.		Article.
Commissioners' court to regulate.....	4984	Exercise right of eminent domain.....	4988
General powers over the subject.....	4985	And discontinue ditches, etc.....	4989
May lease suerte of delinquent.....	4986	And establish fence laws.....	4990
May license irrigation.....	4987		

Article 4984. [3108] **Commissioners' court to regulate irrigation.**—The commissioners' courts are authorized to order, regulate and control the time, mode and manner of erecting, repairing, cleaning, guarding and protecting the dams, ditches, roads and bridges, belonging to any irrigation farms and property, and the fences or other like protection in and around such farms; provided, that such farms, dams, ditches and fences be owned conjointly by two or more different persons; and, further, provided, that the same be situated outside of a corporation having jurisdiction thereof. [Act Feb. 10, 1852, p. 80, sec. 1. P. D. 3945.]

Art. 4985. [3109] **General powers over the subject.**—Said courts shall have power to establish all needful police regulations for the government and control of irrigation farms and property; and said courts may assess and collect fines for breaches of any regulations established by them or by the joint owners of such farms and property, or recognized by said court as consistent with ancient usage and the law of the state; said courts may order meetings of joint owners for the election of commissioners and other officers, and for the consideration of any of their other interests, or the said court may proceed and elect said officers, and may regulate the right of way, the stoppage and passage of the water, and the right distribution of the shares of said water; they may forbid the running of stock at large on the common farm; they may fine for taking water out of turn and for carelessness and wantonness in overflowing roads and neighboring lands, and generally they may do, or cause to be done, what they may consider just and needful or beneficial to the joint owners. [Id. sec. 2. P. D. 3946.]

Art. 4986. [3110] **May lease suerte of delinquent.**—If any owner of a suerte or subdivision lot in said farm shall fail or refuse to do or pay his proportion of labor and expense in and on any dam, ditches, fences, bridges or other needful appurtenances to such irrigation farms, the commissioners' court may lease said suerte; provided, that such leasing shall be at public outcry, after ten or more days of due public notice, and to the persons bidding the shortest term, not to exceed four years, who shall give good security to discharge faithfully all such charge and work. [Id. sec. 3. P. D. 3947.]

Art. 4987. [3111] **May license irrigation.**—Upon the application of the owners of any suitable lands and water, and the assurance and proper security given to the county, if required by said court, that no injury will result to the public health, the commissioners' courts are authorized by decree to license and permit any such owners to proceed and dam the water, and to ditch, fence and irrigate their lands; provided, that joint owners of all irrigation farms shall be liable for damages done to the public, or to any person, by reason of the over-

flow of such irrigation water; suit to be brought against the person occasioning the injury, or in such other way as may be sanctioned by said court. [Id. sec. 4. P. D. 3948.]

Art. 4988. **May exercise right of eminent domain.**—If, in the establishment of any new project of irrigation, or the extension thereof, the commissioners' court deem it of sufficient importance to order a dam or ditch to be made on the lands of any person refusing to consent thereto, the said court, after giving such person actual notice in writing, and full hearing and consideration of his objections, may decree the making of the same, and shall depute two or more discreet and disinterested freeholders of the vicinage to arbitrate and fix the amount of damage permanently sustained by such person, which shall, by that or another such commission, be levied upon and paid forthwith by the applicants for such irrigation project in the ratio of the interest and several shares of the said applicants and joint owners; and the said courts may, after like personal notice to parties interested, order the multiplication or extension of any ditches for irrigation, and of irrigation farms at and below, or at the sides of such property; when it shall be the duty of such court to proceed and assess all just fines and equitable damages, and to fix and direct the rate and amount and kind of work, labor and tax to be paid by any of such applicants and others, according to their interest. [Id. sec. 5. P. D. 3949.]

Art. 4989. [3113] **And discontinue ditches, etc.**—Where the health of the public may be injured by irrigation or the damming up of water for any purpose, it shall be the duty of the commissioners' courts, after due and mature hearing and consideration, to decree the discontinuance, and they shall proceed and break up and discontinue all such dams, ditches and irrigation, whether the same have been heretofore ever so long in existence or may be hereafter started. [Id. sec. 6. P. D. 3950.]

Art. 4990. [3114] **And establish fence laws.**—In counties where the commissioners' courts may decree and adjudge that fences around irrigation farms may be dispensed with, they may make all fair, equal and proper regulations for the keeping up or herding of hogs, cattle and other stock, and for the security and protection of the crops and farms; provided, that, if ten or more voters shall make written protest against such decree, then the said court shall proceed by notice and a public election and ascertain if two-thirds of the voters be in favor of dispensing with the use of fences, otherwise it shall not be so decreed. [Id. sec. 7. P. D. 3961.]

CHAPTER TWO.

GENERAL PROVISIONS.

Article.	Article.
Unappropriated waters public property.....4991	"Completion" defined.....5000
Purposes for which storm or rain waters	Appropriator only to divert.....5001
diverted.....4992	Corporations under this chapter.....5002
Flow and overflow of running waters di-	Power to enter lands, etc.....5003
verted.....4993	Right of way over public lands.....5004
Purposes of appropriation.....4994	Surplus water to be returned.....5005
Priority of appropriation.....4995	Right of way across highways.....5006
Statement of route of canal, etc., to be	No cause of action for damages, when.....5007
filed.....4996	May construct over and along streams...5008
Claimant's right dates from when.....4997	Liens for water rent.....5009
Who may appropriate; construction to	Corporations may acquire lands, how...5010
begin.....4998	Reclamation and irrigation act of United
Construction to begin.....4999	States Congress.....5011

Article 4991. [3115] **Unappropriated waters public property.**—The unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain waters of every river or natural stream, canyon, ravine, depression or water-shed within those portions of the state of Texas in which, by reason of the insufficient rainfall or by reason of the irregularity of the rainfall, irrigation is beneficial for agricultural purposes, are hereby declared to be the property of the public, and may be acquired by appropriation for the uses and purposes and in the manner as herein-after provided. [Acts 1895, p. 25.]

Art. 4992. [3116] **Purposes for which storm or rain waters be diverted.**—The storm or rain waters, as described in the preceding article, may be held or stored in dams, lakes or reservoirs built and constructed by a person, corporation or association of persons for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising, within those portions of Texas described in the foregoing article; and all such waters may be diverted by the person, corporation or association of persons owning or controlling such dam, reservoir or lake for irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising. [Id.]

Art. 4993. [3117] **Ordinary flow or underflow of running waters may be diverted, etc.**—The ordinary flow or underflow of running water of every natural river or stream within those portions of Texas described in article 4991 may be diverted from its natural channel for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising; provided, that such flow or underflow of water shall not be diverted to the prejudice of the rights of the riparian owner without his consent, except after condemnation thereof in the manner as hereinafter provided. [Id.]

Art. 4994. [3118] **Purposes of appropriation.**—The appropriation of water must be either for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising. [Id.]

Art. 4995. [3119] **Priority of appropriation.**—As between appropriators the first in time is the first in right. [Id.]

Art. 4996. [3120] **Statement of route of canal, etc., to be filed.**—Every person, corporation, or association of persons who have constructed, or may hereafter construct, any ditch, canal, reservoir, dam or lake for the purposes named in this chapter, and taking the water from any natural stream, storage reservoir, dam or lake, within ninety days after commencement of such construction, file and cause to be recorded in the office of the county clerk of the county where the headgate of such ditch or canal may be situated or to which said county may be attached for judicial purposes, in a well bound book to be kept by said clerk for that purpose, a sworn statement in writing showing approximately the number of acres of land that will be irrigated, the name of such ditch or canal, the point at which the headgate thereof is

situated, the size of the ditch or canal and width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of said stream from which said water is taken, the time when the work was commenced, the name of the owner or owners thereof, together with a map showing the route of such ditch or canal; and when the water is to be taken from a reservoir, dam or lake, the statement above provided for shall show in addition to the ditch and other things provided for, the locality of the proposed dam, reservoir or lake, giving the names or numbers of the surveys upon which it is to be located, its holding capacity in cubic feet of water, the acreage and surface feet of land that will be covered, and the limits of such lake, reservoir or dam, and the area of the watershed from which the storm or rain water will be collected. [Id.]

Art. 4997. [3121] **Time from when claimant's right dates.**—By compliance with the provisions of the preceding articles, the claimant's right to the use of the water relates back to the time when the work of excavation or construction was commenced on said ditch, canal, reservoir, dam or lake; provided, that a failure to file such statement shall in no wise work a forfeiture of such heretofore acquired rights, nor prevent such claimants of such heretofore acquired rights from establishing such rights in the courts. [Id.]

Art. 4998. [3122] **Who may appropriate; construction to begin.**—Any person, firm, association of persons or corporation may acquire the right to, and appropriate for, irrigation purposes the unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain water of every river or natural stream, canyon, ravine, depression or watershed within those portions of the state referred to in article 4991, by filing a sworn statement in writing, to be recorded as provided in article 4996, declaring his or its intention of appropriating such water. Said statement shall also show approximately the number of acres of land proposed to be irrigated, the name of such ditch or canal, the point at which the headgate thereof will be situated, the size of the ditch or canal in width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of the person, firm, association or corporation appropriating such water, the name of the stream, and shall attach to such statement a map showing approximately the proposed route of such ditch or canal; and, when the water sought to be appropriated or acquired is storm or rain water, the statement above required shall also show or describe the locality of the proposed dam, reservoir, or lake by giving the names or numbers of the surveys upon which it is to be located, and approximately the following, that is to say, its holding capacity in cubic feet of water, the acreage of land that will be covered and the area of the watershed from which the storm or rain waters will be collected; provided, any person, association of persons or corporation who has heretofore had a survey made of the proposed route of his or its ditch shall have a preference right at any time within ninety days from the time this chapter shall take effect to file the statement hereinbefore required for the appropriation of water. [Id.]

Art. 4999. **Construction to begin.**—Within ninety days next after filing of said statement referred to in the foregoing articles, the party or corporation claiming the right to appropriate the water shall begin actual construction of the proposed ditch, canal, dam, lake or reservoir, and shall prosecute the work thereon diligently and continuously to completion.

Art. 5000. [3123] **"Completion" defined.**—"Completion," as used in article 4998, is hereby defined to be the conducting of the water in the main canal to the place of the intended use. [Id.]

Art. 5001. [3124] **The appropriator only to divert water.**—Whenever any person, corporation or association of persons shall become entitled to the use of any water of any river, stream, canyon or ravine, or the storm or rain

water hereinbefore described, it shall be unlawful for any person, corporation or association of persons, to appropriate or divert any such water in any way, except that the owner whose land abuts on a running stream may use such water therefrom as may be necessary for domestic purposes; and any one whose land may be located within the area of the watershed from which the storm or rain waters are collected may construct on his land such dams, reservoirs or lakes as may be necessary for the storage of water for domestic purposes for such owner of land; provided, that the excess of such water not used or contracted for use by such person, corporation or association of persons for irrigation, mining, milling, waterworks for cities or towns, or stockraising, may be appropriated by any person, corporation or association of persons in the manner hereinbefore provided for the appropriation of water. [Id. p. 27.]

Art. 5002. [3125] **Corporations may be formed to operate under this chapter.**—Corporations may be formed and chartered, under the provisions of this chapter and of the general corporation laws of the state of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, reservoirs, dams, lakes and wells, and of conducting and transferring water to all persons entitled to the same for irrigation, mining, milling, to cities and towns for waterworks, and for stockraising, and for the purpose of building storage reservoirs for the collection and storage of water for the purposes before mentioned. All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation for such time as may be agreed upon, and, in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land or otherwise. All persons who own or hold a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral constructed and maintained under the provisions of this chapter, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam or lake with water for irrigation of such land, and for mining, milling and stockraising in accordance with the terms of his or their contract; provided, that, if the person, association or corporation owning or controlling such water, and the person who owns or holds a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral constructed and maintained under the provisions of this chapter fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person and for mining, milling and stockraising, such person, firm, association or corporation shall nevertheless, if such person, firm, association or corporation has or controls any water not contracted to others, furnish the necessary water to such person to irrigate his lands, and for mining, milling and stockraising, at such prices as may be reasonable and just; provided, further, that, in case of shortage of water from drought, accident or other cause, the water to be distributed shall be divided among all consumers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given to none. The sale of the permanent water right shall be an easement to the land and pass with the title thereof; and the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract with such person or corporation, or in case no contract is entered into, then at just and reasonable prices. Any instrument of writing providing a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land. [Id.]

Art. 5003. [704] **Power to enter lands, etc.**—Every canal corporation, for the purpose of irrigation, shall have power to cause such examination and survey for its proposed canal to be made as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, to enter upon the land or waters of any person.

Art. 5004. [3126] **Right of way over public lands.**—All corporations and associations formed for the purpose of irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising, as provided in this chapter, are hereby granted the right of way, not to exceed one hundred feet in width, over all public, public free school, university and asylum lands of the state, with the use of the rock, gravel and timber on the right of way for construction purposes, and may obtain the right of way over private lands by contract. Any such corporation or association of persons, or any city or town, may also obtain the right of way over private lands, and also the land for dam sites and storage reservoirs and the water belonging to the riparian owner by condemnation, by causing the damages for any private property appropriated by any such persons, corporations or associations to be assessed and paid for as provided in cases of railroads, and the delay necessary to condemn and acquire the property needed for the ditch, dam site, reservoir and sewers for water supply and drainage or water of the riparian owner shall not work to the prejudice of the person, corporation or association of persons constructing such ditch, canal, lake, reservoir or dam, and shall not be taken into account in estimating the time for the completion of such work. [Id. p. 21.]

Art. 5005. [3127] **Surplus water to be returned.**—All surplus water of a running stream not used or disposed of as provided in the preceding articles shall be conducted back to the stream from which it was taken through a ditch or canal constructed under the provisions of this chapter, or through a natural channel leading back to the stream. [Id.]

Art. 5006. [3128] **Right of way across highways, etc.; conditions precedent thereto.**—All said persons, corporations and associations shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges for the accommodation of the public, and shall not impair the usefulness of such road or highway; provided, that if any public road or highway or public bridges should be upon the ground necessary for the dam site, reservoir or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridges that the same may not interfere with the construction of the proposed dam, reservoir or lake; provided, further, that the expense of making such change shall be paid by the person, firm or corporation owning such dam site, lake, reservoir or canal. [Id.]

Art. 5007. [3129] **No cause of action for damages, when.**—Unless such person, association of persons, or corporation shall fence their said ditch, canal, reservoir, dam or lake, and keep the same securely fenced, then there shall accrue in their favor no cause of action against owners of livestock for any trespass thereon. [Id.]

Art. 5008. [704] **May construct over and along streams.**—Such canal corporation, for the purpose of irrigation, shall have power to construct its canal across, along or upon any stream of water.

Art. 5009. [3130] **Liens for water rent.**—Every person, corporation or association of persons which has heretofore constructed, or which may hereafter construct, any ditch, canal, dam, lake or reservoir for the purpose of irrigation, and who shall lease or rent the water from said ditch, canal, dam, lake or reservoir to any person or association of persons or corporation owning any lands subject to irrigation from any such ditch, canal, lake, dam or reservoir, such person, corporation or association of persons owning such ditch,

canal, lake, dam or reservoir shall have a preference lien, superior to every other lien, upon the crop or crops raised upon the land thus irrigated under such lease or contract. [Id.]

Art. 5010. [3131] **Conditions under which corporations may acquire lands.**—Any corporation organized under the provisions of the general laws of this state or the provisions of this chapter, for the purpose of irrigation, shall have the power to acquire lands by voluntary donation or purchase or in payment of stock or water rights, and to hold and dispose of all such land and other property, and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes and wells, and may issue bonds and mortgage its corporate and other property and franchises to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void; and provided, further, all lands acquired by said corporation, except such as are used for the construction, maintenance and operation of said canals, ditches, laterals, feeders, reservoirs, dams, lakes and wells, shall be alienated within fifteen years from the date of acquiring said lands or be subject to judicial forfeiture. [Id. p. 27.]

Art. 5011. **Reclamation and irrigation act of U. S. Congress.**—Where, in the examination, survey, or construction of any irrigation or reclamation project under the provisions of the act of congress, approved June 17, 1902, thirty-second statutes, 388, known as the reclamation act, it shall be found advisable or necessary to irrigate or reclaim lands within limits of the state of Texas, the secretary of the interior is authorized to make all necessary examinations and surveys for, and to locate and construct, irrigation or reclamation works within said state, and to perform any and all acts necessary to carry into effect the provisions of the reclamation act as to such lands, subject to all the provisions, limitations, charges, terms and conditions of the said reclamation act. [Acts 1905, p. 151.]

CHAPTER THREE.

IRRIGATION DISTRICTS.

Organization.	Article.
Who may propose organization of district	5012
The petition	5013
Commissioners' court to hear petition and take testimony	5014
Who may appeal	5015
Districts to be divided into divisions	5016
Notice of election to be given	5017
Election of officers	5018
Qualification of electors	5019
Commissioners' court to canvass votes, etc.	5020
Copy of order to be filed	5021
Election may be contested, how	5022
Officers shall qualify, etc.	5023
Officers.	
Classification of directors	5024
Meetings of directors	5025
Powers and duties of directors	5026
Duty of board in condemnation proceedings	5027
Vacancy in office, how filled	5028
Director must be resident, etc., of district	5029
Offices may be consolidated	5030
Petition as to number of directors to be elected	5031
Compensation of directors	5032
Contracts—Interest in forbidden	5033
General Elections.	
Election of district officers	5034
Directors to meet and organize	5035
Notice of election to be posted	5036
Inspector to be chairman of the election board	5037
Voting same as in general election	5038
Canvass of vote to be made in public	5039
Statement to be recorded and to show what	5040
Bonds.	
Bonds may be issued for what purposes	5041
Bonds payable in gold, etc.	5042
Sale of bonds, etc.	5043
Bonds to be paid by assessment	5044
Payment of bonds	5045
As to outstanding bonds	5046
Reduction of bonded indebtedness	5047
Notice of election to reduce bonded indebtedness	5048
Outstanding bonds	5049
May hold election to destroy unsold bonds, when	5050
How election to be held	5051
Bonds destroyed not to be reprinted or re-issued	5052
Taxation and Assessments.	
Assessments to be made, when	5053
Assessments to be made on all property, etc.	5054
Authority of board as to collection of taxes	5055
Board to regulate manner, etc., of making tax list	5056

Article.	Article.
Board to fix compensation of deputies	5057
Assessment book to be completed, etc.	5058
Equalization of assessments	5059
Levy and collection of taxes	5060
If board neglects or refuses to levy, etc.	5061
Collector to settle monthly	5062
Directors may call special election, when	5063
Rate of assessment, how ascertained	5064
Boundaries.	
Boundaries may be changed, etc.	5065
Land may be excluded, when, etc.	5066
Notice to be published	5067
Board to hear petition to exclude, etc.	5068
Duty of board upon hearing petition to exclude	5069
In cases where land is excluded	5070
Office of director to become vacant, when land is excluded	5071
Director to be elected for each division	5072
Guardian, executor, etc., may petition	5073
Lands excluded not released from debts, etc.	5074
Changes in boundaries not to impair organization	5075
Changing boundaries	5076
Notice	5077
Board to hear petition, etc.	5078
Petitioners shall pay, etc.	5079
Board may order petition rejected	5080
Resolution of board on petition	5081
Board to fix time for election	5082
Result of election	5083
Change of boundaries to be recorded	5084
Minutes of board admissible in evidence, when	5085
Guardian, etc., may swear to petition, etc.	5086
In case of inclusion of land	5087
Water Regulation.	
Water declared a public use	5088
Water apportioned ratably	5089
Water to be apportioned	5090
Navigation not to be impaired, etc.	5091
Right of condemnation	5092
General Provisions.	
Title to vest in district	5093
Bids for work to be advertised	5094
All claims to be allowed by board before payment	5095
Funds out of which payments are to be made	5096
Right of way	5097
No debts to be incurred, except	5098
Funds	5099
Officers liable on bonds	5100
Board may lease water for mechanical purposes, when	5101
Such lease to be let to the highest bidder, etc.	5102
Bids to be opened in public	5103
Rental, etc.	5104
Board to have power to lease for five years	5105
Lessee to execute bond	5106
Other laws unrepealed	5107

ORGANIZATION.

Article 5012. **Who may propose organization of district.**—A majority in numbers of the holders of title, or evidence of title, to lands susceptible of irrigation from a common source, and by the same system of works, such holders of title, or evidence of title, representing a majority in value of said land, according to the county assessment roll or rolls for the year last preceding,

may propose the organization of an irrigation district under the provisions of this law. [Acts 1905, p. 235, sec. 1.]

Art. 5013. **The petition.**—In order to propose the organization of an irrigation district, a petition shall be presented to the commissioners' court of the county in which the lands within the proposed district, or the greater portion thereof, are situated, signed by the required number of holders of title, or evidence of title, to lands within such proposed district, and representing the requisite majority in value of said lands, which petition shall set forth the boundaries of the proposed district, and shall state generally the source from which said lands are proposed to be irrigated, and the character of the works proposed to be acquired or constructed for irrigation purposes, and shall pray that the territory embraced within the boundaries of the proposed district may be organized as an irrigation district under the provisions of this law. The petition must be accompanied with a good and sufficient undertaking, to be approved by the county commissioners' court, in double the amount of the probable cost of organizing such district, conditioned that the sureties shall pay all of said costs, in case said organization shall not be effected. Said petition shall be presented at a regular meeting of said commissioners' court, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is presented, together with the notice stating the time of the meeting at which the same will be presented; and, if any portion of the lands within said district lie within another county or counties, then said petition and notice shall be published, as above provided, in a newspaper published in each of said counties. When such petition is presented, said commissioners' court shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all. And on final hearing, said commissioners' court shall make such changes in the proposed boundaries as may be deemed advisable, and shall define and establish such boundaries. But said commissioners' court shall not modify said boundaries so as to exclude from such proposed district any territory which is susceptible of irrigation from a common source, and by the same system of works applicable to the other lands in such proposed district; nor shall any lands which will not, in the judgment of the commissioners' court, be benefited by irrigation, by the same system of works, be included within such proposed district. Any person whose lands are susceptible of irrigation, from the same source and system of works, may, upon his application, in the discretion of said commissioners' court, have such lands included within said proposed district. [Id. sec. 2.]

Art. 5014. **Commissioners' court to hear petition and take testimony.**—Upon such hearing of said petition, the commissioners' court shall determine whether or not said petition complies with the requirements of the two preceding articles, and for that purpose must hear all competent and relevant testimony offered in support or in opposition thereto. Such determination shall be entered upon the minutes of said commissioners' court. [Id. sec. 3.]

Art. 5015. **Who may appeal.**—The right of appeal from said order to the district court of the county where said petition is heard is hereby given to any person interested who is a party to the record; provided, that, if more than one appeal be taken, they shall be consolidated and tried together. Such appeal shall be taken within ten days after the entry of such order upon the minutes of the commissioners' court. Upon the appeal, the district court may make and enter its judgment affirming, modifying or reversing the order appealed from. Within ten days thereafter, the district court must cause its decree to issue to said commissioners' court, and, if said order of the commissioners' court is modified or reversed, the judgment of the district court and its decree shall direct the commissioners' court what order it shall enter.

Such decree shall be filed by the clerk of the commissioners' court; and, at the first regular meeting of the commissioners' court thereafter, it shall cause to be entered in its minutes the order as directed by said district court. The appeal herein provided for shall be heard and determined at the first regular term of the district court after the filing of the notice of appeal. [Id. sec. 4.]

Art. 5016. **Districts to be divided into divisions.**—If, on said final hearing, the boundaries of the proposed district are defined and established, said commissioners' court shall make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one director shall be elected for each division by the electors thereof; provided, that, if so requested in said petition, the commissioners' court may order that there be only three divisions in said district, and that only three directors be elected, or that they be elected for the district at large. [Id. sec. 5.]

Art. 5017. **Notice of election to be given.**—Said commissioners' court shall then give notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this law. Such notice shall describe the boundaries so established and shall designate a name for the proposed district; and said notice shall be published for at least three weeks previous to such election in a newspaper published within the county in which the petition for the organization for the proposed district was presented; and, if any portion of such proposed district is within another county or counties, then such notice shall be published for the same length of time in a newspaper published in each of said counties. Such notice shall require the electors to cast ballots, which shall contain the words, "Irrigation District, Yes," or, "Irrigation District, No," signed by the voter, or words equivalent thereto, and also the names of persons to be voted for at said election. For the purposes of said election, the commissioners' court must establish a convenient number of election precincts in said proposed district, and define the boundaries of the same. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state, but no particular form of ballot shall be required. [Id. sec. 6.]

Art. 5018. **Election of officers.**—At such election, there shall be elected a board of directors, and an assessor, tax collector and treasurer; provided, that, where a consolidation of offices as hereinafter provided for is deemed advisable in the organization of the district, the petitioners may request in their petition to organization such consolidation; and the commissioners' court calling the election shall in its order therefor announce such consolidation, and then only one person shall be elected to fill the several offices so consolidated. [Id. sec. 7.]

Art. 5019. **Qualification of electors.**—No person shall be entitled to vote at any election held under the provisions of this law, unless he possesses all the qualifications required of electors under the general election laws of this state, and must be a resident property taxpayer in the district. [Id. sec. 8.]

Art. 5020. **Commissioners' court to canvass votes, etc.**—The commissioners' court shall meet on the second Monday succeeding such election, and shall proceed to canvass the votes cast thereat; and, if upon such canvass it appears that at least two-thirds of all the votes cast are "Irrigation District, Yes," said commissioners' court shall, by order entered on its minutes, declare the territory duly organized as an irrigation district, under the name theretofore designated, and shall declare the persons receiving respectively the highest number of votes at said election to be duly elected. [Id. sec. 9.]

Art. 5021. **Copy of order to be filed.**—Said commissioners' court shall then cause a copy of such order, duly certified, to be immediately filed for record in the office of the county clerk of any county in which any portion of the land embraced in such district is situated, and must also immediately forward

a copy thereof to the commissioners' court of each of said last mentioned counties, and no commissioners' court of any county in which any portion of the lands embraced in such districts are situated shall, after the date of the organization thereof, allow another district to be formed including any portion of said lands, without the consent of the board of directors of the district in which they are situated. From and after such filing, the organization of such district shall be complete. [Id. sec. 10.]

Art. 5022. **Election may be contested, how.**—Such election on organization may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the district court of the county where the petition for organization is filed; provided, that, if more than one contest be pending, they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine upon the hearing whether the election was fairly conducted, and in substantial compliance with the requirements of this law, and enter its judgment accordingly. Such contest must be brought within twenty days after the canvass of the vote and declaration of the result by the commissioners' court. The right of appeal is hereby given to either party to the record as in other cases tried before the district court. [Id. sec. 11.]

Art. 5023. **Officers shall qualify, etc.**—The officers elected at the election hereinbefore provided for shall immediately enter upon their duties as such, upon qualifying in the manner for such officers herein provided. Said officers shall hold office respectively until their successors are elected and qualified. [Id. sec. 12.]

OFFICERS.

Art. 5024. **Classification of directors.**—The directors of any district, on the first Tuesday after their election, after they shall have qualified, shall meet and classify themselves by lot into two classes, as nearly equal in number as possible, and the term of office of the class having the greater number shall expire at the next general February election in this law provided for, and the term of office of the class having the lesser number shall terminate at the next general February election thereafter. After such classification, said directors shall organize as a board, shall elect a president from their number, and appoint a secretary, who shall each hold office during the pleasure of the board. The salary of the secretary and the amount of the bond to be given by him for the faithful performance of his duties shall be fixed by the board of directors. [Id. sec. 13.]

Art. 5025. **Meetings of directors.**—The board of directors shall hold a regular monthly meeting in their office on the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business; provided, that all special meetings must be ordered by a majority of the board. The order must be entered of record, and five days notice thereof must by the secretary be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting. All meetings of the board must be public, and three members constitute a quorum for the transaction of business; provided, however, that when the board consists of three members only, then in such case two shall constitute a quorum for the transaction of business, but, on all questions requiring a vote, there shall be a concurrence of at least the number constituting a quorum. All records of the board shall be open to public inspection during business hours. The board of directors shall, on the first Tuesday in January of each and every year, render, and immediately thereafter cause to be published, a verified statement of the financial condition of the district, showing particularly the receipts and dis-

bursements of the last preceding year, together with the source of such receipts and purpose of said disbursements. Said publication shall be made at least once a week for two weeks in some paper published in the county where the office of the board of directors of such district is situated. [Id. sec. 14.]

Art. 5026. Powers and duties of directors.—The board shall have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employes as may be required, and prescribe their duties. The board and its agents and employes shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by purchase or condemnation, or other legal means, all lands, and waters, and water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and works including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. But no such purchase of any waters, or water rights, or canals, or reservoirs, or reservoir rights, or irrigation works, or other real property of any nature or kind, for any price in excess of ten thousand dollars, shall be final or binding on the district, nor shall the purchase price thereof be paid until a petition of a majority of the holders of title, or evidence of title, to lands within the district, such holders of title, or evidence of title, representing a majority in value of said lands, according to the last assessment roll of the district, shall have been filed with the board and an order of the board made thereon confirming such purchase. Said board may also construct the necessary dams, reservoirs and works for the collection of water for said district, and do any and every lawful act necessary to be done, that sufficient water may be furnished to each land owner in said district for irrigation purposes. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this law, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this law, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this law, or acquired in pursuance thereof. And in all courts, actions, suits or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. It shall be the duty of said board to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said lands, which must be printed in convenient form for distribution in the district. Said board shall have power generally to perform all such acts as shall be necessary to fully carry out the purposes of this law. [Id. sec. 15.]

Art. 5027. Duty of board in condemnation proceedings.—In case of condemnation proceedings, the board shall proceed in the name of the district, under the provisions of the law relating to the condemnation of land by railroads. [Id. sec. 16.]

Art. 5028. Vacancy in office, how filled.—In case of a vacancy in the office of assessor, collector or treasurer, the vacancy shall be filled by appointment of the board of directors; provided, that, if said board of directors shall neglect or refuse to make such appointment within a period of forty days, then the commissioners' court of the county wherein the office of said board of directors is situated shall make such appointment. In case of a vacancy in the office of director, the vacancy shall be filled by appointment by the commissioners' court of the county where the office of such board of directors

is situated from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election for said district and until the successor is elected and qualified. [Id. sec. 25.]

Art. 5029. **Director must be resident, etc., of district.**—A director shall be a resident and property taxpayer of the irrigation district, but not necessarily of the division for which he is elected. [Id. sec. 26.]

Art. 5030. **Offices may be consolidated.**—The board of directors may, in its discretion, consolidate any two or more of the offices of assessor, collector and treasurer. The order of consolidation must be made at least thirty days prior to general election of the district, and shall take effect at the next preceding election; provided, that the board of directors may, at least thirty days before the general election of the district, where the offices have been consolidated, segregate the same and each office to be filled at such election. [Id. sec. 27.]

Art. 5031. **Petition as to number of directors to be elected.**—In any district, the board of directors thereof may, upon the presentation of a petition therefor, by majority of the holders of title, or evidence of title, of said district, evidenced as above provided, order that, on or after the next ensuing general election for the district, there shall be either three or five directors, as said board may order, and they shall be elected by the district at large, or by divisions, as so petitioned and ordered; and after such order such directors shall be so elected. [Id. sec. 28.]

Art. 5032. **Compensation of directors.**—The directors when sitting as a board, or acting under the orders of a board, shall each receive not to exceed three dollars per day and actual and necessary expenses paid while engaged in official business under the order of the board. The board shall fix the compensation to be paid to all officers named in this law, to be paid out of the treasury of the district; provided, that said board shall, upon the petition of at least fifty or a majority of the freeholders within such district therefor, submit to the electors at any general election a schedule of salaries and fees to be paid hereunder. Such petition must be presented to the board not less than twenty days nor more than forty days prior to the general election; and the result of such election shall be determined and declared under this law. [Id. sec. 46.]

Art. 5033. **Contracts, interest in forbidden.**—No director or other officer of any irrigation district, organized under the provisions of this chapter, shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom. For the violation of this provision, such officer shall be punished as provided in the Penal Code for this offense. [Id. sec. 47.]

GENERAL ELECTIONS.

Art. 5034. **Election of district officers.**—An election shall be held in each irrigation district once every two years, on the first Tuesday in February of each even year, at which an assessor, a collector and a treasurer and directors for the district shall be elected. The person receiving the highest number of votes for any office to be filled at such election shall be elected thereto. The assessor, collector and treasurer shall each hold office from the first Tuesday in March next after for two years and until his successor is elected and qualified. Within ten days after receiving their certificates of election herein provided for, said officers shall take and subscribe the official oath and file the same in the office of the board of directors and execute the bond hereinafter provided for. The assessor shall execute an official bond in the sum of five thousand dollars, and the collector an official bond of twenty thousand dollars, and the district treasurer an official bond in the sum of fifty

thousand dollars, each of said bonds to be approved by the vote of directors; provided, that the board of directors may, if it shall be deemed advisable, fix the bonds of the treasurer and collector, respectively, to suit the conditions of the district, the maximum amount of the treasurer's bond not to exceed fifty thousand dollars, and the minimum amount thereof not to be less than ten thousand dollars, and the maximum of the collector's bond not to exceed twenty thousand dollars, and the minimum amount thereof not to be less than five [thousand] dollars. Each member of said board of directors shall execute an official bond in the sum of five thousand dollars, which said bond shall be approved by the county judge of said county where such organization was effected, and shall be recorded in the office of the county clerk thereof and filed with the secretary of said board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers. [Id. sec. 19.]

Art. 5035. **Directors to meet and organize.**—On the first Tuesday in March next following their election, the directors who shall have been elected at the general February election shall meet and organize as a board, elect a president, and appoint a secretary, who shall each hold office during the pleasure of the board. And the directors who shall be elected at the general February election, when they meet to organize, shall classify themselves, by lot, into two classes as nearly equal in number as possible. And the term of office of the class having the greater number shall be two years, and the term of office of the lesser number, shall be four years. The full term of office of directors is hereby fixed at four years. [Id. sec. 20.]

Art. 5036. **Notice of election to be posted.**—Twenty days before any election held under this law, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place, to be determined by said board, specifying the holding places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges who shall constitute a board of election for said precinct. If the board fail to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. [Id. sec. 21.]

Art. 5037. **Inspector to be chairman of election board.**—The inspector is chairman of the election board and may administer all oaths required in the progress of an election, and appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock a. m., on the morning of the election, and be kept open until six o'clock p. m., when they must be closed. The provisions of the general election law concerning the form of ballots to be used shall not apply to elections held under this chapter. [Id. sec. 22.]

Art. 5038. **Voting, same as in general election.**—Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open, and shall be conducted, as nearly as practicable, in accordance with the provisions of the general election laws of this state. As soon as all the votes are counted, a certificate shall be drawn upon each of the papers consisting of the poll list and tally sheet or attached thereto, stating the number of votes each one voted for has received and designating the office to fill which he has voted for, which number shall be written in figures and words at full length. Each certificate shall be signed by the clerk, judge and the inspector. One of said certificates, with the poll list and tally sheet to which it is attached, shall be retained by the inspector and preserved by him at least six months. The ballots shall be placed in a box by the inspector during the counting thereof; and said ballots, together with the other of said certificates with the poll list and tally sheet to which it is attached, shall be sealed up by the inspector in the presence of the judges and clerks, and endorsed, "Election returns of (naming the precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept open for at least six months; and, if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns and demand a re-count of the votes of the precinct that is so claimed to have been incorrectly counted. [Id. sec. 23.]

Art. 5039. **Canvass of vote to be made in public.**—No list, tally sheet or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but, if all the returns have not been received, the canvass be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof. [Id. sec. 24.]

Art. 5040. **Statement to be recorded to show what.**—The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

- (a) The number of votes cast in the district and in each division of the district.
- (b) The names of the persons voted for.
- (c) The office to fill which each person is voted for.
- (d) The number of votes given in each precinct to each of such persons.
- (e) The number of votes given in each division for the office of directors, and the number of votes given in the district for the offices of assessor, collector and treasurer.

The board of directors must declare elected the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election signed by him and authenticated with the seal of the board. [Id. sec. 25.]

BONDS.

Art. 5041. **Bonds may be issued for what purposes.**—For the purpose of constructing necessary irrigating canals and works, and acquiring the neces-

sary property and rights therefor, and otherwise carrying out the provisions of this law, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and also whenever thereafter the construction fund has been exhausted by expenditures therein authorized therefrom, and it is necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised. And thereafter said board, when petitioned by a majority of said holders of title, or evidence of title, to lands within the district, such holders of title, or evidence of title, to lands within the district, such holders of title, or evidence of title, representing a majority in value of said lands, according to the assessment roll of the district, if such has theretofore been made, and if such has not been made, then according to the county assessment roll covering the lands of such district, shall immediately call a special election, at which shall be submitted to the electors of such district, possessing the qualifications prescribed by this law, the question whether or not the bonds of said district in the amount as set forth in said petition, and not to exceed one-fourth of the assessed valuation of the real property of such district, shall be issued. Notice of such election must be given by posting notices in the public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, the amount of the bonds proposed to be issued; and said election must be held, and the result thereof determined and declared, in all respects as nearly as practicable in conformity with the provisions of this law governing the election of officers; provided, that no informalities in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election, the ballot shall contain the words, "Bonds, Yes," or, "Bonds, No," or words equivalent thereto. If two-thirds of the votes cast are, "Bonds, Yes," the board of directors shall cause bonds in said amount to be issued; if more than one-third of the votes cast at any bond election are, "Bonds, No," the result of such election shall be so declared and entered of record. Whenever thereafter a petition of the character hereinbefore provided for in this article is presented to the board, it shall so declare of record in its minutes, and shall thereupon submit such questions to said electors in the same manner and with like effect as at such previous election; provided, that only one such election can be held in any one year. [Id. sec. 30.]

Art. 5042. **Bonds payable in gold, etc.**—All bonds issued under the provisions of this law shall be payable in gold coin of the United States, in ten series, as follows, to wit: At the expiration of twenty-one years, five per cent of the whole number of said bonds; at the expiration of twenty-two years, six per cent; at the expiration of twenty-four years, eight per cent; at the expiration of twenty-five years, nine per cent; at the expiration of twenty-six years, ten per cent; at the expiration of twenty-seven years, eleven per cent; at the expiration of twenty-eight years, thirteen per cent; at the expiration of twenty-nine years, fifteen per cent; and at the expiration of thirty years, sixteen per cent; that the several enumerated percentages being the entire amount of the bond issue; but each bond must be made payable at a given time for its entire amount and not for a percentage. Said bonds shall bear interest at the rate of not more than five and one-half per cent per annum, payable annually on the first day of January of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars, nor more than five hundred dollars, shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Each issue shall

be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their face that they were issued by authority of this law, stating its title and date of approval, and shall also state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received and the name of the purchaser. [Id. sec. 31.]

Art. 5043. Sale of bonds, etc.—The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise to fully carry out the objects and purposes of this law. Before making any sale, the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by public issue thereof at least three weeks, in some newspaper published in the county where the office of the board of directors is located, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed, the board shall open the proposals, and award the purchase of the bonds to the highest responsible bidder; provided, however, that they may reject all bids. Said board shall in no event sell any of the said bonds for less than the par value thereof. It shall be the duty of the president of the board of directors, whenever any bond or bonds are issued, and before the sale of same, to forward the same to the comptroller of public accounts of the state, whose duty it shall be to register said bond or bonds in a book kept for that purpose, and to indorse on each bond so registered his certificate of registration, and to give, at the request of the president of the board of directors, his certificate certifying to the amount of bonds so registered in his office up to date. [Id. sec. 32.]

Art. 5044. Bonds to be paid by assessment.—The said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the property of the district; and all the property in the district shall be and remain liable to be assessed for such payments, as hereinafter provided. [Id. sec. 33.]

Art. 5045. Payment of bonds.—Upon the presentation of the coupons due to the treasurer, he shall pay the same from the bond fund. Whenever said fund shall amount to the sum of ten thousand dollars in excess of the amount sufficient to meet the interest coupons due, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising in the manner hereinbefore provided for the sale of bonds for sealed proposals, for the redemption of said bonds. Said proposals shall be opened by the board in open meeting at the time to be named in the notice, and the lowest bid for said bonds must be accepted; provided, that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed as herein provided for, said money shall be invested by the treasurer under the direction of the board in valid bonds issued by the state of Texas, or any county in the state, which shall be kept in said bond fund, and may be used to redeem said district bonds whenever the holders thereof may desire. [Id. sec. 41.]

Art. 5046. As to outstanding bonds.—If there be outstanding bonds of the district, at the time of the filing of the petition referred to in article 5066, the holders of such outstanding bonds may give their assent in writing to the

effect that they severally consent that the lands mentioned in the petition, or such portion thereof as may be excluded from said district by order of said board, may be excluded from the district; and, if said lands, or any portion thereof, be thereafter excluded from the district, the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of the conveyance of land. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a copy thereof certified by the secretary of the board, shall be admissible in evidence with the same effect as the said assent; and such certified copy thereof may be recorded in the office of the county clerk wherein said lands are situated. [Id. sec. 61.]

Art. 5047. Reduction of bonded indebtedness.—Whenever the board of directors of an irrigation district, organized under the provisions of this law, shall determine that the authorized bonded indebtedness of such irrigation district is greater than such district is liable to need to complete its system as planned, and there shall be no outstanding bonds, the board of directors may call a special election for the purpose of voting upon a proposition to reduce such bonded indebtedness to such sum as the board may determine to be sufficient for such purpose. [Id. sec. 80.]

Art. 5048. Notice of election to reduce bonded indebtedness.—Notice of the said election shall be given in the same manner as provided in article 5041, in relation to calling special election for issuance of bonds. The notice of election must state the amount of the authorized bonded indebtedness of such district, and the amount which it is proposed to reduce the same, and also the date on which said election will be held and the polling places as established by said board of directors. The ballots cast at said election shall contain the words, "For reducing bonds—Yes," or, "For reducing bonds—No." When the vote is canvassed by the board of directors and entered of record, if a majority of the votes cast shall be "For reducing bonds—Yes," then in that event the board of directors shall only be empowered to issue or sell such amount of bonds as is stipulated in the said notice of such special election; but, if a majority of said votes are not "For reducing bonds—Yes," then the authorized bonds shall remain the same as before said special election was held. [Id. sec. 81.]

Art. 5049. Outstanding bonds.—In case there be outstanding bonds of any district desiring to take advantage of the provisions of this law concerning reduction of bonded indebtedness, the assent of such bond holders may be obtained to such reduction of the bonded indebtedness in the same manner as provided in article 5047. If such assent is obtained in the manner therein provided, then, and in that event, such district shall be empowered to take advantage of all the provisions of this law, but not otherwise. No reduction of the bonded indebtedness as in this law provided shall in any manner affect any order of court that may have been made adjudicating and confirming the validity of said bonds. [Id. sec. 82.]

Art. 5050. May hold election to destroy unsold bonds, when.—Whenever there remains in the hands of the board of directors of any irrigation district, organized under this law, after the completion of its system and the payment of all demands against said district, any bonds voted to be issued by said district, but not sold, and not necessary to be sold for the raising of the funds for the use of such district, said board of directors may call a special election for the purpose of voting upon a proposition to destroy said unsold bonds, or so many of them as may be deemed best, or may submit such proposition at a general election. [Id. sec. 89.]

Art. 5051. How election to be held.—Such election shall be held in the same manner as other elections held under the provisions of this law. A

notice of such election shall be given in the same manner as provided in article 5041 in relation to calling special elections for the issuance of bonds. The notice of election must state the amount of the bonded indebtedness of such district, authorized by the vote of the district, the amount of the bonds remaining unsold and the amount proposed to be destroyed, and the date on which said election is proposed to be held, and the polling places as fixed by the board of directors. The ballots to be cast at such election shall contain the words, "For Destroying Bonds—Yes," and, "For Destroying Bonds—No," and the voter must erase the word, "No," in case he favors the destruction of bonds; otherwise the word, "Yes." [Id. sec. 90.]

Art. 5052. **Bonds destroyed not to be reprinted or reissued.**—When the vote is canvassed by the board of directors and entered of record, if a two-thirds majority of the votes cast should be found to be in favor of the destruction of said bonds, then the president of the board, in the presence of a majority of the members of the board, must destroy the bonds so voted to be destroyed; and the total amount of bonds so destroyed and canceled shall be deducted from the sum authorized to be issued by the electors of said district, and no part thereof shall thereafter be reprinted or reissued. [Id. sec. 91.]

TAXATION AND ASSESSMENTS.

Art. 5053. **Assessment to be made; when.**—In case the money raised by the sale of bonds issued be insufficient, or in case the bonds be unavailable for the completion of the plan of canal and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan by levy of assessments therefore; provided, however, that such levy of assessments shall not be made, except first an estimate of the amount required for such purposes has been made by said board, and the question as to the making of said levy submitted to a vote of the electors of the district. Before such question is submitted, the order of submission shall be entered in the minutes of the board, stating the amount to be levied and the purpose therefor; and, if submitted at a special election, said order shall, in addition, fix the day of election. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, and the amount of assessments proposed to be levied. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this law governing the election of officers; provided, that no informalities in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words, "Assessment—Yes," or, "Assessment—No," signed by the voter, or words equivalent thereto. If two-thirds of the votes cast are, "Assessment—Yes," the board of directors shall cause an assessment in the amount named in the order of submission to be levied; if more than one-third of the votes are, "Assessment—No," the result of such election shall be declared and entered of record. [Id. sec. 34.]

Art. 5054. **Assessments to be made on all property, etc.**—The assessor must, between the first Monday in March and the first Monday in June in each year, assess all property in the district, to the persons who own, claim, have the possession, or control thereof, at its full cash value. Any property which may have escaped the payment of assessment for any year shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for such current year. [Id. sec. 35.]

Art. 5055. Authority of board as to collection of taxes.—The board of directors may and shall have full power to provide for the prompt collection of all taxes assessed, levied and imposed under this law, and due or becoming due to said district, and are hereby authorized and to that end may and shall have full power and authority to sell or cause to be sold real as well as personal property, and may and shall make all such rules and regulations, and ordain and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing, and collecting of any of the taxes herein provided. [Id. sec. 35a.]

Art. 5056. Board to regulate manner, etc., of making tax list.—The board of directors shall have power, by ordinance, to regulate the manner and mode of making out tax lists or inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and define the powers of the assessor and collector, and adopt such measures as they may deem advisable to secure the assessment of all property within the limits of said district and collect the tax thereupon. [Id. sec. 35b.]

Art. 5057. Board to fix compensation of deputies.—The board of directors must allow the assessor as many deputies, to be appointed by him, as will in the judgment of the board enable him to complete the assessment within the time therein prescribed. The board must fix the compensation of such deputies, which shall be paid out of the treasury of the district. The compensation must not exceed five dollars per day for each deputy for the time actually engaged, nor must any allowance be made, but for work done between the first Monday in March and the first Monday in August in each year. [Id. sec. 36.]

Art. 5058. Assessment to be completed, etc.—On or before the first Monday in August in each year, the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors, acting as a board of equalization, will meet to equalize the assessment, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall be not less than twenty nor more than thirty days from the publication of a notice; and, in the meantime, the assessment book must remain in the office of the secretary for the inspection of all persons interested. [Id. sec. 37.]

Art. 5059. Equalization of assessments.—Upon the day specified in the notice required by the preceding article for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from time to time as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them, and the board may change the valuation as may be just. The secretary of the board shall be present during the session and note all changes made in the valuation of property and in the names of the persons whose property is assessed; and, within ten days after the close of the session, he shall have the total values as finally equalized by the board extended into columns and added. [Id. sec. 38.]

Art. 5060. Levy and collection of taxes.—The board of directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds as it shall fall due, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity. The secretary of the board must compute and enter into a separate column of the assessment book the respective sums in dollars and

cents to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury and be apportioned to the several proper funds. [Id. sec. 39.]

Art. 5061. **If board neglects or refuses to levy, etc.**—In case of the neglect or refusal of the board of directors to cause such assessments and levies to be made, as in this law provided, then the assessment of property by the commissioners' court shall be adopted, and shall be the basis of assessment for the district; and the county commissioners' court of the county in which the office of the board of directors is situated shall cause an assessment roll for said district to be prepared, and shall make the levy required by this law, in the same manner and with like effect as if the same had been made by said board of directors; and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the collector or treasurer of the district to perform the duties imposed by law, then the tax collector and treasurer of the county in which the office of the board of directors is situated must respectively perform such duties and shall be accountable therefor upon their official bonds as in other cases. [Id.]

Art. 5062. **Collector to settle monthly.**—On the first Monday in each month, the collector must settle with the secretary of the board for all moneys collected for assessment, and pay the same over to the treasurer; and, within six days thereafter, he must deliver to and file in the office of the secretary a statement under oath showing: (a) An account of all his transactions and receipts since his last settlement; (b) that all money collected by him as collector has been paid. The collector shall also file in the office of the secretary on said first Monday in each month the receipts of the treasurer for the money so paid. [Id. sec. 40.]

Art. 5063. **Directors may call special election, when.**—The board of directors may, at any time when in their judgment it may be deemed advisable, call a special election and submit to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this chapter. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of article 5041. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such elections, the ballots shall contain the words, "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are, "Assessment—Yes," the board shall at the time of the annual levy hereunder, levy an assessment sufficient to raise the amount voted. [Id. sec. 48.]

Art. 5064. **Rates of assessment, how obtained.**—The rate of assessments levied under the provisions of this law shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district as it appears on the assessment roll for the current year, and then dividing the sum voted by the remainder of such aggregate assessed value. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board, and collected at the same time in the manner as other assessments provided for herein; and when collected shall be paid into the district treasury for the purpose specified in the notice of such election. [Id. sec. 49.]

BOUNDARIES.

Art. 5065. **Boundaries may be changed, etc.**—The boundaries of any irrigation district organized under the provisions of this law may be changed; and tracts of land which were included within the boundaries of such district

at or after its organization, under the provisions of this law, may be excluded therefrom in the manner herein prescribed; but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization or its right in or to property, or any of its rights or privileges of whatever kind and nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which said district was and may become liable or chargeable had such change of its boundaries not been made or had not such land been excluded from the district. [Id. sec. 56.]

Art. 5066. **Land may be excluded, when, etc.**—The owner or owners in fee of one or more tracts of land, which constitute a portion of an irrigation district, may jointly or severally file with the board of directors of the district, a petition praying that such tract or tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall state the grounds and reasons upon which it is claimed that such lands should be excluded, and shall describe the boundaries thereof, and also the lands of such petitioner or petitioners which are included within such boundaries; but the description of such land need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be verified by oath of each signer thereto. [Id. sec. 57.]

Art. 5067. **Notice to be published.**—The secretary of the board of directors shall cause the notice of the filing of such petition to be published at least two weeks in some newspaper published in the county where the office of the board of directors is situated; and, if any portion of such territory to be excluded lies within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or, if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district; and, in case of the posting of said notices, one of said notices must be posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or who may be affected by, such change of the boundaries of the district to appear at the office of said board at a time named in said notice and show cause in writing, if any they have, why the change of the boundaries of said district as proposed in said petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. [Id. sec. 58.]

Art. 5068. **Board to hear petition to exclude, etc.**—The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all of the evidence or proofs that may or shall be introduced by or in behalf of the petitioner or petitioners, and all objections to such petition that may or shall be presented, in writing, by any person showing cause as aforesaid, and all evidence and proof that may be introduced in support of such objections. The failure of any person interested in said district, other than the holders of bonds thereof outstanding, at the time of the filing of said petition with said board, to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and the filing of such petition with said board as aforesaid shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. The expenses

of giving said notice, and of the aforesaid proceedings, shall be paid by the person or persons filing such petition. [Id. sec. 59.]

Art. 5069. Duty of board upon hearing petition to exclude.—If upon the hearing of any such petition no evidence or proofs in support thereof be introduced, or if the evidence fails to sustain said petition, or if the board deem it not to be the best interest of the district that the lands, or some portion thereof mentioned in the petition, should be excluded from the district, the board shall order the said petition to be denied as to such lands; but, if the said board deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause in writing why said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, or upon the hearing fails to establish such objections as he may have made, then it shall be the duty of the board to and it shall forthwith make an order that the lands mentioned and described in the petition, or some defined portion thereof, be excluded from said district; provided, that it shall be the duty of said board to so order, upon petition therefor as aforesaid, that all lands so petitioned to be excluded from said district shall be excluded therefrom which can not be irrigated from, or which are not susceptible to, or would not by reason of being permanently devoted to uses other than agricultural or horticultural. [Id. sec. 60.]

Art. 5070. In cases where land is excluded.—In the event the board of directors shall exclude any lands from said district, upon petition therefor, it shall be the duty of the board of directors to make an entry in the minutes of the board describing the boundaries of the district, should the exclusion of said land change the boundaries of said district; and for that purpose the board may cause a survey to be made of such portions of the district as the board may deem necessary; and a certified copy of the entry in the minutes of the board excluding any lands, certified by the president and secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any of the lands of the district; but said district, notwithstanding such exclusion, shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district. [Id. sec. 62.]

Art. 5071. Office of director to become vacant when land is excluded.—If the lands excluded from any district under this law shall embrace the greater part of any division or divisions of such district, then the office of director of such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board excluding said lands; and such vacancy or vacancies shall be filled by appointment by the county commissioners' court of the county where the office of such board is situated from the district at large. A director appointed as above provided shall hold his office until the next regular election for said district and until his successor is elected and qualified. [Id. sec. 63.]

Art. 5072. Director to be elected for each division.—At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing said district into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall be elected by each division. For the purpose of elections in such districts, the said board of directors must establish a convenient number of election precincts and define the boundaries thereof; which said precincts will be changed from time to time as the board of directors may deem necessary. [Id. sec. 64.]

Art. 5073. Guardian, executor, etc., may petition.—A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of

this state; and who as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereto properly authorized by the proper court, sign and swear to the petition in this law mentioned, and may show cause as in this law provided why the boundaries of the district should not be changed. [Id. sec. 65.]

Art. 5074. Lands excluded not released from debt, etc.—Nothing in this law shall in any manner operate to release any of the lands so excluded from the district from any obligation to pay, or any lien thereon, of any valid outstanding bonds, or other indebtedness of said district at the time of the filing of said petition for the exclusion of said lands, but upon the contrary said lands shall be held subject to said lien and answerable and chargeable for and with the payment and discharge of all said outstanding obligations at the time of the filing of the petition for the exclusion of said lands as fully as though said petition for such exclusion were never filed, and said order or decree of exclusion never made; and, for the purpose of discharging such outstanding indebtedness, said lands so excluded shall be deemed and considered as a part of said irrigation district, the same as though said petition for its exclusion had never been filed, or said order or decree of exclusion never made; and all provisions which may have been resorted to to compel the payment by said lands of its quota or portion of said outstanding obligations, had said exclusion never been accomplished, may, notwithstanding said exclusion, be resorted to to compel and enforce the payment on the part of said lands of its quota and portion of said outstanding obligations of said irrigation district for which it is liable as herein provided. But said lands so excluded shall not be held answerable or chargeable for any obligation of any nature or kind whatever incurred after the filing with the board of directors of said district of the petition for the exclusion of said lands from the said district; provided, that the provisions of this article shall not apply to any outstanding bonds, the holders of which have assented to the exclusion of such lands in said district as hereinbefore provided. [Id. sec. 66.]

Art. 5075. Changes in boundary not to impair organization.—The boundaries of any irrigation district, organized under the provisions of this law, may be changed in the manner herein prescribed; but such change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind and nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon it [which] was or might become liable or chargeable had such change of its boundaries [not] been made. [Id. sec. 67.]

Art. 5076. Changing boundaries.—The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous, and which taken together constitute one tract of land, may file with the board of directors of said district a petition in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners, respectively, of distinct parcels; but such description need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are respectively the owners; and it must be verified by oath of each signer thereto. [Id. sec. 68.]

Art. 5077. Notice.—The secretary of the board of directors shall cause a notice of the filing of said petition to be given and published in the same

manner and for the same time that notice of special elections for the issue of bonds are required by this law to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice and show cause in writing, if any they have, why the changes in the boundaries of said district as proposed in said petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this law. [Id. sec. 69.]

Art. 5078. **Board to hear petition, etc.**—The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto, presented in writing by any person showing cause as aforesaid why said proposed change of the boundaries of the district should not be made. The failure by any persons interested in said district, or in the matter of the proposed changes of its boundaries, to show cause in writing as aforesaid shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board as aforesaid shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. [Id. sec. 70.]

Art. 5079. **Petitioners shall pay, etc.**—The board of directors to whom such petition is presented may require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated (the several amounts to be determined by the board), as said petitioners or their grantors would have been required to pay to such district as assessments had such lands been included in such district at the time the same was originally formed. [Id. sec. 71.]

Art. 5080. **Board may order petition rejected.**—The board of directors, if they deem it not for the best interest of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interest of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition, or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district, as they will be after the change thereof as aforesaid is made; and, for that purpose, the board may cause a survey to be made of such portion of such boundaries as is deemed necessary. [Id. sec. 72.]

Art. 5081. **Resolution of board on petition.**—If any person interested in said district, or the proposed change of its boundaries, shall show cause as aforesaid why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deem it for the best interest of the district that the boundaries thereof be so changed as to include therein the lands mentioned in petition, or some part thereof, the board shall adopt a resolution thereof to that effect. The resolution shall describe the exterior

boundaries of the lands, which the board are of the opinion should be included within the boundaries of the district when changed. [Id. sec. 73.]

Art. 5082. **Board to fix time for election.**—Upon the adoption of the resolution mentioned in the last preceding article, the board shall order that an election be held within said district to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which election shall be held, and cause notice thereof to be given in public. Such notice shall be given in public, and such election shall be held and conducted, the returns thereof shall be made, and canvassed, and the result of the election ascertained, and declared, and all things pertaining thereto conducted in the manner prescribed by this law in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall contain the words, "For change of boundary," or, "Against change of boundary," or the equivalent thereto. The notice of the election shall describe the proposed change of the boundaries in such manner and terms that it can be readily traced. [Id. sec. 74.]

Art. 5083. **Result of election.**—If, at such election, a majority of all the votes cast at said election shall be against such changes in the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in that matter. But, if a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and, for that purpose, the board may cause a survey of such portions thereof to be made as the board may deem necessary. [Id. sec. 75.]

Art. 5084. **Change of boundaries to be recorded.**—Upon a change of the boundaries of the district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any of the lands of the district; and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are included in the district by the change of boundaries, as aforesaid, had been included therein at the original organization of the district. [Id. sec. 76.]

Art. 5085. **Minutes of board admissible in evidence, when.**—Upon the filing of the copies of the order as in the last preceding article mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes or a certified copy thereof, shall be admissible in evidence with the same effect as the petition. [Id. sec. 77.]

Art. 5086. **Guardian, etc., may swear to petition, etc.**—A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of the state, and who as such guardian, executor, or administrator is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and swear to the petition mentioned in this law, and may show cause as in this why the boundaries of the district may not be changed. [Id. sec. 78.]

Art. 5087. **In case of inclusion of land.**—In case of the inclusion of any land within any district by proceedings under this law, the board of directors must, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall thereafter be elected by each division. For the purposes of election, the board of directors must establish a convenient number of election precincts in said districts.

and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary. [Id. sec. 79.]

WATER REGULATIONS.

Art. 5088. **Water declared a public use.**—The use of all water required for the irrigation of the land of any district formed under the provisions of this law, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this law, is hereby declared to be a public use, subject to the regulation and control of the state, in the manner as may be prescribed by law. [Id. sec. 17.]

Art. 5089. **Water apportioned ratably.**—It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; provided, that any land owner may assign the rights to the whole or any portion of the waters so apportioned to him. [Id. sec. 18.]

Art. 5090. **Water to be apportioned.**—In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion in a just and equitable proportion a certain amount of said water to different localities as they may in their judgment think best to the interest of all parties concerned and with due regard to the legal and equitable rights of all. Said water commissioners shall consist of the chairman of the board of directors of each of the districts affected. [Id. sec. 51.]

Art. 5091. **Navigation not to be impaired.**—Navigation shall never in any wise be impaired by the operation of this law, nor shall any vested interest in or to any mining water rights or ditches, or in or to any water, or water rights, or reservoirs, or dams now used by the owners or possessors thereof in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used, directly or indirectly, in carrying on or promoting the mining industry, ever be affected by or taken under its provisions, save and except the rights of way may be acquired over the same. [Id. sec. 52.]

Art. 5092. **Right of condemnation.**—Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal, or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public uses. [Id. sec. 53.]

GENERAL PROVISIONS.

Art. 5093. **Title to vest in district.**—The legal title to all property acquired under the provisions of this law shall immediately, and by operation of law, vest in such irrigation district, and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this law. The board of directors is authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided. [Id. sec. 29.]

Art. 5094. **Bids for work to be advertised.**—After adopting the plan for such canal or canals, storage reservoir and works as in this law provided for, the board of directors shall give notice by publication thereof, not less than twenty days in one newspaper published in each of the counties composing

the district (providing a newspaper is published therein), and in such other newspapers as they may deem advisable, calling for bids for the construction of such work, or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which at the time and place appointed shall be opened in public; and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder; or they may reject any and all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use for twenty-five per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer, and be approved by the board. [Id. sec. 42.]

Art. 5095. **All claims to be allowed by board before payment.**—No claim shall be paid by the treasurer until allowed by the board; and only upon a warrant signed by the president and countersigned by the secretary; provided, that the board may draw from time to time from the construction fund and deposit in the county treasury of the county where the office of the board is situated any sum in excess of the sum of twenty-five thousand dollars. The county treasurer of said county is hereby authorized and required to receive and receipt for the same and place the same to the credit of said district, and he shall be responsible upon his official bond for the safe-keeping and disbursement of the same as in this law provided. He shall pay out the same, or any portion thereof, to the treasurer of the district only, and only upon the order of the board signed by the president and attested by the secretary. The said county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said reports shall be verified and filed with the secretary of the board. The district treasurer shall also report to the board in writing on the first Monday in each month the amount of money in the district treasury, the amount of receipts for the month preceding, and the amounts and items of expenditures, and said report shall be verified and filed with the secretary of the board. [Id. sec. 43.]

Art. 5096. **Funds out of which payments are to be made.**—The cost and expenses of purchasing and acquiring property and constructing the work and improvements herein provided for shall be wholly paid out of the construction funds. For the purpose of defraying the expenses of the organization of the district and of the care, operation, management, repair and improvement of such portions of said canal and works as are completed and in use, including salaries of officers and employes, the board may in lieu (either in part or in whole) of levying assessments as herein provided for, fix rates of tolls and charges and collect the same from all persons using said canal for irrigation and other purposes. [Id. sec. 44.]

Art. 5097. **Right of way.**—The board of directors shall have the power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the right of way of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected to its former state as near as may be, or in a sufficient manner

not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings and grant the privileges aforesaid; and, if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to the taking of land. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. [Id. sec. 45.]

Art. 5098. **No debts to be incurred, except.**—The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this law; and any debt or liability incurred [in excess of such] express provisions shall be and remain absolutely void, except that for the purposes of organization or for any of the purposes in this law the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of two thousand dollars, and may cause warrants of the district to issue therefor bearing interest at six per cent per annum. [Id. sec. 50.]

Art. 5099. **Funds.**—The following funds are created and established to which the moneys properly belonging shall be apportioned, to wit: Bond fund, construction fund, general fund. [Id. sec. 54.]

Art. 5100. **Officers liable on bonds.**—For any wilful violation of any express duty provided for in this chapter on the part of any officer herein named, he shall be liable upon his official bond, and subject to removal from office by proceedings brought in the district court of the county wherein the office of the board of directors of the district is located, by any assessment-payer of the district. [Id. sec. 55.]

Art. 5101. **Board may lease water for mechanical purposes, when.**—Whenever any irrigation district organized under the provisions of this law, in the development of its works as by law provided, may have opportunity, without increased expenditure, to utilize the water by it owned or controlled for mechanical purposes, not inconsistent with the provisions of this law, the board of directors may lease the same as in this law herein provided. [Id. sec. 83.]

Art. 5102. **Such lease to be let to highest bidder.**—Whenever the board of directors may desire to lease the use of water as hereinbefore stated, they shall pass a resolution of intention to so lease the same. Immediately thereafter, the secretary shall cause notice of such intention to be given by publication in one newspaper published in each county in which lands of the district are situated, for at least twenty days (provided a newspaper is published therein, otherwise in any newspaper the board of directors may select), and if the board thinks proper, such other newspaper as may be deemed advisable, calling for bids for the leasing of said water for the purposes hereinbefore mentioned. Said notice shall state that the board will receive sealed proposals therefor, that the lease will be let to the highest responsible bidder, stating the time and place of opening said proposals. [Id. sec. 84.]

Art. 5103. **Bids to be opened in public.**—At the time and place appointed, the board shall proceed to open the polls in public. As soon thereafter as may be convenient, the board shall let said lease in portions, or as a whole, to the highest responsible bidder, or they may reject any and all bids and re-advertise for the proposals for the same. [Id. sec. 85.]

Art. 5104. **Rentals.**—The rental accruing upon said lease may vary from year to year as shall be specified in said lease. All moneys collected, as in this law provided, shall be paid into the treasury and be apportioned to such funds as may be deemed advisable. [Id. sec. 86.]

Art. 5105. **Board to have power to lease for five years.**—The board shall have power, as in this law provided, to execute a lease for any period not exceeding five years. If at any time the rental shall not be paid on the days mentioned in said lease, the amount of such rental shall then be doubled, and, if not paid within ninety days thereafter, the lease shall be forfeited to said district, together with any and all works constructed, owned, used or controlled by said lessee. [Id. sec. 87.]

Art. 5106. **Lessee to execute bond.**—Upon the execution of any lease, as in this law provided, the board may require the lessee to execute a bond for the faithful performance of the covenants of said lease or give such other evidence of good faith as in their judgment may be necessary. [Id. sec. 88.]

Art. 5107. **Other laws unrepealed.**—Nothing in this chapter shall be construed as repealing or in any wise modifying the provisions of any other law relating to the subject of irrigation, except in so far as they may be inconsistent herewith; and provided, that nothing contained in this chapter shall be so construed as to make its provisions applicable to water secured or provided by wells. [Id. sec. 92.]

TITLE 74.

JAILS.

Article.	Article.
Commissioners' court to provide 5108	Commissioners to see that jails are prop- erly kept 5111 United States marshal may use jails. 5112 Marshal liable for fees. 5113
Sheriff keeper, etc. 5109	
Shall be constructed to enable executions to be had in death penalty. 5110	

Article 5108. [3132] **Commissioners' court shall provide jails, etc.**—The commissioners' courts of the several counties shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair. [Act July 22, 1876, p. 57, sec. 4.]

Art. 5109. [3133] **Sheriffs the keepers of jails, etc.**—Each sheriff is the keeper of the jail of his county; and he shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. [Act Aug. 26, 1856; May 12, 1846. P. D. 2504, 5718. C. C. P. 49.]

Art. 5110. [3134] **Jails shall be so constructed that the penalty of death may be executed within the walls thereof.**—All jails hereafter erected shall be so constructed that the penalty of death may be conveniently executed within the walls thereof; and it shall be the duty of the commissioners' court of any county having a jail already erected, if the same is not so constructed as that the penalty of death can be conveniently executed therein, to have the construction of the same so altered as that the penalty of death may be conveniently executed within its walls, if practicable to do so without too great an expense to the county.

Art. 5111. [3135] **Duty of commissioners' courts to see that jails are properly kept.**—It shall be the duty of the commissioners' courts of the counties to see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners therein confined.

Art. 5112. [3136] **United States marshal may use jail.**—Sheriffs and jailers shall receive into the jails of their respective counties such prisoners as may be delivered or tendered to them by any United States marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law. [Act Aug. 30, 1856, p. 88, sec. 1. P. D. 4796.]

Art. 5113. [3137] **Marshal liable for jail fees.**—In the cases provided for in the preceding article the marshal, by whose authority such prisoners are received and kept, shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases. [Id. sec. 2. P. D. 4797.]

TITLE 75.

JURIES IN CIVIL CASES.

<p>Chapter.</p> <ol style="list-style-type: none"> 1. Jurors, Their Qualifications and Exemptions. 2. Jury Commissioners for the District Court, Their Appointment, Qualifications, etc. 3. Jury Commissioners for the County Court, Their Appointment, Qualifications, etc. 4. Proceedings of the Jury Commissioners in the Selection of Jurors. 5. Selection of Jurors in Counties With Cities of Certain Population. 	<p>Chapter.</p> <ol style="list-style-type: none"> 6. Selected Jurors, How Summoned, etc. 7. Juries for the Week, How Made Up. 8. Jury Trials, Authorized, When and How. 9. Challenges. 10. Formation of the Jury for the Trial of a Cause. 11. Oath of Jurors in Civil Cases. 12. Juries, How Constituted and Their Verdicts. 13. Compensation of Jurors of the District and County Court in Civil Cases.
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CHAPTER ONE.

JURORS—THEIR QUALIFICATIONS AND EXEMPTIONS.

<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="text-align: right; font-weight: normal;">Article.</td> </tr> <tr> <td>Who are competent jurors.....</td> <td style="text-align: right;">5114</td> </tr> <tr> <td>Who are disqualified in general.....</td> <td style="text-align: right;">5115</td> </tr> <tr> <td>Exceptions to certain cases.....</td> <td style="text-align: right;">5116</td> </tr> <tr> <td>Jurors disqualified in certain cases.....</td> <td style="text-align: right;">5117</td> </tr> <tr> <td>Who are liable to jury service.....</td> <td style="text-align: right;">5118</td> </tr> </table>		Article.	Who are competent jurors.....	5114	Who are disqualified in general.....	5115	Exceptions to certain cases.....	5116	Jurors disqualified in certain cases.....	5117	Who are liable to jury service.....	5118	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="text-align: right; font-weight: normal;">Article.</td> </tr> <tr> <td>Where several fire companies in one town.....</td> <td style="text-align: right;">5119</td> </tr> <tr> <td>List of members selected to be delivered to the clerk.....</td> <td style="text-align: right;">5120</td> </tr> <tr> <td>Filing of legal exemptions.....</td> <td style="text-align: right;">5121</td> </tr> </table>		Article.	Where several fire companies in one town.....	5119	List of members selected to be delivered to the clerk.....	5120	Filing of legal exemptions.....	5121
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Filing of legal exemptions.....	5121																				

Article 5114. [3138] **Who are competent jurors.**—All male persons over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter.

Art. 5115. [3139] **Who are disqualified, in general.**—No person shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the state and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.

2. He must be a freeholder within the state, or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write, except in cases provided for in the succeeding article.

5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

6. He must not have been convicted of felony.

7. He must not be under indictment or other legal accusation of theft or of any felony. [Acts Aug. 1, 1876, p. 78. Const., art. 16, p. 19. Amended Act 1903, 1 S. S., p. 15, sec. 1. Amended Act 1905, p. 207.]

Art. 5116. [3140] **Exception in certain cases.**—Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write can not be found within the county, the court may dispense with the exception provided for in the fourth subdivision of the preceding article; and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. [Id. secs. 16, 26.]

Art. 5117. [3141] **Jurors disqualified to try a particular case.**—The following persons shall be disqualified to serve as jurors in any particular case:

1. Any witness in the case.
2. Any person interested, directly or indirectly, in the subject matter of the suit.
3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.
4. Any person who has a bias or prejudice in favor of or against either of the parties.
5. Any person who has sat as a petit juror in a former trial of the same case, or of another case involving the same questions of fact. [Act Aug. 1. 1876, p. 83, sec. 26.]

Art. 5118. [3142] **Who are liable to jury service; who are exempt from jury service.**—All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty years of age.
2. All civil officers of this state and of the United States.
3. All overseers of roads.
4. All ministers of the gospel engaged in the active discharge of their ministerial duties.
5. All physicians and attorneys engaged in actual practice.
6. All publishers of newspapers, school masters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw mills.
7. All presidents, vice-presidents, conductors and engineers of railroad companies when engaged in the regular and actual discharge of the duties of their respective positions.
8. Any person who has acted as jury commissioner within the preceding twelve months.
9. All members of the national guard of this state under the provisions of the title, "Militia."
10. In cities and towns having a population of fifteen hundred or more inhabitants, according to the last preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants. [Id. p. 78, sec. 25.]

Art. 5119. [3143] **Where several fire companies in one town, etc.**—If there be more than one organized fire company in such town or city, the whole number of exemptions provided for under subdivision 10 of the preceding article shall be equally divided between such companies. [Id. sec. 2.]

Art. 5120. [3144] **List of members selected to be delivered to the clerk.**—Before such exemption of any member of such fire company shall be made available, the members so to be exempted shall be selected by their respective companies; and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company. [Id. sec. 2.]

Art. 5121. **Filing of exemptions.**—All persons summoned as jurors in any court of this state, who are exempt by statutory law from jury service, may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person. [Act 1907, p. 216.]

CHAPTER TWO.

JURY COMMISSIONERS FOR THE DISTRICT COURT, APPOINTMENT, QUALIFICATION, ETC.

	Article.		Article.
Jury commissioners	5122	Failure of commissioners, etc.....	5127
Shall serve but once in each year.....	5123	To be instructed in their duties.....	5128
Commissioners to be notified.....	5124	How they shall be kept.....	5129
Failing to attend shall be fined.....	5125	Clerk to furnish stationery, etc.....	5130
Oath of jury commissioners.....	5126	To have use of assessment rolls.....	5131

Article 5122. [3145] **Jury commissioners, appointment and qualifications.**

—The district court of each county shall, at each term thereof, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the following qualifications:

1. They shall be intelligent citizens of the county and able to read and write.
2. They shall be qualified jurors and freeholders of the county.
3. They shall be residents of different portions of the county.
4. They shall have no suit in such court which requires the intervention of a jury. [Act Aug. 1, 1876, p. 79, sec. 4.]

Art. 5123. [3146] **Shall serve but once in a year.**—The same person shall not act as a jury commissioner more than once in the same year. [Id. sec. 5.]

Art. 5124. [3147] **Commissioners to be notified of their appointment, etc.**—The court shall cause the persons appointed as jury commissioners to be notified by the sheriff or any constable of such appointment, and of the time and place when and where they are to appear before the court. [Id. sec. 4.]

Art. 5125. [3148] **Failing to attend, shall be fined.**—If any person appointed a jury commissioner shall fail or refuse to attend and perform the duties required without a reasonable excuse, he shall be fined by the court in any sum not less than twenty-five dollars nor more than one hundred dollars. [Id. sec. 5.]

Art. 5126. [3149] **Oath of jury commissioners.**—When the persons appointed appear before the court, the judge shall administer to them the following oath: “You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a jurymen concerning the merits of any case to be tried at the next term of this court until after said cause may be tried or continued, or the jury discharged.” [Id. sec. 4.]

Art. 5127. [3150] **Failure of commissioners, etc.**—If from any cause the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected be set aside, or the jury lists returned into court be lost or destroyed, the court shall forthwith proceed to supply a sufficient number of jurors for the term under the provisions of this title, and may, when it may be deemed necessary, appoint commissioners for that purpose. [Id. sec. 13.]

Art. 5128. [3151] **To be instructed as to their duties.**—When the jury commissioners have been sworn and organized, the judge shall proceed to instruct them as to their duties, and shall designate to them for what weeks they shall select petit jurors, and the number of jurors selected for each week. Each person serving as jury commissioner shall receive as compensation therefor the same amount as now provided by law for the services of petit and grand jurors; provided, that no such commissioner shall receive any pay as such for any day for which he has received, or is entitled to re-

ceive, compensation as petit or grand juror. [Id. sec. 6. Amended Act 1909, p. 178.]

Art. 5129. [3152] **To be kept free from intrusion and not to separate.**—The jury commissioners shall retire in charge of the sheriff or constable to some suitable apartment, and shall be kept free from the intrusion of any person during their session, and shall not separate, without leave of the court, until they have completed the duties required of them. [Id.]

Art. 5130. [3153] **Clerk to furnish stationery and list of exempt persons, etc.**—It shall be the duty of the clerk to furnish the jury commissioners with all necessary stationery, and also with a list of the names of all persons appearing, from the records of the court, to be exempt or disqualified from serving on the petit jury at each term. He shall also deliver to them the envelope mentioned in article 5148, and shall take their receipt therefor, showing whether or not such seal remained unbroken. [Id. secs. 4, 6. Act Aug. 18, 1876, p. 170, sec. 6. Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 5131. [3154] **To have use of assessment roll.**—It shall be the duty of the county clerk, or other legal custodian of the same, to furnish the jury commissioners with the last assessment roll of the county. [Act Aug. 1, 1876, p. 79, sec. 6.]

CHAPTER THREE.

JURY COMMISSIONERS FOR THE COUNTY COURT, APPOINTMENT, QUALIFICATIONS, ETC.

Jury commissioners, appointment and qualification, powers and duties.....	Article. 5132	Oath	Article. 5133
		To select jurors for six months.....	5134

Article 5132. [3155] **Jury commissioners for the county court, appointment and qualification, powers and duties.**—The county court shall, at its first term after the thirty-first day of December and the thirtieth day of June of each year, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the same qualifications as jury commissioners for the district court, and the same proceedings shall be had in the county court by the officers thereof and by the commissioners for procuring jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this chapter. [Id. p. 81, sec. 15. Acts of 1884, p. 27.]

Art. 5133. [3156] **Oath.**—The oath to be administered to the jury commissioners for the county courts shall be as follows: "You do solemnly swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a jurymen whom you believe to be unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported to the court; that you will not, directly or indirectly, communicate with any one selected by you as a jurymen concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of." [Acts of 1876, p. 79, sec. 4.]

Art. 5134. [3157] **To select jurors for six months.**—Such commissioners shall select jurors for all the terms of the county court to be holden within six months next after the adjournment of the first term of said court after

the said thirty-first day of December and the thirtieth day of June of each year, and the county judge shall designate the number of jurors to be so selected for each term and week. [Acts of 1884, p. 28.]

CHAPTER FOUR.

PROCEEDINGS OF THE JURY COMMISSIONERS IN THE SELECTION OF JURORS.

Article.	Article.
Selection of jurors, how made.....	5135
Drawing of jurors, how conducted.....	5136
Venire facias, special, how drawn.....	5137
List to be certified, sealed, etc.....	5138
To be delivered to the judge.....	5139
And by him to the clerk.....	5139
Clerk and deputies to be sworn.....	5140
Same	5141
District court commissioners to make out jury list for county court.....	5142
Which shall be delivered to the county clerk	5143
And by him to the commissioners for his court	5144
Persons included in such lists not to be selected as jurors in county court.....	5145
County court commissioners to make out lists for district court.....	5146
To be delivered to district clerk.....	5147
And by him to commissioners for his court	5148
Persons included in such lists exempt....	5149
Lists of jurors to be destroyed.....	5150

Article 5135. [3158] **Selection of jurors, how made.**—The jury commissioners shall select from the citizens of the different portions of the county, liable to serve as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names can not be seen. [Acts of 1876, p. 79, sec. 7.]

Art. 5136. [3159] **Drawing of jurors, how conducted.**—The names of the persons so written and folded shall be deposited in a box, and, after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required. [Id.]

Art. 5137. **Special venire list.**—The jury commissioners shall furthermore select one man for every one hundred of population in any county, or a greater or less number if so directed by the court, and these shall constitute a special venire list, from which shall be drawn the names of those who shall answer summons to the special venire facias, after the petit jurors for the term have been drawn on any venire one time during such term, and the drawing of the veniremen from the special venire list shall be done in the same manner as prescribed for other jurors, and no citizen who has served as a petit juror for one week during any term of court shall, during said term, be compelled to answer summons to more than one special venire facias; nor shall any citizen be compelled to answer summons to a special venire facias more than twice during any one term of court; provided, that the provisions of this chapter shall not apply in counties having a population of less than two thousand inhabitants. [Acts 1905, p. 17.]

Art. 5138. [3160] **Lists to be certified, sealed up and indorsed.**—The several lists of names drawn, as provided in the preceding article, shall be certified under the hands of the commissioners to be the lists drawn by them for the said several weeks, and shall be sealed up in separate envelopes, indorsed, “List of petit jurors for the _____ week of the _____ term of the _____ court of _____ county,” [filling the blanks]. [Id.]

Art. 5139. [3161] **To be delivered to the judge.**—The commissioners shall write their names across the seals of the envelopes and deliver them to the judge. [Id.]

Art. 5139a. [3162] **And by him to the clerk.**—The judge shall deliver such envelopes to the clerk, or to one of his deputies in open court, and the court may instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week. [Id. sec. 8.]

Art. 5140. [3163] **Clerk and deputies to be sworn.**—The judge shall at the same time administer to the clerk and each of his deputies an oath, in substance as follows: “You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened until the time prescribed by law; that you will not, directly nor indirectly, converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term,” if in the district court; or if in the county court, “within the next six months.” [Id. secs. 8, 28.]

Art. 5141. [3164] **Same.**—If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath. [Id. sec. 8.]

Art. 5142. [3165] **District court commissioners to make out jury lists for county court.**—The jury commissioners for the district court shall, in addition to the other duties required of them, make out for the use of the jury commissioners of the county court a complete list of the names of all the persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county, and shall deliver the same to the district judge in open court. [Act Aug. 18, 1876, p. 170, sec. 1.]

Art. 5143. [3166] **Which shall be delivered to the county clerk.**—The district judge shall, without delay, deliver said envelope to the county clerk or one of his deputies, and, at the time of delivery, administer to said clerk or deputy, as the case may be, the following oath: “You do solemnly swear that you will, to the best of your ability, safely keep this envelope, and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county.” [Id. sec. 2.]

Art. 5144. [3167] **And by him to the commissioners for his court.**—At the first term of the county court thereafter held, at which jury commissioners are appointed, it shall be the duty of the county clerk to deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not. [Id. sec. 3.]

Art. 5145. [3168] **Persons included in such lists not to be selected as jurors in county court.**—After the jury commissioners, appointed by said county court, shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners. [Id. sec. 4.]

Art. 5146. [3169] **County court commissioners to make out lists for district court.**—The jury commissioners of the county court shall, in addition to

the other duties required of them, make out for the use of the jury commissioners of the district court a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write their names across the seal and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court. [Act Aug. 18, 1876, p. 170, sec. 5.]

Art. 5147. [3170] **To be delivered to the district clerk.**—The county judge shall, without delay, deliver said envelope to the district clerk, or one of his deputies, and, at the time of delivery, administer to said clerk, or his deputy, as the case may be, the following oath: “You do solemnly swear that you will, to the best of your ability, safely keep this envelope, and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county.” [Id. sec. 6.]

Art. 5148. [3171] **And by him to the commissioners for his court.**—At the first term of the district court thereafter held, it shall be the duty of the clerk to deliver said envelope to the jury commissioners or one of them appointed at said term, and to take a receipt therefor, and said receipt shall state whether the seal of said envelope be broken or not. [Id. sec. 7.]

Art. 5149. [3172] **Persons included in such lists not to be selected as jurors in district court.**—After the jury commissioners appointed at said term of the district court shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners. [Id. sec. 8.]

Art. 5150. [3173] **Lists of jurors to be destroyed.**—It shall be the duty of the jury commissioners, in both the district and county courts, before leaving the apartment in which they shall have selected jurors, to destroy said list of names; and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists. [Id. sec. 9.]

CHAPTER FIVE.

SELECTION OF JURORS IN COUNTIES WITH CITIES OF CERTAIN POPULATION.

Article.	Article.
Selection of jurors in cities of 20,000.....5151	List delivered to judge, etc.....5155
Names to be written on cards.....5152	Judge shall deliver to clerk.....5156
Cards placed in wheel; description of wheel.....5153	Disposition of cards containing names of jurors drawn.....5157
Jurors drawn by whom, when, how, etc..5154	Proceedings in case of loss of wheel, etc.5158

Article 5151. **Selection of jurors in certain counties.**—Between the first and fifteenth day of August every two years, in all counties in this state having a city or cities therein containing a population aggregating twenty thousand or more people, as shown by the last United States census, the tax collector, or one of his deputies, and the tax assessor, or one of his deputies, and the sheriff, or one of his deputies, and the county clerk, or one of his deputies, and the district clerk, or one of his deputies, shall meet at the court house of the county and select from the qualified jurors of the county the jurors for service in the district and county courts in such county for the ensuing two years, in the manner hereinafter provided. [Acts 1907, p. 269, sec. 1.]

Art. 5152. **Names written on cards.**—The aforesaid officers shall write the names of all men who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the postoffice address of the jurors so selected. [Id. sec. 2.]

Art. 5153. **Cards placed in wheel, etc.**—The cards containing the aforesaid names shall be deposited in a circular, hollow wheel, to be provided for such purpose by the commissioners' court of the county; and said wheel shall be made of iron or steel and shall be so constructed as to freely revolve on its axle; and said wheel shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel can not be opened unless both of said locks are unlocked at the time the wheel is opened; and the keys to such locks shall be kept, one by the sheriff and the other by the district clerk; and the sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time specified in this chapter, and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same can not be tampered with. [Id. sec. 3.]

Art. 5154. **Jurors drawn by whom, when and how.**—Not less than ten days prior to the first day of a term of court, the clerk of the district court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term or terms, for which jurors will be required; and, at such draw-

ing, no person other than those above named shall be permitted to be present; and the officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. [Id. sec. 4.]

Art. 5155. **List to be certified, etc.**—The several lists of names drawn, as provided in the preceding article, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names of jurors were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, “List of petit jurors for the week of the term of the court of county,” (filling in the blanks properly) and the clerk, or his deputy doing the drawing, shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office, in case of the death of such judge before such delivery can be made to him. [Id. sec. 5.]

Art. 5156. **Judges to deliver list to clerk.**—The judge shall deliver such envelopes to the clerk, or to one of his deputies, and shall in his discretion instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week, and the judge shall, at the same time, administer to the clerk and to each of his deputies an oath in substance as follows: “You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of the men appearing on any of the jury lists, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in this court at its next term. So help you God.” [Id. sec. 6.]

Art. 5157. **Jurors drawn; disposition of cards.**—When the names are drawn, as provided in article [5154], the cards containing such names shall be sealed in separate envelopes, indorsed, “Cards containing the names of jurors for the week of the term of the court of county,” (filling in the blanks properly); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impanelled for such week; and, after such jurors so impanelled have served four or more days, the envelopes containing the cards bearing the names of the jurors for that week shall then be opened by the clerk, or his deputy, and those cards bearing the names of men who have not been impanelled and who have not served as many as four days, shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the men serving as many as four days shall be put in a box provided for that purpose for the use of the officers mentioned in article 5151, who shall next select the jurors for the wheel. [Id. sec. 7.]

Art. 5158. **Loss of wheel, etc.**—If, for any reason, the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately, in accordance with articles 5151, 5152 and 5153; and the judge of the court desiring jurors for a regular or special term of his court may have the same selected in accordance with chapters 2, 3 and 4 of this title, in the event that such new wheel can not be furnished in time to comply with the provisions of this chapter. [Id. sec. 8.]

CHAPTER SIX.

SELECTED JURORS—HOW SUMMONED, ETC.

Article.	Article.
Clerk to make out jury lists and deliver to sheriff.....	Notice to jurors, how served.....
5159	5162
Sheriff to notify jurors.....	Time of service.....
5160	5163
Special venire, how summoned.....	Sheriff's return.....
5161	5164

Article 5159. [3174] **Clerk to make out jury lists and deliver to sheriff.**—Within not more than thirty days and not less than ten days prior to each term of the court, it shall be the duty of the clerk of the district and county courts, respectively, to open the list of jurors selected for such term, and to make out a copy of the same, duly certified under his hand and the seal of his office, and deliver the same to the sheriff. Where the judge has directed that the jurors for any week shall be summoned for some other day than Monday, the clerk shall note such order for the information of the sheriff. [Act Aug. 18, 1876, p. 171, sec. 10.]

Art. 5160. [3175] **Sheriff to notify jurors.**—On the receipt of such lists it shall be the duty of the sheriff immediately to notify the several persons named in such lists to be in attendance on the court on the day and week for which they were respectively drawn to serve as jurors for said week. [Id.]

Art. 5161. **Special venire, how summoned.**—Whenever district court shall have convened, and a day shall have been set for the trial of the different capital cases which call for a special venire, the men whose names may have been drawn to answer summons to the venire facias in the different capital cases shall be immediately notified by the sheriff to be in attendance on the court on the day and week for which they were respectively drawn to serve as veniremen for said day and week; and such notice shall be given at least one day prior to the time when such duty is to be performed, exclusive of the day of service. [Acts 1905, p. 17.]

Art. 5162. [3176] **Notice to jurors, how served.**—Such notice may be orally delivered by the sheriff to the juror in person, or in case such juror can not be found, then a written memorandum thereof, signed by the sheriff officially, may be left at the juror's place of residence, with some member of his family over sixteen years of age. [Acts Aug. 18, 1876, p. 171.]

Art. 5163. [3177] **Time of service.**—Such notice shall be served at least three days prior to the first day of the term of court, exclusive of the day of service.

Art. 5164. [3178] **Sheriff's return.**—The sheriff executing such summons shall return the lists on the first day of the term of the court at which such jurors are to serve, with a certificate thereon of the date and manner of service upon each juror; and, if any of said jurors have not been summoned, he shall also state the diligence used to summon them, and the reason why they have not been summoned. [Id.]

CHAPTER SEVEN.

JURIES FOR THE WEEK—HOW MADE UP.

	Article.		Article.
Jurors for the week, how selected.....	5165	May be adjourned.....	5169
If not selected on day appointed may be		Oath to be administered to the sheriff	
subsequently done.....	5166	when jurors not selected are to be sum-	
If practicable, to be of jurors selected		moned by him.....	5170
by jury commissioners.....	5167	Court may hear excuses of jurors.....	5171
May be filled up, how.....	5168	Defaulting jurors to be fined.....	5172

Article 5165. [3179] **Jurors for the week, how selected.**—On Monday of each week of the court for which a jury shall be summoned, and for which there may be jury trials, or where the jury trials for the week have been set for some other day, then on such day the court shall select thirty qualified jurors, or a greater or less number, in its discretion, to serve as jurors for the week. [Id.]

Art. 5166. [3180] **If not selected on day appointed, may be subsequently done.**—Should such selection from any cause not be made on the day appointed, it may be made on any subsequent day.

Art. 5167. [3181] **If practicable, to be of jurors selected by jury commissioners.**—Such jurors shall be selected from the names included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the court.

Art. 5168. [3182] **May be filled up, how.**—If the requisite number of such jurors be not in attendance at any time, the court shall direct the sheriff to summon a sufficient number of qualified persons to make up the requisite number of jurors. [Act Aug. 1, 1876, p. 80, sec. 11.]

Art. 5169. [3183] **May be adjourned.**—The court may adjourn the whole number of jurors for the week, or any part thereof, to any subsequent day of the term, but jurors shall not be paid for the time they may so stand adjourned. [Id. p. 83, sec. 24.]

Art. 5170. [3184] **Oath to be administered to the sheriff when jurors not selected are to be summoned by him.**—Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: “You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any jurymen touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any jurymen in his opinion in any case which may be tried by him. So help you God.” [Id. sec. 12.]

Art. 5171. [3185] **Court may hear excuses of jurors.**—The court may hear any reasonable excuse of a juror, supported by oath or affirmation, and may either release him entirely or until some other day of the term.

Art. 5172. [3186] **Defaulting juror to be fined.**—Should any juror who has been lawfully notified fail to be in attendance on the court in obedience to such notice without some reasonable excuse, to be judged of by the court, he shall be fined in any sum not less than ten nor more than one hundred dollars. [Id. sec. 10.]

CHAPTER EIGHT.

JURY TRIALS—AUTHORIZED WHEN AND HOW.

Article.	Article.
Right of trial by jury to remain inviolate, subject, etc.....	Oath of inability to make deposit.....
5173	5181
Must be demanded and jury fee paid.....	Cases heretofore entered on jury docket excepted
5174	5182
Time of demand.....	Order of court.....
5175	5183
Same	Clerk to keep jury docket.....
5176	5184
Rules for justices' courts elsewhere pre- scribed	Jury trial day to be fixed.....
5177	5185
Call of docket for demands for jury trials	Application for jury not to be withdrawn, unless, etc.....
5178	5186
Same as to appearance docket.....	When application withdrawn, court may permit jury fee withdrawn also.....
5179	5187
Jury fee.....	5180

Article 5173. [3187] **Right of trial by jury to remain inviolate, subject, etc.**—The right of trial by jury shall remain inviolate, subject to the following rules and regulations. [Const., art. 1, sec. 15.]

Art. 5174. [3188] **Must be demanded and jury fee be paid.**—No jury trial shall be had in any civil suit, unless an application therefor be made in open court and a jury fee be deposited, or an affidavit be made of inability to make such deposit, as hereinafter prescribed. [Const., art. 5, secs. 10, 17.]

Art. 5175. [3189] **Time of demand.**—Any party to a civil suit in the district or county court desiring to have the same tried by jury, shall make application therefor in open court on the first day of the term of the court at which the suit is to be tried, unless the same be an appearance case, in which event the application shall be made on default day. [Act Aug. 18, 1876, p. 171, sec. 11.]

Art. 5176. [3190] **Same.**—Should any court be in session when the preceding article shall go into effect, the application for a jury trial in any cause pending therein, and which is to be tried at such term, may be made at any time before the case is called for trial.

Art. 5177. [3191] **Rules for justices' courts elsewhere prescribed.**—The manner of applying for a jury trial in the justices' courts, and the proceedings thereon, are prescribed in the title relating to justices' courts.

Art. 5178. [3192] **Call of docket for demands for jury trial.**—On the first day of each term of the court, the court shall call over the docket, except appearance cases, and shall note thereon in each case whether or not a jury trial is applied for therein, and by which party.

Art. 5179. [3193] **Same as to appearance docket.**—On the call of the appearance docket at each term of the court, the court shall in like manner note in each appearance case whether or not a jury trial is applied for, and by whom.

Art. 5180. [3194] **Jury fee.**—The party applying for a jury trial in the district or county court shall, on the same day, deposit with the clerk, to the use of the county, a jury fee of five dollars if in the district court, and of three dollars if in the county court. [Act Aug. 18, 1876, p. 171, sec. 11.]

Art. 5181. [3195] **Oath of inability to make jury fee deposit.**—The deposit mentioned in the preceding article shall not be required when the party shall, within the time limited for making such deposit, file with the clerk an affidavit in writing signed by him, to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose. [Act Aug. 1, 1876, p. 81, sec. 18.]

Art. 5182. [3196] **Cases heretofore entered on jury trial docket, excepted.**—The preceding article shall not apply to cases which have been heretofore properly entered on the jury trial docket in accordance with former laws.

Art. 5183. [3197] **Order of court.**—Upon a compliance with the foregoing provisions, the court shall order the clerk to enter the suit on the jury docket. [Act. Aug. 18, 1876, p. 171, sec. 11.]

Art. 5184. [3198] **Clerk to keep jury docket.**—It shall be the duty of the clerks of the district and county courts each to keep a docket, to be styled, "The Jury Docket," in which shall be entered in their order the cases in which jury trials have been ordered by the court. [Id.]

Art. 5185. [3199] **Jury trial day to be fixed.**—The court shall, by an order entered on the minutes, designate any day during the term for the taking up of the jury docket and the trial of causes thereon; and such order may be revoked or changed at discretion. [Act Aug. 1, 1876, p. 81, sec. 14.]

Art. 5186. [3200] **Application for jury not to be withdrawn, unless, etc.**—When one party has applied for a jury trial, as herein provided, he shall not be permitted to withdraw such application without the consent of the parties adversely interested.

Art. 5187. [3201] **When application withdrawn, court may permit jury fee to be withdrawn also.**—When a party who has applied for a jury trial has been permitted under the preceding article to withdraw such application, the court may, in its discretion, by an order permit him to withdraw also his jury fee deposit.

CHAPTER NINE.

CHALLENGES.

Article.	Article.
Challenge to the array of jurors.....5188	On trial of challenge for cause, evidence to be heard.....5195
Not allowed, when.....5189	Certain questions not permissible.....5196
Challenge to array must be in writing..5190	Peremptory challenge.....5197
Court shall decide at once.....5191	Number in district court.....5198
Proceedings when challenge to array is sustained.....5192	In the county court.....5199
Challenge to a particular juror.....5193	Challenge to a particular juror made orally.....5200
Challenge for cause.....5194	Court to decide challenges promptly....5201

Article 5188. [3202] **Challenge to the array of jurors.**—Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array of jurors upon making it to appear that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. [Id. p. 83, sec. 25.]

Art. 5189. [3203] **Not allowed, when.**—No challenge to the array shall be entertained where the jurors have been selected by jury commissioners under the provisions of this title.

Art. 5190. [3204] **Challenge to array must be in writing, etc.**—All challenges to the array must be in writing, setting forth distinctly the grounds of such challenge, and must be supported by the affidavit of the party, or some other credible person.

Art. 5191. [3205] **Court shall decide at once.**—When a challenge to the array is made, the court shall hear evidence, and shall decide without delay whether the challenge shall be sustained or not.

Art. 5192. [3206] **Proceedings when challenge to the array is sustained.**—If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors to be summoned in their

stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case. [Id.]

Art. 5193. [3207] **Challenge to a particular juror.**—A challenge to an individual juror is either—

1. A challenge for cause; or
2. A peremptory challenge.

Art. 5194. [3208] **Challenge for cause.**—A challenge for cause is an objection made to a particular juror, alleging some fact which, under the provisions of the first chapter of this title, disqualifies him to serve as a juror in any case, or in the particular case, or which, in the opinion of the court, renders him an unfit person to sit on the jury.

Art. 5195. [3209] **On trial of challenge for cause, evidence to be heard.**—Upon a challenge for cause the examination shall not be confined to the answers of the juror, but other evidence may be heard in support of or against the challenge.

Art. 5196. [3210] **Juror not to be asked certain questions.**—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by indictment or other legal accusation with theft or any felony.

Art. 5197. [3211] **Peremptory challenge.**—A peremptory challenge is made to a juror without assigning any reason therefor.

Art. 5198. [3212] **Number of peremptory challenges in district court.**—Each party to civil suit in the district court shall be entitled to six peremptory challenges. [Act. Dec. 1, 1871, p. 61, sec. 6.]

Art. 5199. [3213] **In the county court.**—Each party to civil suit in the county court shall be entitled to three peremptory challenges. [Act. Aug. 1, 1878, p. 83, sec. 27.]

Art. 5200. [3214] **Challenge to a particular juror made orally, etc.**—Challenges for cause and peremptory challenges to a particular juror may be made orally on the formation of a jury to try the case, as provided in articles 5206 and 5208.

Art. 5201. [3215] **Court to decide challenges promptly.**—The court shall decide without delay any challenge to a particular juror; and when the challenge is sustained the juror shall be discharged from further attendance or from the particular case, as the case may be.

CHAPTER TEN.

FORMATION OF THE JURY FOR THE TRIAL OF A CAUSE.

	Article.		Article.
Clerks to provide a box.....	5202	When number of jurors reduced, etc.....	5207
Shall place names of jurors in the box..	5203	Peremptory challenge to be made.....	5208
Shall draw and record names of jurors..	5204	Lists to be returned to clerk, and jury	
Where names of full jury not found in		to be called.....	5209
the box.....	5205	Where jury is left incomplete.....	5210
Challenge for cause to be made, when..	5206	Jurors to be sworn.....	5211

Article 5202. [3216] **Clerks to provide a box for use in drawing jurors.**—The clerks of the district and county courts shall each provide and keep a box with a sliding lid, suitable for the purposes indicated in this chapter. [Act Aug. 1, 1876, p. 82, sec. 21.]

Art. 5203. [3217] **Shall place names of jurors in the box.**—When the parties to a civil cause, which is to be tried by a jury, have announced themselves ready for trial and no challenge to the array is made, the clerk shall write the names of all the regular panel for the week on separate slips of paper, as near the same size and appearance as may be, and shall place such slips in the box provided for in the preceding article, and shall mix them well. [Id.]

Art. 5204. [3218] **Shall draw and record names.**—The clerk shall draw from the box, in the presence of the court, the names, one by one, of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be if there be a less number in the box; and shall write the names as they are drawn upon several slips of paper and deliver one slip to each of the parties to the suit or their attorneys. [Id. sec. 22.]

Art. 5205. [3219] **Where names of full jury not found in the box.**—Where there are not so many names drawn from the box as twelve, if in the district court, or six, if in the county court, the court shall direct the sheriff to summon such number of qualified persons as it may deem necessary to complete the panel; and the names of the persons so summoned shall be placed in the box and drawn and entered upon slips as provided in the preceding article.

Art. 5206. [3220] **Challenge for cause to be made, when.**—When as many as twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the slips containing their names are delivered to the parties, if either party desire to challenge any juror for cause, such challenge shall now be made.

Art. 5207. [3221] **When number reduced, etc., by challenge for cause.**—If the number of jurors be reduced by challenge for cause to less than twelve in the district court, or six in the county court, the court shall order other jurors to be drawn or summoned, as the case may be, and entered upon the slips in place of those who have been set aside for cause.

Art. 5208. [3222] **Peremptory challenge to be made, when.**—When a juror has been challenged and set aside for cause, his name shall be erased from the slips furnished the parties; and, if there be remaining on such slips not subject to challenge for cause, twelve names, if in the district court, or six names, if in the county court, the parties shall proceed to make their peremptory challenges if they desire to make any. [Id.]

Art. 5209. [3223] **Lists to be returned to the clerk and jury to be called.**—When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the clerk; and the clerk shall, if the case be in the district court, call off the first twelve names on the slips that have not been erased, and if the case be in the county court, the clerk

shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case.

Art. 5210. [3224] **When jury is left incomplete.**—When, by peremptory challenges, the jury is left incomplete, the court shall direct such number of other jurors to be drawn or summoned, as the case may be, as the court may consider sufficient to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance.

Art. 5211. [3225] **Jurors to be sworn.**—When the jury has been selected, such of them as have not been previously sworn for the trial of civil causes, shall be sworn by the court, or under its direction.

CHAPTER ELEVEN.

OATH OF JURORS IN CIVIL CASES.

	Article.		Article.
Jury shall be sworn.....	5212	Form of oath.....	5213

Article 5212. [3226] **Jury shall be sworn.**—Before the trial of any civil cause, the jurors shall be sworn by the court, or under its direction. [Act Feb. 13, 1858, sec. 10. P. D. 3984.]

Art. 5213. [3227] **Form of oath.**—The form of the oath to be administered to jurors in civil cases shall be in substance as follows: “You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.” [Id. P. D. 3984.]

CHAPTER TWELVE.

JURIES—HOW CONSTITUTED, AND THEIR VERDICTS.

	Article.		Article.
Jury in district court.....	5214	|	Jury in the county and justices' courts..
Death or inability of jurors in district court pending trial.....	5215		The entire jury must concur in the verdict
			5217

Article 5214. [3228] **Jury in district court.**—The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number. [Const., art. 5, sec. 13.]

Art. 5215. [3229] **Death or inability of jurors in district court pending trial.**—Where, pending the trial of any case in the district court, one or more of the jurors, not exceeding three, may die or be disabled from sitting, the remainder of the jury shall have power to render the verdict; but in such case the verdict shall be signed by every remaining member of the jury. [Id. Act Aug. 1, 1876, p. 82, sec. 19.]

Art. 5216. [3230] **Jury in county and justices' courts.**—The jury in the county courts and in courts of justices of the peace shall be composed of six men. [Id. sec. 27.]

Art. 5217. [3231] **Entire jury must concur in verdict.**—No verdict shall be rendered in any cause except upon the concurrence of all the members of the jury trying the same. [Id. sec. 19. Const., art. 5, sec. 13.]

CHAPTER THIRTEEN.

COMPENSATION OF JURORS OF THE DISTRICT AND COUNTY COURTS IN CIVIL CASES.

	Article.		Article.
Pay of jurors.....	5218	|	Jury scrip receivable at par for all county taxes
Certificate of jury service.....	5219		5220

Article 5218. [3232] **Pay of jurors.**—Each juror in civil cases shall receive two dollars for each day and for each fraction of a day he may serve or attend as such juror. [Act Nov. 12, 1866, p. 201, sec. 1.]

Art. 5219. [3233] **Certificate of jury service.**—The amount due to jurors shall be paid by the county treasurer upon the certificate of the clerk of the district or county court in which such service was rendered; which certificate shall state the service, when rendered, by whom rendered, and the amount due therefor. [Id.]

Art. 5220. [3234] **Jury scrip receivable at par for all county taxes.**—All certificates issued under the provisions of the foregoing article shall, without further action by any authority, be receivable at par for all county taxes. The same may be transferred by delivery, and no rule or regulation made by the commissioners' court or other officer or officers of a county shall defeat the right of the holder of any such certificate to pay county taxes therewith. [Id.]

TITLE 76.

JUVENILES, THE STATE INSTITUTION FOR THE TRAINING OF.

	Article.		Article.
Board of trustees.....	5221	Salaries, etc., how paid.....	5227
Meetings of boards.....	5222	Who to be confirmed.....	5228
Board shall prescribe rules for govern- ment of institution; biennial report to governor	5223	Same	5229
Shall provide instruction, etc.....	5224	Leave of probation.....	5230
The superintendent.....	5225	Duration of sentence.....	5231
Powers and duties of the superintendent.....	5226	Inmates to be divided into classes.....	5232
		Clothing, books, etc., to be furnished....	5233
		Escapes	5234

Article 5221. [2941] **Board of trustees.**—The institution known as the house of correction and reformatory, located at Gatesville, Texas, shall be named and known as, “The State Institution for the Training of Juveniles,” the government of which shall be vested in a board of trustees composed of five members, three of whom shall be men and two women. The board of trustees shall be appointed by the governor, with the advice and consent of the senate. Each member of said board shall hold office for a term of two years, or until his or her successor is appointed and qualified, unless peremptorily removed by the governor. Each of said trustees shall serve without compensation, but shall receive his or her actual traveling and other necessary expenses, while engaged in the performance of official duties, for which the comptroller shall issue his warrant on the account verified by said trustee and approved by the chairman of said board. The chairman of said board shall not approve any expense account of any trustee until same has been allowed by not less than a quorum of said board. [Acts 1909, p. 103.]

Art. 5222. [2942] **Meetings of board.**—Said board shall elect one of their members as chairman and one as secretary of said board. Said board shall hold two regular meetings at the said institution each year, and shall hold such other special meeting, at such times and places as are deemed necessary, when requested so to do in writing by at least three members of said board. [Id.]

Art. 5223. [2943] **Board shall prescribe rules for government of institution; biennial report to governor.**—It shall be the duty of said board of trustees to take control and supervision of said state institution for the training of juveniles. Said board shall formulate by-laws, rules and regulations for the economic and efficient government and control of said institution, having in view the objects to be accomplished by this law. Said by-laws, rules and regulations, when adopted by said board and approved by the governor, shall become binding and of obligatory force upon the trustees, superintendent, subordinate officers, employes and inmates of said institution; and it shall be the duty of the trustees to see to the enforcement thereof, and also of the provisions of this law in relation to said institution. Said by-laws, rules and regulations may be amended from time to time as said board may deem necessary. Said board shall make a biennial report to the governor, setting forth in full all facts pertaining to the institution, including receipts and disbursements, the number and salaries of all employes, the number of inmates received and discharged and detained, and estimates for appropriations required for two years of maintenance. [Id.]

Art. 5224. [2944] **Shall provide instruction, etc.**—Said board of trustees and the superintendent shall provide for, establish and maintain suitable instruction and training of the inmates of said institution. Said instruction and training shall include elementary common school, as well as industrial, manual, or agricultural branches, or either or all, as may be deemed desirable by said board and superintendent. Each inmate shall be given definite instruction

and training in some useful occupation. Each inmate shall given such moral training and discipline as he is capable of receiving. The prime end to be sought by said board is to reform, educate and train the children committed to the institution into industrious and useful law-abiding citizens, strengthen their self control and place them in a moral environment that will build character, inculcate correct ideas of civic virtue and responsibility. [Id.]

Art. 5225. [2945] **The superintendent.**—The said board of trustees shall appoint a superintendent of said institution, with the approval of the governor, who shall hold his office for a term of two years. Such superintendent shall, before entering upon the duties of his office, take oath of office prescribed by the constitution, and shall give a bond in a sum of ten thousand dollars, payable to the governor, or his successors in office, conditioned for the faithful performance of the duties of his office. Said bond shall be signed by said superintendent and two good and sufficient sureties, or by himself and some solvent surety company authorized to transact business in Texas, and shall be approved by the governor. Said bond when approved by the governor shall be deposited in the office of the secretary of state. [Id.]

Art. 5226. [2946] **Powers and duties of the superintendent.**—The superintendent, shall have control and management of said instituton, subject to the provisions of this law and the by-laws, rules and regulations adopted from time to time by the said board of trustees and approved by the governor; provided, that said board shall never adopt any by-laws, rules and regulations in conflict with the provisions of this law.

1. It shall be the duty of the superintendent to keep a register in which he shall enter the name, date of reception, previous moral character, habits and education, so far as can be ascertained, the discharge, death, escape, commutation of time, parolment and punishment of each inmate or person admitted to said institution.

2. It shall be the duty of the superintendent to execute and carry out all the written orders and instructions which he shall receive from time to time from the board of trustees or the governor.

3. He shall reside at the institution and be held responsible for the strict enforcement of the provisions of this law, as well as the said by-laws, rules and regulations and written orders of the board of trustees.

4. He shall see that the buildings are kept in good and sanitary order, and that the premises are kept in a healthful and cleanly condition.

5. He shall keep, or cause to be kept, the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which the same is expended. Said books shall at all times be open for the inspection of the board of trustees or the governor, or to any one appointed by the governor to inspect or audit said books.

6. Said superintendent shall make a semi-annual report in duplicate, in writing under oath, showing in detail the fiscal operations of the institution since the last report, giving under appropriate heads the total number of inmates in the institution at the date of the report, the number received since last report, the number discharged since last report, the number paroled, or otherwise discharged, with such recommendations for the improvement of management or other matter as he may deem proper. One of said reports shall be presented to the board of trustees at their regular semi-annual meeting, and the other shall be forwarded to the governor.

7. It shall be the duty of the superintendent to make supplemental reports in writing to the board of trustees on any matter within the scope of his duties, when requested to do so by the president of the board of trustees.

8. The superintendent shall, under the directions of the president of said board, sell all products raised and all articles manufactured at said institution not required for use in said institution, and shall keep an accurate account of all such funds, and shall not expend any of such funds, except upon the

orders of said board approved by the governor. A correct account shall be kept of all such expenditures. [Id.]

Art. 5227. [2947] **Salaries, etc., how paid.**—The superintendent shall employ such subordinate officers, teachers and employes as may be deemed requisite and necessary to the conduct, administration and maintenance of said institution, up to the standards of efficiency and utility essential to accomplish the best results. The salaries and compensation of said superintendent and all subordinate officers, teachers and employes aforesaid, shall be fixed by the board of trustees, and the same shall be prescribed by said board in the form of an itemized account sworn to by said superintendent; and the same shall be paid monthly on the comptroller's warrants based upon such sworn itemized account aforesaid. Said account shall contain the name and address of each person and the amount due and for what service; provided, that no account for salary shall be presented by said superintendent until the same has been fixed by said board as herein provided. [Id.]

Art. 5228. [2948] **Who to be confined.**—There shall be confined in said state institution for the training of juveniles all persons now confined in the house of correction and reformation at Gatesville at the time this law takes effect, and all persons who may be sentenced to a term in said house of correction and reformatory before this law takes effect; and their present status and terms of sentence shall not be affected by this law; also all juveniles committed to said institution by any court within this state acting under authority of law. Provided, that all inmates sentenced to the house of correction and reformatory shall only be required to serve out their unexpired terms in said institution, at which time they shall be released. [Id.]

Art. 5229. [2949] **Same.**—Hereafter all male persons under the age of sixteen years, who shall be convicted of a felony in any court within this state, whose term of confinement shall not exceed five years, shall be confined in the state institution for the training of juveniles; provided, that the white inmates shall be kept, worked and educated entirely separate from the inmates of other races, and shall be kept apart in all respects. [Id.]

Art. 5230. [2950] **Leave of probation.**—The said board of trustees shall establish and maintain in the said institution a system of grading and promotion on a basis of moral, intellectual and industrial advancement of the inmate. When the superintendent is satisfied that any inmate has acquired sufficient self control, moral habits and industrial efficiency, and suitable employment under a responsible, sober and moral person can be found for said inmate, he shall, with the approval of the chairman of said board of trustees, grant said inmate a "leave of probation." The said inmate may then be sent out on parole, with the condition that the person paroled and his employer send a report at the end of each month thereafter for a period of six months to said superintendent, stating fully the habits and demeanor of said paroled persons. If each of said reports be favorable, the superintendent, with the approval of the chairman of said board, shall grant a full release in writing to said paroled person, and his term of commitment shall thereby terminate, with none of his legal right impaired or abrogated. In the event any of said monthly reports shall be deemed unfavorable, or for any reason be not sent as herein provided, and the said superintendent should for any reason become convinced before the expiration of said six months that the said paroled person should be returned to the state institution for further training or discipline, the said paroled person shall, in that event, forfeit his leave of probation, and shall be returned to said institution. If his said employers shall fail or refuse to return said paroled person to said institution, it shall be the duty of any sheriff, or other peace officer, upon notice from said superintendent, to take said paroled person into custody, under the same conditions as if said person were an escaped inmate, and

return him to said institution in the manner prescribed in the law for apprehending and returning escaped inmates. No inmate of the said state institution for the training of juveniles, who shall be committed to said institution for the training of juveniles, who shall be committed to said institution by a judgment of a district court after the conviction upon a charge of felony, shall be granted a leave of probation, paroled or released before the expiration of the term for which he shall be so committed, unless same be recommended by the superintendent and a majority of the board of trustees, and is approved by the governor. In case any such inmate convicted of a felony is granted a leave on probation, as herein provided, the procedure shall be the same as herein provided for inmates not confined on a judgment of felony; provided, that the governor shall, at all times, have full power to grant an unconditional pardon to or commute the sentence of any inmate committed to said institution. [Id.]

Art. 5231. [2951] **Duration of sentence.**—No inmate shall be sentenced or committed to the said institution for the training of juveniles for a shorter period than two years, nor for a longer period than five years. No inmate shall remain or be detained in said institution, after he has reached the age of twenty-one years. [Id.]

Art. 5232. **Inmates to be divided into classes.**—The superintendent shall divide the inmates into such classes and shall house, feed and train such inmates in such manner as may be provided by said board of trustees in the by-laws, rules and regulations adopted by said board as provided by this law. [Id.]

Art. 5233. [2952] **Clothing, books, etc., to be furnished.**—All inmates of said institution shall be provided with shelter, wholesome food and suitable clothing, books and other material necessary for their training, at the expense of the state, except as otherwise provided by law. [Id.]

Art. 5234. [2953] **Escapes.**—If any inmate confined in the state institution for the training of juveniles shall escape therefrom, or if on leave of probation, and is ordered returned and the employer of said paroled person fails or refuses to return him as provided in this law, it shall be the duty of the superintendent of said institution, or any officer or employe of same, or the sheriff or any peace officer, to apprehend and detain him. It shall be lawful for any person to apprehend such escaped inmate and forthwith deliver him to any sheriff or peace officer; any such escaped inmate shall be returned to said institution by any sheriff, peace or probation officer; and the costs of his return shall be paid by the county from which said inmate was sentenced; provided, if any inmate committed to said institution on a charge of felony shall escape, the costs of his return to said institution shall be paid by the state, on warrant of comptroller, based upon a sworn itemized statement of said expense account, approved by said superintendent. All laws and parts of laws in conflict with the provisions of this law be and the same are hereby repealed. [Id.]

TITLE 77.

LABOR.

Chapter.	Chapter.
1. Bureau of Labor Statistics.	2. Labor Organizations.

CHAPTER ONE.

BUREAU OF LABOR STATISTICS.

	Article.		Article.
Bureau to be under commissioner of labor	5235	Reports and returns, how long preserved	5240
Oath; bond; office at the capitol; governor may remove	5236	Commissioner may enter factories, mills, etc., in the performance of his duty	5241
Biennial report of commissioner; his general duties	5237	Commissioner to report to county and district attorneys certain violations of this chapter	5242
Biennial report to contain what; to be printed and distributed	5238	Salary and compensation of commissioner and other employes	5243
Commissioner may issue process, administer oaths, etc.	5239		

Article 5235. **Bureau to be under commissioner of labor.**—The bureau of labor statistics shall be under the charge and control of a commissioner of labor statistics. [Act 1909, p. 59, sec. 1.]

Art. 5236. **Oath; bond; office to be at capitol; governor may remove.**—The commissioner of labor statistics shall be appointed by the governor, whose term of office shall begin on the first day of February of every odd-numbered year, and shall continue for two years and until his successor is appointed and qualified. The commissioner may be removed for cause by the governor, record thereof being made in his office, and any vacancy shall be filled in the same manner as the original appointment. Said commissioner shall give bond in the sum of two thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of his office, and he shall also take the oath of office prescribed by the constitution. He shall have an office in the capitol building; and, except as hereinafter provided, he shall safely keep and shall deliver to his successors all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office. [Id sec. 2.]

Art. 5237. **Biennial report of commissioner; his general duties.**—The commissioner shall collect, assort, systematize and present in biennial reports to the governor, statistical details relating to all departments of labor in Texas, and especially as affecting or bearing upon the commercial, social, educational and sanitary conditions of the employes and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of children and of women and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state, and of the persons employed therein. Said commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interests therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry, and he shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the state, together with such information as may tend

to increase the employment of labor and the products of such employment in Texas. [Id. sec 3.]

Art. 5238. **Report to contain what; to be printed and distributed.**—In each biennial report, the commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and to persons employed therein, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employes living in rented houses, with the average rental paid, the value of property owned by such employes, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical; but such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as is or may be provided by law. [Id. sec. 4.]

Art. 5239. **Commissioner may issue process, administer oaths, etc.**—The commissioner shall have power to issue subpoenas, administer oaths and take testimony in all matters related to the duties herein required of the said bureau, but such testimony must be taken in the vicinity of the residence or office of the person testifying. [Id. sec 5.]

Art. 5240. **Reports and return, how long preserved.**—No report or return made to the bureau under the provisions of this chapter, or the penal laws of this state, and no schedule, record or document gathered or returned by its officers or employes shall be destroyed within two years of the collection or receipt thereof; but, at the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the commissioner to be of no further value, shall be destroyed, provided that the permission of the governor shall first be obtained for such destruction. [Id. sec. 8.]

Art. 5241. **Commissioner may enter factories, mills, etc.**—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employes from danger and the sanitary conditions in and around such building or place, of all of which the said commissioner shall make and return the bureau of labor statistics a true and detailed record in writing. [Id. sec. 9.]

Art. 5242. **Commissioner to report violations to district and county attorneys.**—If the commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employes, or the preservation of health, or in any other way affecting the employes, he shall at once give written notice of the facts to the county or district attorney of the county in which the law has been violated, or of some other county, if any there be, having jurisdiction of the offense, and the county or district attorney to whom such notice has been given shall immediately institute the proper proceedings against the guilty person. [Id. sec. 10.]

Art. 5243. **Salary and compensation of commissioner and employes.**—The commissioner shall receive a salary of two thousand dollars per annum, payable monthly; and he shall also be allowed a clerk and a factory inspector at a

salary of one hundred dollars per month each, and such other employes and assistants as the legislature shall at any time in the future authorize. The commissioner shall also be allowed all necessary postage, stationery and other expenses of a similar character necessary to the transaction of the business of the bureau, and the said salaries and expenses shall be paid as in the case of other state officers. In addition to his salary, the commissioner and any employe of the said bureau shall be allowed his actual and necessary traveling expenses, while in the performance of his duties under this chapter, but the total of the expenses of the said bureau, outside of the salaries paid, shall not exceed one thousand five hundred dollars per annum. [Id. sec. 12.]

CHAPTER TWO.

LABOR ORGANIZATIONS.

Right to organize.....	Article. 5244	Not to apply to what organizations.....	Article. 5246
Other rights and privileges.....	5245		

Article 5244. **Right to organize.**—It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. [Acts 1899, p. 262, sec. 1.]

Art. 5245. **Other rights and privileges.**—It shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. [Id. sec. 2.]

Art. 5246. **Not to apply to what organizations.**—The foregoing articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade; provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employes; provided, further, that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. [Id. sec. 3.]

TITLE 78.

LANDS—ACQUISITION FOR PUBLIC USE.

Chapter. 1. Authorizing Governor to Purchase Lands for State Use.	}	Chapter. 2. United States Government Au- thorized to Obtain Title to Lands in Texas.
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CHAPTER ONE.

AUTHORIZING GOVERNOR TO PURCHASE LANDS FOR STATE USE.

Governor to purchase, when.....	Article. 5247	Costs	Article. 5250
Land may be condemned.....	5248	Right of way for penitentiary railroad.....	5251
Land, how condemned.....	5249		

Article 5247. **Governor to purchase, when.**—When any land shall be required by the state for the use of the state penitentiaries, or any other of the public institutions of the state, or for any other public use, the governor of the state is hereby authorized and empowered to purchase said land, or the right to the use thereof, for the purpose for which the same may be required. [Act 1903, 1 S. S., p. 10, sec. 1.]

Art. 5248. **Land may be condemned.**—Should the governor in the exercise of the power conferred by the preceding article not be able to agree with the owners of any land which, or the use of which, may be needed for any public use as aforesaid, upon the compensation to be paid therefor, such land may be condemned for such public use in the name of the state of Texas as herein provided. [Id. sec. 2.]

Art. 5249. **Land, how condemned.**—Whenever it may become necessary to condemn any land for any public use as hereinbefore provided, upon the direction of the governor, proceedings shall be instituted against the owner of said land, and of any interest therein, by the attorney general of the state, or under his direction, by the proper district or county attorney, who shall file with the county judge of the county in which said land, or a part thereof, may be situated, a statement showing the land sought to be condemned, and the purpose thereof, the names and places or residences of the owners of the same, or if not known, stating that fact. Upon the filing of the statement provided for in this article, it shall be the duty of said county judge, in term time or vacation, to appoint three disinterested freeholders of said county who are qualified voters therein, as special commissioners to assess the damages to accrue to the owner of said property by reason of such condemnation. Said special commissioners shall, in their proceedings, be governed and controlled by the laws in force in reference to the condemnation of right of way for railroad companies and the assessment of damages therefor; and the proceedings shall be in accordance with such law, the State of Texas occupying the position of the railroad company; and all laws in reference to the applications for the condemnation for right of way of railroad companies, including the measure of damages, the service of notice, actual or constructive, on the owners of said property, the right of appeal and the like not inconsistent with the other provisions of this chapter, shall apply to the application by the state and these proceedings. But it is expressly provided that in case of such condemnation of property, should the award of damages be deemed by the governor excessive, the same shall not be paid; but in such case the state shall pay the costs of such proceedings, and no further action shall be taken thereunder. [Id. sec. 3.]

Art. 5250. **Costs.**—Should the damages awarded be less than had been offered by the state to said property owner, the costs of such proceedings shall be taxed against said owner, and may be collected by execution as in other cases or paid by the state and deducted from the amount to be paid said owner upon such award. Should the amount awarded be greater than the amount offered by the state, such costs shall be paid by the state. [Id. sec. 4.]

Art. 5251. **Right of way for penitentiary railroad.**—Should any land be purchased by the governor, or condemned as herein provided, for the purpose of obtaining right of way for any railroad or train road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this state, or any of the farms of this state, and used in connection with the state penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs herein provided for in case of condemnation, or the price of said property if purchased by voluntary purchase by the governor as herein provided. [Id. sec. 5.]

CHAPTER TWO.

UNITED STATES GOVERNMENT AUTHORIZED TO OBTAIN TITLE TO LANDS IN TEXAS.

Article.		Article.	
5252	May purchase lands for certain purposes.	5266	Decision to be in writing, etc.
5253	May institute condemnation proceedings.	5267	County judge to fill vacancies.
5254	Statement to be made in writing.	5268	Commissioners may adjudge costs.
5255	Commissioners to be appointed.	5269	May be tried in county court, when.
5256	Commissioners to be sworn.	5270	County judge to enforce decree, etc.
5257	Hearing, when and how.	5271	The United States to deposit money with commissioners.
5258	Notice to be given.	5272	United States liable for costs, when.
5259	Notice to be served.	5273	Acquisition of public lands by the United States.
5260	Return of notice.	5274	Titles to the United States to be recorded.
5261	In case of minor, lunatic, etc.	5275	Governor may cede jurisdiction.
5262	In case of non-resident.	5276	State to retain concurrent jurisdiction.
5263	Hearing postponed for perfection of service.	5277	United States land to be exempt from taxation.
5264	May compel attendance of witnesses.		
5265	Compensation of commissioners.		

Article 5252. **May purchase for certain purposes.**—The United States government may purchase, acquire, hold, own, occupy and possess such lands within the limits of the state of Texas as they shall deem expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post-offices, and all other needful public buildings and for the purpose of erecting and constructing dams, locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas; and the consent of the legislature of the state of Texas is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. [Act 1095, p. 101, sec. 1.]

Art. 5253. **May institute condemnation proceedings.**—All purchases or acquisitions of land by the United States government for any of the purposes mentioned in the preceding article shall be effected by the proper agent of the United States government with the owners thereof, or by any judicial pro-

ceedings as hereinafter prescribed; that is to say, whenever the owners of the land desired by the United States government can not agree with the United States authorities thereto authorized upon the price thereto, then the said United States government is authorized, under the direction of the proper law officer to institute proceedings against the owner of said land, or the owners of any interest therein in the county court of the county in which the land may be situated, and in the same manner as is provided for the condemnation for right of way for railroads, except as hereinafter indicated. [Id. sec. 2.]

Art. 5254. **Statement to be made in writing.**—If the said government of the United States and said owner can not agree upon the value of said land, or the damages thereto, caused by the erection or construction of the improvement required, it shall be the duty of the United States officer having the matter in hand and authorized thereto by the United States government, to state in writing the real estate and property condemned, the object for which it is to be condemned, the name of the owner thereof and his residence, if known, and file same with the county judge of the county in which said property, or a part thereof, is situated; provided, if the owner resides in either county in which the land is situated, the same shall be filed in the county of his residence. [Id. sec. 3.]

Art. 5255. **Commissioners to be appointed.**—Upon the filing of said statement, the county judge shall, either in term time or in vacation, appoint three disinterested freeholders of said county as commissioners to assess said damages, giving preference to those that may be agreed upon between the United States government and the owner of said property. [Id. sec. 4.]

Art. 5256. **Commissioners to be sworn.**—The said commissioners shall be sworn by the county judge, or by any officer qualified to administer oaths, to assess said damages impartially and according to law. [Id. sec. 5.]

Art. 5257. **Hearing, when and how.**—Said commissioners shall, without delay, appoint a time and place for the hearing of said parties; and the day appointed shall be the earliest day practicable, and the place, the nearest practicable place to the said property, or at the said county seat of the county in which the property is situated, or a part thereof. [Id. sec. 6.]

Art. 5258. **Notice to be given.**—The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing. [Id. sec. 7.]

Art. 5259. **Notice to be served.**—Said notice shall be served upon said parties at least five days before the date of the hearing, exclusive of the day of service, and shall be served by the delivery of the copy of same to the party, his agent or attorney, and may be served by any person competent to testify. [Id. sec. 8.]

Art. 5260. **Return of notice.**—The party making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for said hearing, with his statement thereon, showing how and when same was served. [Id. sec. 9.]

Art. 5261. **In case of minor, lunatic, etc.**—When the property in controversy is the property of a deceased person, or minor, or of a person of unsound mind, and such estate has a legal representative, or such minor, or person of unsound mind, has a guardian, the notice shall be served upon such a legal representative or guardian. But if said minor, or person of unsound mind, have no legal representative, then said commissioner shall appoint a guardian ad litem, as courts of record are authorized to do, to protect the interest of said minor, or person of unsound mind, and shall allow reasonable compensation therefor, which shall be allowed and taxed as part of the costs of the proceedings. [Id. sec. 10.]

Art. 5262. **In case of non-resident.**—When the property in controversy belongs to a non-resident of this state, or to an unknown person, or to persons whose residence is unknown, or who secrete themselves so that service can not be had on them, then such notice may be served upon said owner by publication in the same manner as provided in article 1874 of the Revised Statutes of the state of Texas; provided, that said cause may be tried by said commission on any day not less than four weeks after the publication of said notice. [Id. sec. 11.]

Art. 5263. **Hearing postponed, for what.**—When the service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time or place to which said hearing has been adjourned, proceed to hear said parties, but if upon the day set for the hearing, the serving of notice has not been perfected, the hearing shall be postponed from time to time until the service has been perfected. [Id. sec. 12.]

Art. 5264. **Witnesses.**—Said commissioners, for the purpose mentioned in this law, shall have the power to compel the attendance of witnesses and the giving of testimony and to administer oath and punish for contempt as fully as is provided by law for the district or county court. The rules for damages to be applied in these cases shall be the same as those prescribed for ascertaining the amount of damages in condemnation for right of way proceedings for railroads. [Id. sec. 13.]

Art. 5265. **Compensation.**—The compensation for the commissioners shall be the same as is prescribed by law for commissioners in performing similar services in condemnation of right of way for railroads. [Id. sec. 14.]

Art. 5266. **Decision in writing.**—When the said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date same, sign it, and file it with the county judge without delay. [Id. sec. 15.]

Art. 5267. **Vacancies, how filled.**—If said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge shall appoint another commissioner or commissioners to fill the place or places left vacant by those who are unable or fail to act. [Id. sec. 16.]

Art. 5268. **Commissioners may adjudge cost.**—The commissioners may adjudge the cost against either party, and shall in their finding state against whom it is adjudged and the amount thereof, and file same with their award with the county judge. [Id. sec. 17.]

Art. 5269. **Tried in county court, when.**—If either party be dissatisfied with the decision of such commissioners, he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his opposition, and thereupon the case shall be set down on the county court docket for trial as other civil cases. [Id. sec. 18.]

Art. 5270. **County judge to enforce decree, etc.**—If no objections are filed to such decision within the time prescribed in preceding article, the said judge shall have same entered on the record and shall make necessary provisions to enforce the same. [Id. sec. 19.]

Art. 5271. **United States to deposit money, etc.**—Upon the filing of the award of the commissioners with the county judge, stating the amount of damages and costs which the United States government shall pay before taking possession of the property, if the United States government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the said United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. [Id. sec. 20.]

Art. 5272. **United States liable for costs, when.**—If, after the filing of the objections to the award, the case shall be retried in the county court and a judgment rendered against the United States for a larger sum than that found in the award of the commissioners, then the said United States government shall be responsible for the costs of said appeal, as well as for the amount adjudged against it in said county court. [Id. sec. 21.]

Art. 5273. [372] [331] **Acquisition of public land by United States.**—When the state of Texas may be the owner of any land desired by the United States for any of the purposes specified in this title, the governor may sell such land to the United States, and upon payment of the purchase money therefor into the treasury of the state, it shall be the duty of the commissioner of the general land office, upon the order of the governor, to issue a patent to the United States for such land in like manner as other patents are issued. [Act Feb. 13, 1854, p. 102. P. D. 5450.]

Art. 5274. [373] [332] **Title to United States to be recorded.**—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands lying within this state in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situate, or in the county to which such county may be attached for such purpose; and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. [Act April 4, 1871, p. 19. P. D. 7693, 4th ed., 7810.]

Art. 5275. [374] [333] **Governor may cede jurisdiction.**—Whenever the United States shall acquire any lands in this state, for any of the purposes and in either of the modes authorized by this title, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, it shall be lawful for the governor of this state, in the name and behalf of the state, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing, or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. [Act Dec. 19, 1849, p. 12. P. D. 5449.]

Art. 5276. [375] [334] **State to retain concurrent jurisdiction.**—No such cession of jurisdiction shall ever be made, except upon the express condition that the state of Texas shall retain concurrent jurisdiction with the United States over the lands so ceded, and every portion thereof, so far, that all process, civil or criminal, issuing under the authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officers of this state, upon any person amenable to the same, within the limits of the land so ceded, in like manner and with like effect as if no such cession had taken place; and such condition shall be always inserted in any instrument of cession under the provisions of this title. [Id.]

Art. 5277. [376] [335] **U. S. lands to be exempt from taxation.**—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this state so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title, and not otherwise. [Act April 4, 1871, p. 19. Id.]

TITLE 79.

LANDS—PUBLIC.

Chapter.

1. Public Domain.
2. General Land Office.
3. Land Districts.
4. County and District Surveyors.
5. Surveys and Field-notes.
6. Patents.

Chapter.

7. Land Reservations.
8. General Provisions.
9. Sale of Public Free School and Asylum Lands.
10. Lease of Public Free School and Asylum Lands.

CHAPTER ONE.

PUBLIC DOMAIN.

Article. Vacant public lands belong to free school fund 5278	Article. All public lands retained at annexation.. 5279
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Article 5278. **Vacant public lands belong to free school fund.**—All vacant public lands, not otherwise appropriated, except islands, lakes and bays within tidewater limits along the Gulf of Mexico, are the property of the public free school fund. [Acts 1900, p. 29.]

Art. 5279. [4036] **All public lands retained at annexation.**—In order that the provisions of law relating to the public domain may be brought together, the following extract is made from the joint resolutions of the congress of the United States for annexing Texas to the United States, approved March 1, 1845, and the joint resolution of the congress of the republic of Texas assenting to the same, approved June 23, 1845, viz.:

“Said state, when admitted into the Union, * * * shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said state may direct,” etc. [Joint res., June 23, 1845.]

CHAPTER TWO.

GENERAL LAND OFFICE.

General land office established.....	Article. 5280	To be copyrighted, etc.....	Article. 5287
Commissioner to have custody of books, etc.	5281	To be sold at fifty cents, etc.....	5288
Night watchman	5282	Proceeds to be placed where.....	5289
Papers to be kept in land office, how.....	5283	No transfers to be withdrawn.....	5290
Examination of papers permitted, when.....	5284	Receipts for papers, etc.....	5291
Clerk to examine papers after, etc.....	5285	Commissioner and sureties responsible, when	5292
Lithographic copies of maps to be printed, etc.	5286		

Article 5280. [4042] **General land office established.**—There shall be one general land office, which shall be at the seat of government, where all land titles which have emanated, or may hereafter emanate, from the state shall be registered, except those titles the registration of which may be prohibited by the constitution. [Id. sec. 1.]

Art. 5281. [4043] **Commissioner to have custody of books, etc.**—The commissioner of the general land office shall have custody and control of all books, records, papers, maps and original documents appertaining to the titles of lands heretofore and by the provisions of the law denominated archives; and the said books, records, papers and original documents shall become and be deemed the books and papers of said office. [Act Dec. 14, 1837. P. D. 71.]

Art. 5282. [4044] **Night watchman.**—The said commissioner is hereby authorized to employ one night watchman for the general land office, at a salary not to exceed six hundred dollars per annum. [Act Feb. 27, 1875, p. 56.]

Art. 5283. **Papers to be kept in land office, how.**—The commissioner shall adopt the most convenient method for filing papers and preserving the records of said office; provided, a list of all papers in each file shall be retained in the file, and each employe who files a paper shall place his own name thereon. [Act 1909, p. 429, sec. 6.]

Art. 5284. [4045] **Examination of papers, etc., permitted, when.**—Any one desirous to examine any of the papers, records or files in the general land office shall first obtain the consent of the commissioner, or the chief clerk, in writing so to do, and an order for the detail of a clerk of said office to be present and superintend such examination. [Act June 2, 1873, p. 180. P. D. 7099kk.]

Art. 5285. [4048] **Clerk to examine papers after, etc.**—After an examination is made, the clerk in charge of same shall carefully examine the papers of said file and see that they are all in place. [Id. sec. 3. P. D. 7099mm.]

Art. 5286. [4049] **Lithographic copies of maps to be printed.**—The commissioner of the general land office is authorized to contract for the printing and delivery to him of lithographic copies of maps of the various counties of this state; provided, that the cost of such printing and delivery shall not exceed two cents per copy. [Acts of 1879, p. 40.]

Art. 5287. [4050] **To be copyrighted.**—When said commissioner has prepared the official copy of the map of any county from which such lithographic copies are to be printed, he shall copyright the same in the name and for the benefit of the state of Texas, in accordance with the laws of copyright of the United States. [Id. sec. 2.]

Art. 5288. [4051] **To be sold at fifty cents.**—When such copies are received by the commissioner, he shall offer the same for sale at not less than fifty cents nor more than one dollar per copy, regulating the price by the amount of labor required in the original compilation of such maps and transcribing same; provided, that when a party desires to purchase at any one time one hundred or more copies of the maps of any county or counties, he shall be

allowed a discount on the fixed price of the same of twenty per cent. [Id. sec. 3.]

Art. 5289. [4052] **Proceeds to be placed in state treasury.**—All moneys received from the sale of maps, as above provided, shall be paid into the state treasury as are all other fees received by the general land office. [Id. sec. 4.]

Art. 5290. [4053] **No transfers, etc., shall be withdrawn.**—No transfer or deed that may be a link in any chain of title to any certificate on file in the general land office shall be withdrawn by any one; but the commissioner shall, on demand, deliver to the interested party certified copies, which shall have the same force and effect as the originals; provided, if in any suit there is any question as to the genuineness of any such original, the commissioner shall deliver the same to the party to whom the same may be ordered by the court where such suit is pending; and in such case it shall be the duty of the commissioner of the general land office to retain in his office a duly certified copy of such original, which, in case of the loss of the original, shall have the same force and effect as the original. [Id. sec. 4. P. D. 7099nn.]

Art. 5291. [4061] **Receipts for papers, etc.**—No paper, certificate, copy or document, other than a patent, shall be delivered by the commissioner to the owner until he has receipted for the same, in which receipt shall be stated his place of residence, his postoffice, and, if delivered to the agent or attorney, shall state in addition his residence and postoffice, which receipt shall be filed by the commissioner with the other papers; provided, that, when the commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in the general land office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed. [Id. sec. 9. P. D. 7099ss.]

Art. 5292. [4062] **Commissioner and sureties responsible, when.**—The commissioner of the general land office and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said general land office, unless said commissioner can show that such removal, withdrawal or alteration has taken place by permission of the party owning said file or record. [Id. sec. 12. P. D. 7099uu.]

CHAPTER THREE.

LAND DISTRICTS.

What counties are separate land districts	Article. 5293	County or district failing to organize as separate district	Article. 5297
When county becomes a land district.....	5294	Unorganized counties attached to organized counties.....	5298
When county to have a surveyor.....	5295	Counties attached.....	5299
"Land districts" defined.....	5296		

Article 5293. [4063] **What counties are separate land districts.**—Every organized county which has heretofore complied, or may hereafter comply, with the laws in force permitting a county to become a land district, is hereby declared a separate land district. [R. S., 1879.]

Art. 5294. [4064] **When county becomes a land district.**—When any organized county shall elect a surveyor, and he shall give bond and be qualified as provided by law, said county shall be a separate land district. [Acts Jan. 26, 1858. P. D. 1082.]

Art. 5295. [4065] **When county to have a surveyor.**—Each county becoming a land district shall have at least one surveyor, who shall keep his office at the county seat; and such office shall be supplied with a map or maps of all the surveys made in such county, with a file or entry book, and a record book of the field-notes of all surveys in the county.

Art. 5296. [4066] **"Land districts" defined.**—All "land districts" now created by law and having a district surveyor shall remain and continue as such, subject, however, to alteration by any organized county within its limits, or any part of such district, becoming a separate land district as provided by law.

Art. 5297. [4067] **County or district failing to organize as separate land district.**—Any organized county, or newly created district, which may fail or refuse to organize as a separate land district as provided by law shall continue to form a part of the land district to which it was formerly attached until it shall have complied with the provisions of law relating to the election and qualification of a surveyor, and until such surveyor shall have procured the necessary maps, field-notes, copies and records as required by law. [Act Feb. 8, 1860. P. D. 1090.]

Art. 5298. [4067a] **Unorganized counties attached for land purposes, etc.**—Each county in this state that is unorganized, or that has not so completed its organization as to become a separate land district under the requirements of the law, shall be attached to some organized county for surveying purposes; and the county surveyor of such organized county shall be the surveyor for the land district thus constituted, and the records of all files and surveys of land in such district shall be kept at his office. [Amend. 1895, Sen. Jour., p. 481.]

Art. 5299. [4067b] **Counties attached.**—The land districts composed of more than one county are defined and the unorganized counties are attached for surveying purposes as follows:

The county of Bailey is attached to Crosby county. [R. S., 1895.]

The county of Crane is attached to Ector county. [Act Feb. 3, 1909, p. 11.]

The county of Loving is attached to Reeves county. [Id.]

The counties of Cochran and Hockley are attached to Lubbock county. [Act Mar. 13, 1905, p. 31.]

CHAPTER FOUR.

COUNTY AND DISTRICT SURVEYORS.

Article.	Article.		
County surveyor, when elected.....	5300	Deputy surveyor of new county to pro-	
Oath and bond.....	5301	cure maps.....	5318
Commissioners' court to fill vacancy,		Surveys of deputy to be placed on map.....	5319
when.....	5302	Surveys in unorganized counties.....	5320
Duties.....	5303	Special deputies.....	5321
To report to commissioners, etc.....	5304	Surveyor not authorized to survey until,	
Shall plat surveys, etc.....	5306	etc.....	5322
Record books to be furnished.....	5307	Shall return field-notes of.....	5323
Deputies appointed; oath and bond.....	5308	Transcript to be obtained.....	5324
Chain carriers and markers, etc.....	5309	May rent office, when.....	5325
Deputies shall return field-notes.....	5310	Rent of office, how paid.....	5326
County surveyor may do work of deputy.....	5311	To have deputy, when.....	5327
Shall keep map in office.....	5312	Right to examine books.....	5328
Duty on change of boundary.....	5313	Transcripts, how paid for.....	5329
Contested elections, in what court tried,		True meridian to be established.....	5330
etc.....	5314	Neglect or failure of duty.....	5331
Their duties, how regulated.....	5315	Shall turn over books, etc.....	5332
Deputy district surveyors.....	5316	County clerk to take charge of books,	
Special county surveyor for unorganized		when.....	5333
counties.....	5317	Commissioners may have record tran-	
		scribed, when.....	5334

Article 5300. [4068] **County surveyor, when elected.**—At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county surveyor, who shall reside in the county and keep his office at the county seat, who shall hold his office for two years and until his successor may be elected and qualified. [Const., art. 16, sec. 44. Acts Jan. 26, 1858, p. 199; Aug. 19, 1876.]

Art. 5301. [4069] **Oath and bond required.**—Before entering upon his duties, the county surveyor shall take the oath of office prescribed by the constitution, and shall enter into bond, with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, in such sum as may be fixed by such commissioners' court, not to be less than five hundred dollars nor more than ten thousand dollars payable to the governor and his successors in office, conditioned that he will faithfully perform all of the duties of his office, which bond shall be deposited and recorded in the county clerk's office of the county. [Act Dec. 14, 1837. P. D. 1081, 4522. Amended act 1897, p. 26.]

Art. 5302. [4070] **Commissioners' court to fill vacancy.**—Whenever there shall be a vacancy in the office of county or district surveyor in any of the counties, it shall be the duty of the county commissioners' court of the county in which such vacancy occurs to fill by appointment such vacancy, such appointment to continue in force until the next general election. In the event such commissioners' court shall fail to appoint a person to fill such vacancy, or if they shall appoint a person to fill same and he shall fail to qualify and act as such surveyor, then any county or district surveyor of the nearest county or district to such county, who may be accessible and willing to act shall be authorized to do surveying in such county, and for his services he shall be entitled to receive the same fees and compensation as are now provided by law for county and district surveyors, and such surveyor shall be subject to the same law as is now applicable to county and district surveyors for the faithful performance of their duties. In making a survey under the provisions hereof, said surveyor shall make out and return said field-notes in the manner and form as required under article 5336, but he shall sign the field-notes officially, as the surveyor of his own county or district, and also cause to be attached to said field-notes, so made by him, a certificate of the county clerk of proper county, to the fact that there is no qualified surveyor of such county. [Act Aug. 19, 1876, p. 219. Amended act 1905, p. 371.]

Art. 5303. [4071] **Duties of county surveyor.**—Each county surveyor shall receive and examine all field-notes of surveys which have been, or may hereafter be, made in said county, and upon which patents are to be obtained, and shall certify to the same according to law, and shall record such field-notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. [Act Dec. 14, 1837. P. D. 4522.]

Art. 5304. [4072] **Surveyor to report to commissioners' court as to inclosed school lands.**—It shall be the duty of the surveyor of each county to make a report to the county commissioners' court on the first Monday in June each year of the number of sections of public school lands in his county inclosed during the past year, and the names of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them respectively. [Acts of 1879, p. 101.]

Art. 5305. [4073] **Shall record all field-notes in his district.**—The surveyors of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with the plats thereof that he may make, whether private or official; and such record shall be open to the inspection of the public; for which service the surveyor may charge, in addition to the fees now allowed by law for field work, twenty cents per hundred words for such record. [Acts of 1881, p. 71.]

Art. 5306. [4074] **Shall plat surveys upon map, etc.**—It shall be the duty of every district, county and special county surveyor, once in every three months, to plat upon the map of his district or county all surveys made to that date within the three preceding months, and transmit sketches and field-notes of same to the commissioner of the general land office, together with a list of all land certificates or warrants on file in his office, giving the number, date and quantity in acres of each, stating by whom and to whom the same purports to have been issued, and when and by whom filed; and any surveyor failing or refusing to comply with the provisions of this article shall be subject to a fine of five hundred dollars for each offense, to be recovered by the state before the district court on complaint of any party aggrieved, or of the proper county or district attorney, whose duty it shall be to prosecute all such suits. A certificate from a postmaster certifying that a letter or package containing the returns herein provided for was mailed in his office, addressed to the commissioner of the general land office, shall be evidence of the fact in any suit against a surveyor under this article. [Act Jan. 26, 1858. P. D. 1087.]

Art. 5307. [4075] **Record books furnished.**—The commissioners' courts of the several counties shall furnish the county surveyors of their respective counties with the necessary books of record pertaining thereto. [Acts March 9, 1875; Feb. 2, 1860. P. D. 1089.]

Art. 5308. [4076] **Deputies appointed; oath and bond required, etc.**—The county or district surveyor shall appoint as many deputy surveyors as he may deem necessary for the county or district, and shall administer to them the oath of office, and take the bond hereinafter prescribed, and shall furnish them such instructions as may be furnished to him from time to time by the commissioner of the general land office; and such deputy surveyor, before he enters upon the duties of his office, shall enter into bond with two or more good and sufficient sureties, to be approved by the commissioners' court, in the sum of five thousand dollars, payable to the governor and his successors in office, conditioned for the faithful performance of the duties of his office, which bond shall be deposited and recorded in the clerk's office of the same county; and the county or district surveyor shall immediately report such appointment to the commissioner of the general land office, and state when such

deputy entered upon the discharge of the duties of his office. [Act Dec. 14, 1837. P. D. 4522.]

Art. 5309. [4077] **Chain carriers and markers.**—It shall be the duty of each deputy district or county surveyor to administer an oath to each individual employed by him as chain carrier or marker for the faithful performance of his duties as such, in accordance with the instructions given him; and no person under the age of sixteen years shall be employed in either of the above capacities; and, further, it shall be the duty of said deputy to subscribe the name of each of the chain carriers to his field-notes previous to returning the same to the county surveyor. [Act Dec. 14, 1837. P. D. 4523.]

Art. 5310. [4078] **Deputy surveyors shall return field-notes.**—It shall be the duty of all deputy surveyors to make returns of the field-notes of every survey by them made, within three months after making the survey, to the county or district surveyor for his approval; and any deputy neglecting to do so shall be liable for damages at the suit of any person thereby injured. [Act Feb. 5, 1840. P. D. 4112.]

Art. 5311. [4079] **County surveyor may do work of deputy.**—Any county surveyor may do the work of a practical surveyor, and may also perform all the duties required of a deputy surveyor, and in such case he shall make out, certify to, record and return the field-notes under his own official signature. [Act Dec. 20, 1837.]

Art. 5312. [4080] **Shall keep a map in his office for inspection.**—It shall be the duty of each county or district surveyor to make out and keep in his office, free for the inspection of all persons, a map on which all the surveys made in his county shall be laid down and properly connected; which map shall be corrected at the end of every three months. [Act Feb. 5, 1840.]

Art. 5313. [4081] **Duty on change of boundary.**—Hereafter, when any change may take place in the boundaries of any county, it shall be the duty of the surveyor of any county from which territory may be so taken, to furnish the surveyor of the county including such territory with a full and complete copy of all the field-notes of surveys made in the same. [Act Feb. 5, 1840.]

Art. 5314. [4082] **Contested elections, by what court tried.**—Whenever the election of any person to the office of county or district surveyor may be contested, like notice shall be given and proceedings had as in case of contested elections for county officers. When the district is composed of one county, the contest shall be tried in such county, but where the district is composed of more than one county, then such contest shall be tried in the county from which the district takes its name. [Act Feb. 7, 1853.]

Art. 5315. [4083] **Their duties, how regulated.**—All district surveyors shall be governed in the discharge of their official duties by the same provisions of law which regulate and prescribe the duties of county surveyors so far as the same may be applicable; and, upon their removal from office or at the expiration of their term of office, they shall deliver to their successors all records, books, papers, maps and other things appertaining to the office. [Act May 12, 1846.]

Art. 5316. [4084] **Deputy district surveyors.**—Each district surveyor shall appoint one or more deputy surveyors, who shall qualify and give bond in manner and form as required of deputy county surveyors, and whose duties shall be the same as those of deputy county surveyors so far as the same may be applicable; and, when such surveyor does the work of surveying in a new county, he shall notify the special county surveyor acting under his direction, and report his work to him to be mapped and noted on his records.

Art. 5317. [4085] **Special county surveyor for unorganized county.**—It shall be the duty of each district surveyor, within twenty days after his election, to appoint as his deputy a special county surveyor for each unorgan-

ized county within his district, who shall hold his office during the term of his principal, unless sooner superseded by the appointment of another as his successor. The district surveyor shall immediately notify the commissioner of the general land office of every such appointment. Each special county surveyor so appointed shall have all the powers, perform all the duties and be subject to all the penalties appertaining to county surveyors, and shall keep, in addition to the returns to be made to his principal, a record and map of all the transactions in his office, to become part of the county surveyor's records of such county whenever it may be organized. All such special county surveyors shall reside and keep their offices in their respective counties, if there be settlements in the same, but if there be no settlements in the county, then at the nearest town to such county. Whenever any county may elect a county surveyor, who shall have qualified and given bond, and who shall have procured the maps and records required by law, the district surveyor within whose district such county may have been, or may be at the time, and his deputy shall cease to exercise any official acts within the same. [Act Jan. 26, 1858. P. D. 1085.]

Art. 5318. [4086] **Deputy surveyor of new county to procure maps.**—Deputy surveyors of the several new counties shall procure from the district surveyors of their respective districts, or make out the same, a map of all the surveyed lands situated in the new county to which such deputy may be assigned, which shall be kept in the office of such deputy at the county site, for the inspection of all persons interested. [Act May 11, 1846. P. D. 4276.]

Art. 5319. [4087] **Surveys of deputy to be placed on map.**—All surveys made by a deputy surveyor in a new county, after being examined and placed upon the map of the district, shall be placed upon the county map. [Id. P. D. 4277.]

Art. 5320. [4088] **Surveys in unorganized counties.**—In any unorganized county to which a special deputy surveyor may have been appointed, or may hereafter be appointed, the district surveyor of the land district to which it is attached, or his deputies, may make surveys, the field-notes of which shall be recorded in a separate book for each of such unorganized counties, and also in the ordinary record books of the land district; but before making such surveys he shall notify the special deputy surveyor thereof and afterward report the field-notes to him, to be mapped out and noted on his records. [Act Feb. 8, 1860. P. D. 1091.]

Art. 5321. [4089] **Special deputies, bond, etc.**—The district or county surveyor of any county shall have the power to appoint a special deputy, who shall be empowered to perform all official acts which said district or county surveyor may legally perform; and the said special deputy surveyor, before entering on the discharge of his duties, shall give bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor, for the faithful discharge of the same, which shall be approved by the commissioners' court of the county and filed with the county clerk thereof. [Id. P. D. 1092.]

Art. 5322. [4090] **Surveyor not authorized to survey, until, etc.**—Any surveyor, elected as provided by law, in a county not previously a separate land district, shall procure a certified map of the surveys in said county, and a certified copy of all files, applications and locations of lands therein from the surveyor's office of the land districts to which said county belonged, and file the same in his office for the inspection of any one interested in examining the same. [Act Jan. 26, 1858.]

Art. 5323. [5091] **To return field-notes of county boundaries.**—When the surveyor shall have complied with the provisions of the preceding article, it shall be his duty immediately to make out and return to the general land office field-notes properly certified to, of the boundaries of such county; and

the commissioners' court of said county shall make the necessary provision for paying the expenses thereof. [R. S. 1879.]

Art. 5324. [4092] **Transcript to be obtained from land office, when.**—Whenever the maps, field-notes of surveys or other records, or any part thereof, of the surveyor's office in any county or land district shall from any cause be lost or destroyed, or when any new county shall organize, or new land district is created, it shall be the duty of such county or district surveyor to obtain from the commissioner of the general land office a transcript of such maps, field-notes of surveys or other records of his office of his county or land district, certified to as required by law, and for obtaining which he shall be entitled to five cents per hundred words, and the state shall be entitled to ten cents per hundred words, to be paid by the commissioners' court of his county; said transcript of records so certified shall answer all the purposes and have the same force and effect in law that the original could have. [Acts of 1885, p. 92. Amend. 1895, Sen. Jour., p. 482.]

Art. 5325. [4093] **Authorized to rent office.**—The district and county surveyors are authorized to rent some suitable building or room in which to keep their offices in case the said surveyors can not be provided with offices in the court houses of their respective counties. [Act Aug. 18, 1876, p. 196.]

Art. 5326. [4094] **Rent of office, how paid.**—The county commissioners' court shall make the necessary arrangement for paying the rent of an office rented by said surveyors, upon satisfactory evidence showing that the rent was reasonable and the office necessary, and that there was no office provided for said surveyors in the court house of their county. [Id.]

Art. 5327. [4095] **To have a deputy in office, when.**—In all cases where the county surveyors do not reside at the county seats of their respective counties, they shall and are hereby required to have deputies in their respective offices residing at said county seats, who shall keep their offices open and the records thereof subject to the examination of any person interested therein, and who shall have authority to receive and file land certificates or other evidences of right to land, and also to receive and record all files or designations of land to be surveyed. [Act Feb. 25, 1863. P. D. 1093.]

Art. 5328. [4098] **Right to examine books, etc.**—Any person interested for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any district, county or special surveyor, on the payment of the fee fixed by law. [Act Jan. 26, 1858. P. D. 1086.]

Art. 5329. [4100] **Transcripts, etc., by whom paid for.**—The transcripts of records and maps, together with the examination of the same, shall be paid for by the county for the benefit of which they are made, allowing ten cents for every one hundred words in copying said records, and three dollars per day for each day the draftsman may be actually and necessarily engaged in copying maps, as provided by law; and clerks and district surveyors for examining and certifying transcripts of records shall have three dollars per day. [Act March 20, 1848. P. D. 1078.]

Art. 5330. [4101] **Surveyors to establish true meridian, etc.**—The district or county surveyors of the several counties, in order to secure uniformity in the courses indicated by the different surveyors' compasses or other instruments used within their several jurisdictions, shall, in some convenient place at their respective county seats, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust, or cause to be adjusted, to the said meridian all such instruments before being used within their respective jurisdictions, and shall keep in their offices a standard chain of the true measurement of ten varas, to which all chains used by themselves or their deputies shall be adjusted before being used in the measurement of lines of surveys. [Act June 2, 1873, p. 173. P. D. 7099sss.]

Art. 5331. [4102] **Responsible for neglect or failure, etc.**—All surveyors shall be held responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of the preceding article. [Id. P. D. 7099ttt.]

Art. 5332. [4103] **Shall turn over records, etc.**—Upon the removal from office, or at the expiration of the term of office, of any county or district surveyor, he shall deliver to his successor all records, books, papers, maps and other things appertaining to his office. [Act May 12, 1846. P. D. 4525.]

Art. 5333. [4104] **County clerk shall take charge of books, etc., when.**—Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county is hereby required to take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office. [Act Oct. 18, 1866, p. 31.]

Art. 5334. [4105] **Surveyor's records may be transcribed.**—Whenever the county commissioners' court of any county shall deem the same necessary, they shall order the surveyor's records to be transcribed in good and substantial books, in a plain hand, by the surveyor or special deputies sworn to make true copies of the same, for which services they shall be allowed not more than ten cents per hundred words, to be paid out of the county treasury. [Act Nov. 6, 1871, p. 18.]

CHAPTER FIVE.

SURVEYS AND FIELD-NOTES.

<p>What authorizes a survey..... 5335 Field-notes shall describe what..... 5336 Copy obtained on loss of original field-notes 5337 Surveys on navigable streams..... 5338 Surveys shall be in a square..... 5339 Notice to settlers..... 5340 Trial as to disputed line before justice of the peace..... 5341 Surveys stricken from map, when..... 5342 Liability for failing to survey..... 5343 Field-notes to be sent back for correction, when..... 5344 The same corrected and returned, how..... 5345 Correction by certificate, when made..... 5346 Commissioners to have surveys made, when..... 5347 Bond, etc..... 5348 May have lands surveyed, when..... 5349 Mineral lands to be surveyed; points marked; surveyor appointed; his salary. 5350</p>	<p>Land commissioner to co-operate with United States geological survey; regulations as to co-operation..... 5351 Persons owning private lands may co-operate..... 5352 General authority of commissioner to have surveys made; compensation of official; state surveys, etc..... 5353 Official surveyors, how commissioned; qualified..... 5354 Field-notes to be returned; force and effect of..... 5355 Conflicts in alternate surveys, how adjusted..... 5356 Surveyor's duties in adjusting conflict..... 5357 In case of conflict, to issue in what cases. 5358 In case of conflict, number of surveys changed; correction made to protect purchasers..... 5359 Third persons protected..... 5360</p>
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Article 5335. [4142] **What authorizes a survey.**—All surveys shall be made by authority of law, and by a county, district or deputy surveyor duly appointed or elected and qualified.

Art. 5336. [4144] **Field-notes shall describe what.**—The field-notes of every survey shall state—

1. The county or land district in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of same.
3. The land by proper field-notes with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey.

5. The variation at which the running was made.
6. It shall show the names of the chain carriers.
7. It shall be dated and signed by the surveyor.
8. The correctness of the survey, and that it was made according to law, shall be certified to officially by the surveyor who made the same; and also that such survey was actually made in the field, and that the field-notes have been duly recorded, giving book and page.
9. When the survey has been made by a deputy, the county or district surveyor shall certify officially that he has examined the field-notes, has found them correct, and that they are duly recorded, giving book and page of record.

Art. 5337. [4146] **Copy obtained on loss of original field-notes.**—When the original field-notes of any survey made by authority of law shall have been heretofore, or may be hereafter, lost or destroyed, it shall be lawful for the party who owned the same, or his agent, on making affidavit of the loss or destruction of such field-notes and filing the same in the office of the county or district surveyor, to apply to such surveyor of the county where the survey was made and recorded and obtain from him a certified copy of the record thereof, which copy shall be as valid and efficient in law as the original was, and shall secure to the party all the rights before the commissioner of the general land office that the original would have done. [Id. P. D. 4552.]

Art. 5338. [4147] **Surveys on navigable streams.**—All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all streams, so far as they retain an average width of thirty feet, shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. [Act Dec. 14, 1837. P. D. 4529.]

Art. 5339. [4148] **Surveys shall be in a square.**—All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. [Id.]

Art. 5340. [4150] **Notice to settlers.**—It shall be the duty of the surveyor in all cases, before he runs a division line between two settlers or occupants claiming lands, to notify in writing the parties interested before running the same; and any survey which may be made contrary to the true intent and meaning of this article shall not be a lawful one. [Act Dec. 14, 1837. P. D. 4528.]

Art. 5341. [4151] **Trial as to disputed line before justice of the peace.**—When two or more persons can not agree to a division line of any land which has never been surveyed agreeably to law, it shall be lawful for either party to apply to any justice of the county or territory in which the land lies, or if there be no justice of the peace in the county or territory, then to the nearest justice in any county or territory, and make oath that he has tried and has not been able to settle the dispute between himself and one or more other persons (naming them) concerning a division line; and the said justice shall issue a warrant to any lawful officer to summon the party or parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may choose to have summoned, to give evidence on a certain day, naming at what time and place; the justice shall also meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute, and shall also determine who shall pay the costs of suit; each juror in such case shall be allowed two dollars per day for such services, the other officers, such fees as have already been established by law for other similar services; provided, that, if the land in dispute shall be on a county line, it shall be lawful for a justice of either county in which part of the land may be to act in such case; and in case

either party be dissatisfied with the decision they shall have the right to appeal to the county court within ten days upon giving bond and security for the costs. [Id. P. D. 4527.]

Art. 5342. [4152] **When surveys void.**—All surveys represented upon the maps of the general land office, the field-notes of which shall not be returned to the general land office, under the provisions of this chapter, and for which there are no titles on file in said office, shall be null and void, and be stricken from the maps of said office, when it is made to appear to the commissioner of the general land office, by the certificate of the county clerk of the county in which the land is situated, that there is no title to said survey on record in said county, and by the affidavits of two credible citizens of said county that the said land is not occupied by the owner nor by some person holding for him. [Acts of 1885, p. 50.]

Art. 5343. [4153] **Liability for failing to survey.**—If any district or county surveyor shall fail, neglect or refuse, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause the survey of the same to be made within one month of the time of the tender to him of said surveying fees, he and his sureties shall be liable on his official bond to the party or parties legally entitled to the same, in the amount of damages or injury said party or parties may sustain by reason of such neglect, refusal or failure, to be recovered before any competent tribunal. [Id. P. D. 4569.]

Art. 5344. [4154] **Field-notes to be sent back for correction, when.**—If, upon examination of the field-notes of a survey in the general land office, they are found to be incorrect, it shall be the duty of the commissioner to cause a plain statement of the errors, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct the same and return corrected field-notes to the general land office. [Act Oct. 24, 1871, p. 11. P. D. 7091.]

Art. 5345. [4155] **The same corrected and returned, how.**—It is hereby made the duty of surveyors who shall have made and delivered incorrect field-notes, upon the requisition of the commissioner of the general land office, provided for in the preceding article, or of the party interested, to make corrected field-notes and return the same to the general land office without delay and without any additional compensation. [Id. P. D. 7092.]

Art. 5346. [4156] **Correction by certificate, when made.**—When a conflict of survey does not exist on the ground, but appears only on the maps or in the field-notes, it shall only be required of the surveyor to make an official certificate of the facts and furnish a true sketch of the survey with its connections. [Id.]

Art. 5347. [4261] **Commissioner to have surveys made, when.**—For the purpose of ascertaining the conflicts and errors in and making proper corrections of surveys of lands made for the common school, university or asylum funds, or other surveys in which the state may be interested, directly or indirectly, in cases where, from discrepancies or imperfections in field-notes, it may become necessary for the proper compilation of maps, or for the proper location and identification of said lands upon the ground, the commissioner of the general land office is hereby invested with full power and authority to have such surveys made as he may deem necessary, and to appoint competent surveyors for this purpose. [Acts of 1887, p. 107.]

Art. 5348. [4262] **Bonds, etc.**—Any surveyor appointed under the provisions of this law shall make and execute a bond in the sum of ten thousand dollars, conditioned and payable the same as bonds of county and district surveyors; he shall also take the oath prescribed by the constitution for other officers; said bond to be approved by the commissioner of the general land office, and shall be conditioned as other surveyor's bonds. He shall be under the con-

trol and direction of the commissioner of the general land office; and, under such direction, may survey the common school, university and asylum lands, or other lands in which the state may be interested, and prepare and return field-notes of same and certify to any and all facts, and generally do and perform such official acts as might lawfully be done by a county or district surveyor, and shall sign his name officially as "state surveyor." [Id. sec. 2.]

Art. 5349. [4263] **May have lands surveyed, when.**—The commissioner of the general land office may have any lands belonging to the common school, university or asylum funds, or other lands in which the state may be interested, or lands alternating therewith, surveyed or resurveyed, and field-notes or corrected field-notes of same returned to his office by any surveyor appointed under this law, which field-notes shall have the same force and effect as if made by the county or district surveyor of the county or district in which said land lies; and, upon the adoption and approval of said field-notes by the commissioner of the general land office, he shall forward to the surveyor of the county or district in which said land lies, certified copies of said field-notes, which thereafter shall be a part of the records of said surveyor's office. In carrying out the provisions of this law, the commissioner of the general land office may, when requested by the owner of lands alternating with the lands resurveyed under the provisions of this law, cancel patents, and in lieu thereof issue patents in accordance with said resurvey; provided, that all such owners shall pay the expenses incurred in making such corrected surveys of their lands and in issuing said patents; provided, that no claims shall be created against the state for services performed under this law in the absence of a previous appropriation therefor. [Id.]

Art. 5350. **Mineral lands to be surveyed; points marked; surveyor appointed; his salary.**—The commissioner of the general land office of Texas may employ a state surveyor, or surveyors, whose duty it shall be to definitely locate on the ground such school land surveys, or blocks of surveys as the said commissioner may designate between the Pecos river and the Rio Grande, commencing at such point in the mineral bearing territory of Brewster county as may appear to be most advantageous to the state. The said surveyor, or surveyors, shall qualify as now provided by statute for state surveyors before entering upon his duties, and shall be under the direction of and subject to the orders of said commissioner. He shall file in the general land office the field-notes and maps of his work; and, when approved by the commissioner, the lines so established, as evidenced by such field-notes and maps, shall be the established lines of the surveys or blocks of surveys represented thereby. All surveys made shall be marked by permanent natural or artificial objects. The said surveyor shall receive for his services, not to exceed one hundred and sixty-five dollars per month, and to be paid in the same manner as are other employes of the said land office. [Act 1907, p. 285, sec. 1.]

Art. 5351. **Land commissioner to co-operate with United States geological survey; regulations as to co-operation.**—The commissioner of the general land office is hereby authorized to confer with the director of the United States geological survey, and to accept the co-operation of the United States with this state in the execution of a topographic survey and map of the territory which is hereby authorized to be surveyed. The said commissioner shall have the power to arrange with said director, or other authorized representative of the United States geological survey, concerning the details of said work and the method of its execution; provided, that the said director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that hereby appropriated, or so much thereof as may be necessary, to secure the proper topographic map or maps. In arranging details heretofore referred to, the said commissioner shall, in addition

to such other provisions as he may deem wise, require that the topographer in charge shall give a bond in the sum of five thousand dollars, conditioned and payable the same as that required of the surveyor provided for above, and that the maps resulting from this survey shall be similar in general design and quality to the Van Horn quadrangle of El Paso county, edition of March, 1906, made by the United States geological survey, and shall show the outlines of all surveys, and kinds of timber and vegetable growth of commercial value, the location of all natural or artificial water roads and shall show the contour lines showing the elevation and depression for every one hundred feet in vertical interval of the surface of the county; that the resulting map or maps shall wholly recognize the co-operation of the state of Texas and that as each manuscript quadrangle of the map or maps is completed, the commissioner shall be furnished by the United States geological survey with photographic copies of the same, and as the engraving on each quadrangle is completed, the commissioner shall be furnished by said director with the resulting maps. [Id. sec. 2.]

Art. 5352. Persons owning private lands may co-operate.—Should any person or persons, owning private lands which alternate with the school land, desire to co-operate with the commissioner of the general land office in having the surveying done and in having the topographic map or maps made, as above provided for, such services and co-operation may be accepted upon a fair division of the expense. [Id. sec. 3.]

Art. 5353. General authority of commissioner to have surveys made; compensation of official; state surveys, etc.—Whenever the commissioner of the general land office shall deem it to the best interest of the state to cause to be made a survey or resurvey of any land or lands which are now, or which may be, owned or claimed by the state of Texas, or which commissioner may deem it expedient to have surveyed, or resurveyed, in order to determine whether such land or lands are owned or should be claimed or sued for by the state of Texas, he may designate and employ one or more competent and experienced surveyors, each to be known as, "Special state surveyor," to do such work, and shall be authorized to allow and pay, as hereinafter provided, reasonable compensation for such services, the amount of such compensation to be determined by such commissioner, not exceeding in any instance the rate of two hundred dollars per month, and may also incur and pay, as hereinafter provided, any and all reasonable expenses which may be incidentally involved in or connected with the making of any and all such surveys and resurveys. [Id. sec. 6.]

Art. 5354. Official surveyors, how commissioned; qualified.—Any such designation of any and all such surveyors shall be evidenced by a written instrument which shall be signed by the commissioner of the general land office, officially, and attested by his seal of office, and such written instrument shall designate, in at least general terms, the land or lands which such surveyor or surveyors may be so designated and employed to survey or resurvey; and before doing any such work, such surveyor or surveyors shall take and subscribe before an officer authorized by law to administer oaths within this state, an affidavit to the effect that affiant will faithfully, impartially and to the best of his knowledge and ability make the survey or resurvey called for in such instrument of designation; and such affidavit shall be endorsed upon or attached to such instrument of designation. Such instrument of designation, together with such affidavits, shall be filed in the general land office before any such work shall be done thereunder. [Id. sec. 7.]

Art. 5355. Field-notes to be returned; force and effect of.—Field-notes and a plat of any and all such surveys and resurveys, signed by such special state surveyor, or surveyors, shall be returned to and filed in the general land

office, and shall thereafter have the same force and effect as if made and returned by a district or county surveyor under existing laws. [Id. sec. 8.]

Art. 5356. **Conflicts in alternate surveys; how adjusted.**—In all cases where land certificates granted by the state have been located in a block or blocks of two or more alternate surveys, and either or all of such surveys are found to be either wholly or partly in conflict with older valid surveys, such individual surveys as may not be patented in such block or blocks, and which may conflict as aforesaid, and such school surveys, except those which may be sold, or those which may have been sold and were in good standing on the thirty-first day of October, 1898, or those for which there may be pending purchase applications in general land office at the time said commissioner of the general land office shall issue his instructions to the surveyor, as hereinafter provided, may be adjusted under the direction of the commissioner of the general land office as provided herein. [Act 1899, p. 330, sec. 1.]

Art. 5357. **Surveyor's duties in adjusting conflicts.**—When any such adjustment is desired, as mentioned in the preceding article, the said commissioner shall, upon request of the party owning such individual survey or surveys, or, in the absence of such application, upon his own judgment, direct the proper surveyor of the county in which such conflicting surveys may be situated, to survey such sections as may be in conflict, and so alter or change the field-notes of each and every survey for which an adjustment is sought, except where the school survey has been sold or applied for as above provided; and, in making such change or alteration, the said surveyor shall divide the total area of the individual survey and its alternate school survey equally between the individual and the school survey, unless there is an excess, in which case the excess shall go to the school survey, and patents shall issue accordingly; provided, that the state shall not be required to pay any costs in the matter of resurveying and setting the boundary lines of said lands as provided for in this chapter. [Id. sec. 2.]

Art. 5358. **In case of conflict, to issue in what cases.**—The commissioner of the general land office shall ascertain the entire number of acres in the school surveys wholly or partly free from conflict, exclusive of any excess there may be in each of said school sections, in any particular block, and also the entire number of acres in the individual surveys free from conflict in such block, and shall issue patents on enough of the individual surveys, if there be enough, to equal in area the total area of said school surveys so wholly or in part free from conflict, without considering the excess in each school section; and, in case the total area of the individual surveys in any particular block exceeds the total area of the school surveys, then such excess shall be equally divided between the individual and the school surveys, and patents shall issue accordingly; and if in any case the total area of the school surveys in any particular block, not including any excess there may be in each school section, nor to give any individual any more than their respective total complement by reason of such resurvey, exceeds the total area of the individual surveys, then such excess shall be equally divided between the individual and school surveys, and patents shall issue accordingly; provided, sufficient amount of the school surveys not sold or applied as aforesaid remain to admit of such division. [Id. sec. 3.]

Art. 5359. **In cases of conflict number of surveys changed; correction made to protect purchasers.**—Where purchasers of school lands have been misled as to the correct lines of their surveys, and have improvements thereon, the commissioner of the general land office may, by the written consent of the purchaser of the school survey and the owner of the individual survey, filed in the general land office, be authorized to change the number of surveys, or have them so corrected as to protect the improvements of the purchaser of the school lands. [Id. sec. 4.]

Art. 5360. **Third persons protected.**—The provisions of this chapter shall not affect prior valid rights of third persons. [Id. sec. 5.]

CHAPTER SIX.

PATENTS.

Article.	Article.
Requisites of patent.....5361	Patents on unrecommended certificates prohibited.....5373
When patent to be issued.....5362	Patent may be canceled, in whole or in part, where issued by mistake.....5374
When to be referred to the attorney general.....5363	When partial conflict, may be canceled.....5375
Map of county to be filed.....5364	Commissioners required to deliver patents, when.....5376
Patents on surveys in two counties.....5365	Patents on homestead claims to issue when.....5377
Patents on more than two surveys, when.....5366	Refunding fee where patent cannot issue.....5378
In case of conflict, how patent may issue.....5367	When patent may be delivered to an agent.....5379
Shall issue patent to assignee.....5368	Commissioners required to issue patents on certificates not reported by clerk, when.....5380
Before issuing to assignee, transfers, etc., must be filed.....5369	Penalty for failure to pay fees on patents.....5381
Patent to assignee without transfers, etc., when.....5370	State shall have lien to secure fees, etc.....5382
Patents to deceased persons shall inure to whom.....5371	
In what order patents shall issue.....5372	

Article 5361. [4175] **Requisites of patent.**—Every patent for land emanating from the state shall be issued in the name and by the authority of the state, under the seal of the state, and under the seal of the general land office, and shall be signed by the governor and countersigned by the commissioner of the general land office; and before the delivery thereof to the party entitled thereto it shall be registered in a well-bound book kept in the general land office for the recording of patents. [Act May 12, 1846. P. D. 4279, 4281.]

Art. 5362. [4176] **When patent to be issued.**—Whenever the field-notes of a survey and the land certificate by virtue of which the same was made have been returned to and filed in the general land office within the time prescribed by law, if it shall appear after due examination that such survey was correctly and legally made upon vacant and unappropriated land, and that the land certificate is genuine and unsatisfied, it shall be the duty of the commissioner of the general land office to make out and deliver to the rightful owner thereof, his agent or legal representative, a patent for the land described in said survey. [Act Jan. 20, 1840. P. D. 4286.]

Art. 5363. [4177] **When to be referred to attorney general.**—Should it appear to the commissioner of the general land office, from the records of his office or from information on oath given him, that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the attorney general, whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

Art. 5364. [4178] **Map of county to be filed.**—No patent shall be issued upon any claim, unless a map of the county in which the same is situated shall be on file in the general land office. [Act Jan. 19, 1841. P. D. 4305. Acts of 1879, ch. 121, p. 129.]

Art. 5365. [4179] **Patents on surveys in two counties.**—The commissioner of the general land office is hereby authorized and required to issue patents in all cases upon surveys of land lying in two or more counties or districts, where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys, occasioned by a

county or district boundary passing through them; provided, the field-notes shall have been recorded in the office of the county or district surveyor of both counties or districts. [Act May 9, 1846. P. D. 4315.]

Art. 5366. [4180] **Patents on more than two surveys, when.**—The commissioner of the general land office is hereby authorized and required to issue patents to the legal owner of a land certificate in all cases where the same has been located in two surveys, and where the same is bounded by other surveys. [Act April 7, 1846. P. D. 4314.]

Art. 5367. [4181] **In case of conflict, how patent may issue.**—In cases where conflicts exist between surveys, the commissioner of the general land office shall be authorized and is hereby required to issue patents to such portions of such surveys as are free from conflicts. [Act May 9, 1846. P. D. 4316.]

Art. 5368. [4182] **Shall issue patent to assignee, when.**—The commissioner of the general land office is hereby required to issue patents to, and in the name of, the assignee of any genuine land certificate issued in conformity to law. [Act May 12, 1846. P. D. 4294.]

Art. 5369. [4183] **Before issuing to assignee, transfers, etc., must be filed.**—Before any patent shall issue to the assignee under the preceding article, he must present and file a sufficient and properly authenticated chain of transfer, assignment or obligation for title, or a power of attorney showing a transfer from the original grantee to the assignee. [Id.]

Art. 5370. [4184] **Patent may issue to assignee without transfer, when.**—All patents may issue in the name of the assignee when the certificate was granted in the name of the assignee, without an exhibition of a chain of transfers as prescribed in the preceding article. [Act Feb. 3, 1845. P. D. 4292.]

Art. 5371. [4185] **Patents to deceased persons shall inure to whom.**—All patents which have heretofore been issued by the authorities of the republic or the state of Texas, in the names of persons deceased at the time of issuing such patents, and all patents for lands which may be issued hereafter by authority of the state of Texas, in the names of persons deceased at the time at which said patents may be issued, shall be, to all intents and purposes, as valid and effectual to convey and secure to the heirs or assignee, as the case may be, of such deceased persons, the land so patented, or which may be so patented, as though such deceased persons had been in being at the time such patents bear date. [Act. Dec. 24, 1851. P. D. 4228a.]

Art. 5372. [4186] **In what order patents shall issue.**—The commissioner of the general land office is authorized and required to patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the general land office or the order of application; provided, that, when application is made for patent on any claim, and the office fees therefor have been paid, such claim shall have preference over claims for which no application has been made; provided, such surveys shall have been regularly mapped, or there be sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office. [Act April 8, 1861. P. D. 4300. Acts of 1879, S. S., ch. 27.]

Art. 5373. [4187] **Patents on unrecommended certificates prohibited.**—The commissioner of the general land office is hereby prohibited from issuing a patent upon any survey that shall have been made by authority of a certificate issued prior to March 16, 1840, and has not been returned as genuine and legal by the commissioners appointed by the act of January 29, 1840, or by authority of a warrant issued for military services, unless the same shall have been presented to and approved by the secretary of war, the adjutant general, or the commissioner of the court of claims, as heretofore prescribed by law, or unless said certificate or warrant shall have been issued by author-

ity of a special act of the legislature; and any patent issued contrary to the provisions of this article shall be null and void, unless the person claiming such patent shall produce to the commissioner of the general land office the judgment or decree of a district court of the republic or state of Texas, from which no appeal was taken within the time prescribed by law, that he is justly entitled to the amount of land under the constitution and laws. [Act Jan. 29, 1840. P. D. 4288. Acts of 1879, ch. 121, p. 129.]

Art. 5374. [4189] **Patent may be canceled in whole or in part, where issued by mistake.**—Where a patent to land has been or may hereafter through mistake be issued upon any valid claim for land which is afterward found to be in conflict with any older title, it shall be competent for the owner of such patent, or any part of the land embraced therein, and within such conflict, to return the same to the commissioner of the general land office for cancellation, or in case the owner of such land in conflict can not obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof; and in either case he shall make and file with the said commissioner an affidavit in writing that he is still the owner of the same, and has not sold or transferred it; and, should it appear from the records of the general land office, or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for him to cancel the patent, or such part thereof as shall appear to belong to the party so applying. [Act March 10, 1885, p. 76.]

Art. 5375. [4190] **When in partial conflict, may be canceled.**—In cases where there is only a partial conflict, the commissioner of the general land office may, under like circumstances and in like manner as is provided for in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field-notes the same may be done. [Act Feb. 3, 1874. P. D. 4302.]

Art. 5376. [4191] **Commissioner required to deliver patent, when.**—The commissioner of the general land office is hereby authorized and required to issue and deliver all patents now or hereafter ready for delivery to the person entitled to receive the same, when it appears from the books of said office that the legal fee for said patent has been at any time heretofore deposited in said office and not withdrawn. [Acts of 1891, p. 182.]

Art. 5377. **Patents on homestead claims, to issue when.**—The commissioner is directed to issue patents to all homestead claimants, pre-emptors, and other persons who settled upon public lands in good faith and attempted to purchase the same and had the field-notes thereto returned to and actually filed in said land office prior to October 23, 1898, where the law under which said settlement, pre-emption or purchase was made is complied with, and patent could legally issue thereto, had it not been for the decision of the supreme court of the state of Texas in the case of Hoge vs. Baker, rendered on October 23, 1898; provided, proof of occupancy shall be filed in the land office and payment of patent fees made. [Amended Act 1903, p. 228, sec. 9.]

Art. 5378. [4192] **Refunding of fee when patent can not issue.**—Upon proper proof being made to the comptroller that deposits have been made in any special funds of moneys, for which deposits and payments no patents for lands can be issued for which such payment may have been or may hereafter be made, the comptroller is authorized to issue his warrant in favor of such parties for such amount as may be found to be due; provided, this article shall not apply to surveys, the errors in which may be corrected. [Acts of 1883, p. 113.]

Art. 5379. [4193] **When patent may be delivered to agent.**—No patent shall be delivered in any case to an agent or legal representative until he shall have filed written authority from the owner.

Art. 5380. [4194] **Commissioner required to issue patents on certificates not reported by clerks, when.**—The commissioner of the general land office is authorized and required to issue patents to lands that have been surveyed and returned to the general land office and have been suspended because the clerks of the county courts have failed to make reports as required by law, when said commissioner is satisfied from evidence in his office that such patents should issue. [Acts of 1883, p. 82.]

Art. 5381. [4195] **Penalty for failure to pay fees on patents; venue, etc.**—If any patents remain in the land office six months after the owners are notified of the issuance, and to pay the dues on the same, it shall be the duty of the commissioner to add to the amount of said fees a penalty of ten per cent per month for the whole time the fees may remain unpaid, and to collect said penalty and fees from the persons or corporations to whom said patents have been granted; and said commissioner shall have no authority to deliver any patent for land or certified copy of field-notes or certificate thereof until the whole amount of said fees and penalty shall have been paid, and it is made the duty of the attorney general to bring suit for the same in the district court of Travis county. [Acts of 1879, p. 62.]

Art. 5382. [4196] **State shall have a lien to secure the fees.**—The state of Texas has and shall hereafter have a lien upon all the land conveyed by or included in all patents to land granted by the state for the amount of fees and penalties provided for in the preceding article, and said land shall be subject to be sold in satisfaction of the same. [Id.]

CHAPTER SEVEN.

LAND RESERVATIONS.

	Article.		Article.
Locations validated.....	5383	One-half of public domain added to permanent fund	5386
Lands sold for taxes to state, etc.....	5384		5387
All unappropriated lands declared part of permanent school fund.....	5385.		

Article 5383. [4265] **Locations validated.**—Any and all public lands heretofore surveyed by railroads, or corporations, or any company, or any person in this state, for the benefit of the public free schools of this state, by virtue of any certificate, valid or invalid, void or voidable, be and the same are hereby declared to be lands belonging to the public free schools of this state. [Acts of 1883, p. 4.]

Art. 5384. [4266] **Lands sold for taxes to state, etc.**—When lands are sold in unorganized counties and bid in by the comptroller for the state for the taxes due thereon, and are not redeemed by the owner thereof, nor his agent, within two years, by the party redeeming the same paying double the amount for which said land was sold, then the land thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. [Acts of 1879, p. 140.]

Art. 5385. **All unappropriated lands declared part of permanent school fund.**—All lands heretofore set apart under the constitution and laws of Texas, and all of the unappropriated public domain remaining in the state of Texas, of whatever character, and wheresoever located, including any lands hereafter recovered by the state, except that included in lakes, bays and islands along the Gulf of Mexico within tidewater limits, is set apart and granted to the permanent school fund of the state; and all such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the state, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres, more or less, and field-notes thereof returned to and filed in the general land office, the same is hereby declared a sufficient designation of said land; and the commissioner of the general land office shall dispose of the same by the survey and block numbers contained in said field-notes. [Acts 1900, p. 29. Acts 1899, p. 123.]

Art. 5386. [4253] **One-half of public domain added to permanent fund, etc.**—After the payment of the amounts due from the state to the common free school fund out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt by an act approved July 14, 1879, and an act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the state, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths. [Acts of 1883, p. 71.]

Art. 5387. [4254] **The asylum lands.**—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. [Const., art. 7, sec. 9. Act Aug. 30, 1856, p. 76.]

CHAPTER EIGHT.

GENERAL PROVISIONS.

Article.	Article.		
No officer to be interested in public lands, etc.	5388	Surplus segregated from public domain, when	5396
Abstract to be corrected if necessary....	5389	Belong to public free school fund.....	5397
Supplemental abstracts furnished, when..	5390	Excess to be added.....	5398
Abstracts to be printed, etc.....	5391	Shall not effect.....	5399
Printing of, how paid for.....	5392	Conflict	5400
Certain locations validated.....	5393	Even numbered surveys in conflict, etc. .	5401
Failure to alienate no forfeiture, when..	5394	Lands—how sold and proceeds invested. .	5402
Must alienate within what time.....	5395	Actual settlers to have preference.....	5403
		Land purchase money refunded, when....	5404

Article 5388. [4211] **No officer shall be interested in public land, etc.—**No person elected or appointed to any position of trust in the general land office, or employed in such land office, shall, directly or indirectly, be concerned in the purchase of any right, title or interest in any public land, either in his own name, right or interest for any other person, or in the name or right of any other person in trust for himself; nor shall take nor receive any fee or emolument for negotiating or transacting the business of said office, other than those fees allowed by law. [Act Dec. 14, 1837. P. D. 4090.]

Art. 5389. [4215] **Abstract to be corrected when necessary.—**The commissioner of the general land office shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent. [Id. sec. 4.]

Art. 5390. [4216] **Supplemental abstract furnished, when.—**During the month of August of each year hereafter, the commissioner of the general land office shall have made out and furnished to the comptroller of public accounts a supplementary abstract of all patents that have been issued from his office during the year ending on the thirty-first day of August. [Id. sec. 5.]

Art. 5391. [4217] **Abstract to be printed, etc.—**The comptroller of public accounts is hereby authorized to have one thousand copies of said supplementary abstracts printed and bound for distribution among those officers of the state and counties whose duties require the use of said abstract, the surplus copies to be sold at a reasonable price to parties applying for them; provided, that, if the demand for copies of said abstract shall be greater than the supply provided for by this article, an additional number of five hundred copies may be printed. [Id. sec. 6.]

Art. 5392. [4218] **Printing of, how paid for, etc.—**The sum necessary to pay for the printing and binding of said supplemental abstracts shall be paid out of the general appropriation made by the legislature for printing; and all moneys received by the comptroller by the sale of said abstracts shall be paid into the treasury to the credit of said appropriation. [Id. sec. 7.]

Art. 5393. [4218a] **Certain locations validated.—**The titles to all lands located by virtue of certificates issued to railroad companies in whole or in part for sidings, switches or turnouts, and which lands were transferred by any of said companies, or their duly appointed receivers or assigns, prior to the first day of January, A. D. 1891, to purchasers in actual good faith for value, and are now owned by such purchasers, their heirs or assigns, be and the same are hereby validated to such purchasers, their heirs or assigns, and also to all actual settlers on such lands so far as the state may have any claim, and that the titles to all public free school, university, or asylum lands located by virtue of such certificates are also validated, whether the

locations were voidable or not by reason of their having been made by the wrong surveyor; provided, that this article shall not apply to lands for the recovery of which suit has already been instituted by the state, nor be construed to validate locations made on lands that were at the time appropriated or reserved from such locations, nor shall it be construed to in any manner apply to or affect the rights of third parties heretofore acquired in good faith; provided, further, this article shall not apply or be held to validate titles in the following other cases:

1. Where said lands were transferred through foreclosure proceedings against such companies to trustees or mortgagees or other persons or corporations interested in mortgages on said lands, or who held said lands for such interested persons or corporations, and where the apparent title to said lands was still in said companies or their receivers or their transferees at such foreclosure sale on January 1, 1891, and have not been subsequently transferred to actual settlers on such land or to bona fide purchasers thereof for value and without notice.

2. Where said lands have been transferred by said companies in evasion and fraud of the laws of alienation applicable thereto and the title is now in the name of the original vendees of said companies. [Act of 1895, p. 36.]

Art. 5394. Failure to alienate, no forfeiture when.—The failure of any railway company or other original grantee of any valid alternate land certificate to alienate their lands or any portion thereof, granted to them within the periods specified in the laws under which said lands were granted, or by any other law of the state of Texas, shall not be deemed a sufficient cause for forfeiting such lands, or any part thereof, by the state of Texas; provided, it shall appear that such lands have in fact, by a bona fide sale, been already alienated to actual purchasers; and provided, further, that all lands now held by such original grantee shall be sold to actual bona fide purchasers on or before the first day of July, 1910, otherwise such lands as are not so alienated shall revert to and become the property of the state of Texas; provided, further, that all lands affected by this article shall be alienated in tracts not to exceed four sections to any one person or persons, and that no person, persons, or corporations shall make more than one purchase of said lands. [Act 1903, p. 130.]

Art. 5395. Must alienate within what time.—Any railway company which has in any manner whatsoever acquired title to or interest in any land in this state, not required in the construction, operation or repair of its railway, or for yards, stations, or other facilities, shall alienate the same in good faith on or before the first day of July, 1910, otherwise the same shall be forfeited to the state at the suit of the attorney general. [Id.]

Art. 5396. [4274] Surplus segregated from public domain, when.—Surveys and blocks of surveys made by virtue of valid alternate scrip be and the same are hereby declared to segregate from the mass of the public domain all land embraced in said surveys, or blocks of surveys, as evidenced by the corners and lines of same, or by calls for natural or artificial objects, or the calls for the corners and boundaries of other surveys, or by the maps and other records in the general land office. [Acts of 1889, p. 104.]

Art. 5397. [4275] Belong to public free school fund.—All excess in said surveys are donated and declared to belong to the public free school fund of the state; and it shall be the duty of the commissioner of the general land office to ascertain, by any and all means practicable, the existence and extent of such excesses, and to provide for and direct such surveys, or corrected surveys, as may be necessary for this purpose; provided, that, where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the

maps, sketches and field-notes originally returned to the general land office; provided, that the person who has already purchased, or who may hereafter purchase from the state the particular section to which surplus shall by such resurvey be made contiguous, shall have the prior right for the period of six months after such resurvey shall have been made, in which to purchase such excess on the same terms on which such purchaser has already bought or may buy. [Id. sec. 2.]

Art. 5398. [4276] **Excess to be added.**—All such surveys which, under the direction of the commissioner of the general land office have been or may be hereafter corrected, so that all excess in the original surveys shall be placed in the surveys belonging to the public free schools, are hereby validated, and the action of the commissioner is hereby ratified; and he is directed and authorized to issue patents to the owners thereof, and to sell such surveys belonging to the public free schools, securing to the state the benefit of such excesses. [Id. sec. 3.]

Art. 5399. [4277] **Shall not affect.**—The provisions of this law shall not apply to nor affect the rights of the third persons heretofore acquired in good faith. [Id. sec. 4.]

Art. 5400. [4278] **Conflicts.**—Nothing in the preceding four articles shall apply to any lands for which patents have been issued. [Id. sec. 5.]

Art. 5401. [4279] **Even numbered surveys in conflict, etc.**—Where the common school or even numbered surveys in conflicting locations, made by virtue of alternate land certificates, are not identical or upon the same land, the commissioner of the general land office may, where he deems it to the interest of the state to do so, change the numbers of the surveys in the conflicting locations so as to make the common school or even numbered surveys in both locations identical; provided, that the commissioner of the general land office shall not change the numbers of surveys without the written consent of the owner of the certificates by virtue of which said surveys are made. [Acts of 1889, p. 104.]

Art. 5402. [4271] **Land, how sold and proceeds invested.**—Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners' court of such county; and the proceeds of any such sale shall be invested in bonds of the state of Texas, or of the United States, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually. [Id.]

Art. 5403. [4272] **Actual settlers to have preference.**—In any sale of county school lands, under the provisions of the preceding article, the actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by the commissioners' court, which price shall not include the value of existing improvements made thereon by such settlers. [Id.]

Art. 5404. [4159c] **Land purchase money refunded, when.**—Upon proper proof being made to the comptroller that money has been in good faith paid into the state treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents can not legally issue, or upon lands which patents have issued and have been or may hereafter be legally canceled, the comptroller is hereby authorized to issue his warrant for the amount so paid into the treasury in favor of the parties who have in good faith paid such money, for which they receive no consideration; provided, that this article shall not apply to surveys, the errors in which may be corrected; and provided, further, that whenever the official records of the general land office shall show that patents for such lands can

not legally issue upon such surveys, on account of conflicts, erroneous or illegal sales; or that patents issued on such lands have been legally canceled, it shall be the duty of the commissioner to issue his certificate to that effect, which certificate filed with the comptroller shall be sufficient proof to authorize him to act under the provisions hereof. [Id. p. 162.]

CHAPTER NINE.

SALE AND LEASE OF PUBLIC FREE SCHOOL AND ASYLUM LANDS.

Article.	Article.
Sale and lease of public lands provided for	Minerals, gayule and lechuguilla reserved
Duties of commissioner of general land office	Sale of gayule and lechuguilla
Classification and valuation	Transfers
Advertisement of land	Lands patented, when
Sales by commissioner, how made	Same
Actual settlers application	Payments and patents for town sites
Cash payments, how remitted	Application of railroad to buy, to contain what
Remittances, how accounts kept	Land, how sold and patent issued
Awards, how made; notice and accounts of	Limitations as to purchases
Remittances, disposition of and accounts of	Application for less than 320 acres to particularly describe
Purchaser's name to be given; permanent records to be kept	No actual settlement required
Award and settlement	Regulations as to occupancy
To whom awarded when application rejected	Certificates of occupancy to be recorded, etc.
Eight section counties—complement	Coupling occupancy under second purchase to cure defects of first
Settlement and residence	Vendees of original purchasers protected
Limitations as to purchases	Cemetery, church and school house sites
Right of lessees	Accounts, etc., with purchasers to be kept
Sales without settlement	
Forfeiture of purchase by non-payment of interest, etc.	Leases.
Permanent improvements to be erected by purchaser; forfeiture	Commissioner may withhold agricultural lands from lease, when
Forfeiture for failure to settle on land, etc.	Commissioner to advertise lands for lease, how
Forfeiture of home tract works forfeiture of other land, when	Leases, how and when made
Terms of re-purchase of forfeited agricultural lands	Regulations as to leases in absolute lease districts
Purchases prior to July 30, 1895, right of under forfeitures	Expired leases, regulations as to
Timber lands defined; regulation for sale of	Where lessee secures permanent water
Same	Lease, how forfeited; lien on improvements for rent
Timber and lands sold prior to August 11, 1907	Lessees may remove improvements, when
Unsurveyed or scrap land	One year to assert right to leased or sold land
	Same

Article 5405. [4218b] **Sale and lease of public lands provided for.**—All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter. [Acts 1895, p. 63.]

Art. 5406. [4218c] **Duties of commissioner of the general land office.**—The commissioner of the general land office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful enclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed

necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations so as to protect the public interest; but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases, and all other forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may, from time to time, call upon the attorney general to prepare such forms; and it shall be the duty of that officer to furnish the commissioner of the general land office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such commissioner to call upon the attorney general for advice whenever there is any doubt as to the meaning of this chapter, or any provisions thereof. [Id.]

Art. 5407. **Classification and valuation.**—The commissioner of the general land office may, from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands set apart for the benefit of the public free school, lunatic asylum, the blind asylum, the deaf and dumb asylum and the orphan asylum, designating the same as agricultural, grazing, or timbered land, according to the fact in the particular case; and he may prescribe such regulations in relation thereto as he may deem necessary to secure a correct classification; provided, all agricultural lands shall be sold at not less than one dollar and fifty cents per acre, and all grazing lands shall be sold at not less than one dollar per acre. He may also reclassify any lands heretofore erroneously classified, upon the official certificate of the commissioners' court of the county in which said land is situated, or of the county to which such county is attached for judicial purposes, certifying what the proper classification should be, said certificate to be signed by the entire commissioners' court, including the county judge, or upon such other evidence as may be satisfactory to the commissioner. And it shall be his duty to notify in writing the county clerk of each county the classification and valuation affixed upon each section of land in his county, and each county attached to it for judicial purposes; and he shall forward the same to the county clerk of the county for which said list was made, or to the county clerk of the county to which the said county is attached for judicial purposes. The said commissioner shall also notify said clerk of each and every sale as soon as they are made. Upon receipt of said list, or any notice required to be given under the provisions of this act, the county clerk receiving the same shall forthwith file and record said list or notice in a well bound book to be kept for that purpose. When informed of the sale of any land, the clerk shall enter on his books, opposite the description of the land so sold, the name of the purchaser and the date sold, and the said list and notice of sale so furnished the said clerk, and the said books shall be considered public records, and be open to public inspection; and it is hereby made the duty of the county clerk to exhibit the said book and the records to any person who shall apply therefor. When any portion of said land has been classified to the satisfaction of the commissioner of the general land office, under the provisions of this chapter, such land shall be subject to sale, but to actual settlers only, except where otherwise provided by law; provided, that the purchaser shall not include in his purchase more than two sections of agricultural land. [Act 1905, p. 159, sec. 1. Art. 4218e, Act 1895, amended Act 1897, p. 184. Art. 4218b, Act 1895. Art. 4218e, Act 1895, amended Act 1897, p. 184. Act of 1905, p. 159, part of sec. 1. Art. 4218f, Act 1895.]

Art. 5408. **Advertisement of land.**—In cases where lands may be leased and the same shall come on the market by reason of the expiration of such lease, it shall be the duty of the commissioner to notify the county clerk ninety days, when practicable, before the expiration of such lease of the date of

such expiration. When a lease is for any cause canceled, he shall notify the county clerk of that fact and fix a date not less than ninety days thereafter on and after which applications to purchase may be filed. All notices of expiration and cancellation of leases shall be forthwith recorded as required for notices of classification and valuation. The commissioner shall adopt such means as may be at his command that will give the widest publicity as to when land will be on the market for sale by reason of expiration of any lease. Such publicity shall, when practicable, be given ninety days in advance of such expiration. When a lease is canceled for any cause, the land shall not be for sale until ninety days thereafter. Immediately after the cancellation of a lease or leases the commissioner shall proceed to give publicity to the fact, the same as is herein required with reference to publicity of expiring leases. If there are no other satisfactory or sufficient means at the command of the commissioner that will give the necessary publicity, he shall have printed at the expense of the state, to be paid out of the appropriation for public printing, a list or lists of the lands, and send them out in the mail and to every person requesting them. Such lists shall also contain a brief statement as to how one shall proceed to purchase the land. [Acts 1905, p. 159, sec. 2.]

Art. 5409. [4218g] **Sales by commissioner, how made.**—The purchaser shall transmit to the land commissioner one-fortieth of the aggregate purchase money for the particular tract of land, together with his application, affidavit and his obligation to the state, duly executed, binding the purchaser to pay to the state on the first day of November of each year thereafter, until the whole purchase money is paid, one-fortieth of the aggregate price, with interest at the rate of three or five per cent per annum, according to his purchase, on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year; and, upon receipt of one-fortieth of the purchase money, and the affidavit and obligation aforesaid, by the commissioner, the sale shall be deemed and held effective from the date the application, affidavit and obligation are filed in the general land office. [Acts 1895.]

Art. 5410. **Actual settlers, applications.**—All sales shall be made by the commissioner of the general land office, or under his direction. Any person desiring to purchase any of the surveyed land mentioned in this chapter shall make a separate application in writing for each tract applied for and be addressed to the commissioner of the general land office. It shall sufficiently designate the tract sought to be purchased, and give the price offered therefor, which shall not be less than the appraised value fixed by the commissioner. Each application shall contain the affidavit of the applicant to the effect that he desires to purchase the land for a home, or as additional to the home applied for, or as additional to his own land which has been theretofore purchased from the state, or as additional to his own private land, as the case may be, and that he is or will, as the case may be, in good faith, become in person an actual bona fide settler on some portion of the land he purchases, or upon his other land, as the case may be, within ninety days from the date his application is accepted, also that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase thereof; also every application shall be accompanied by the obligation of the applicant in a sum equal to the amount of the deferred payment offered for the land. Said application, affidavit and obligation shall be filed in the land office through due course of mail and not by any one in person, in an envelope addressed to the commissioner of the general land office at

Austin, Texas; and, when the land is to come on the market at some future date, the envelope shall have endorsed thereon as follows: "Application to buy land; Sections, Block, Grantee, County, Date on market," and the blanks shall be properly filled out. When the envelope so endorsed is received in the land office, it shall be safely and securely kept and preserved by the commissioner, or his chief clerk, without being opened until the day following the date endorsed thereon as to when the land comes on the market, and one or both of them shall begin at ten o'clock a. m., on the day following the day the land comes on the market, to open the envelopes for inspection of the applications, and such action as is herein provided for, and in the presence of the applicants, if they desire to be present, or in the presence of such person as they may designate to represent them; and said applications shall immediately be filed, together with all other applications received up to that time for the same land. [Acts 1905, p. 159, sec. 3.]

Art. 5411. **Cash payments, how remitted.**—Such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the state treasurer, without liability; provided, that, should a remittance be made payable to the commissioner of the general land office, such payment shall not be invalid for that reason, but the commissioner shall endorse it to the state treasurer without incurring liability and the same shall be treated as if payable to the treasurer. If the payment is not made as required in this article, the application shall be void. [Acts 1909, p. 429.]

Art. 5412. **Remittances, how accounts kept.**—When an envelope enclosing an application to purchase land is opened and the remittance for the first payment is in the general land office, the commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the treasurer. On receipt thereof, the treasurer shall check the remittances with the lists, and, if found to be correct, he shall receipt one of the lists and return it to the commissioner and retain the other list; and thereupon the commissioner shall deliver the third list retained by him to the comptroller of public accounts. The treasurer shall at once collect all collectible remittances and report to the commissioner and comptroller all remittances not collectible in Austin. The items not collected shall be returned to the commissioner, and the application for which such remittances were made shall be void. All first payments thus collected by the treasurer shall be retained by him until he receives notice from the commissioner of the final disposition of the applications to purchase; and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the comptroller. On the last working day of each month, the treasurer shall deposit in the treasury to the credit of the proper fund the sum collected by him on accepted applications during that month. [Id.]

Art. 5413. **Awards, how made; notice and accounts of.**—Notices of awards shall be prepared and issued by the commissioner, and shall be appropriately numbered, and shall be so worded as to constitute a receipt for first payment when signed as such by the commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of award shall be prepared in duplicate, one to be detached from the

book and retained in the land office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupons shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amount remitted as interest, and the amount remitted as principal, and both the original and duplicate shall be mailed to the commissioner with the remittance. The commissioner shall likewise furnish former purchasers with similar coupon books, without notice of award, which coupon shall be used by them in the same manner as herein provided when making remittances for interest or principal, or both. [Id. sec. 3.]

Art. 5414. Remittances, disposition of and accounts of.—All accounts with purchasers and lessees of the lands mentioned in the preceding articles and university land shall be kept in the general land office. A remittance payable to the commissioner of the general land office shall not be invalid for that reason, but he shall endorse it to the treasurer without incurring liability. Immediately on receipt thereof the commissioner shall list in triplicate, separate from first payments, all money and other forms of remittances received for the purposes stated in this article and in such form as to show the amount of each remittance, the name and address of the remitter, and the probable fund to which the remittance should be deposited. The remittances and two of the lists aforesaid shall be transmitted to the treasurer. On receipt thereof, the treasurer shall check the remittances with the list, and if found to be correct he shall receipt one of the lists and return it to the commissioner and retain the other list, and thereupon the commissioner shall deliver the third list retained by him to the comptroller. The treasurer shall at once collect all collectible remittances and report to the commissioner and comptroller all remittances not collectible in Austin. The items not collected shall be returned to the commissioner. On the last working day of each month, the treasurer shall deposit into the treasury to the credit of the proper fund, as indicated by the lists theretofore furnished him by the commissioner, eighty per cent of all collections which have come into his hands during that month upon such lists, and hold the remaining twenty per cent thereof upon deposit receipts issued therefor by the comptroller; provided, when the commissioner shall have issued receipts to the remitters for remittances, he shall immediately notify the comptroller and treasurer definitely the fund or funds to which the whole of such remittances so receipted for should have been applied; and thereupon the treasurer shall deposit to the credit of the proper fund or funds the remaining twenty per cent of such remittances so receipted for. The commissioner shall furnish all available data to the state board of education when requested to do so by said board. The commissioner, treasurer and comptroller shall each keep an account with each fund mentioned in the preceding articles according to the lists and notices given and received by them. [Id.]

Art. 5415. Purchaser's name to be given; permanent records to be kept.—Persons making payments of interest, principal or lease rentals on land shall give the name of the original purchaser or lessee and sufficiently designate the land. All lists and notices provided in the preceding articles, to be given by the commissioner to the treasurer and comptroller, shall be retained in each of those departments as permanent records thereof. [Id. sec. 5.]

Art. 5416. **Award and settlement.**—When the applications and obligations aforesaid have been filed in the general land office, and upon inspection they are found correct and the land is found to be classified and valued, and on the market for sale the day the application was filed or on any prior date and still unsold, and the first payment made as required by law, it shall be the duty of the commissioner to award the land to the one offering the highest price therefor. If two or more applicants offer the same price for the same land, the same being the highest price offered, they shall be advised of that fact and a date fixed not less than thirty days thereafter within which time they may again file applications, and notice shall be sent to the clerk and other publicity shall be given that said lands are still on the market to any one, and the time in which applications to purchase the same may be filed as in the first instance. The applicant offering the highest price shall receive the award. If the second or subsequent applications should be found to offer the same price, the procedure shall be as in the first instance. An application at a less price than the former application contained shall not be considered. An application to purchase land coming on the market at some future date shall not be considered for award prior to the day next following the day the land comes on the market for sale. Land that is or may be on the market, and not filed on as herein provided, may be filed on and sold to any one at any time upon proper applications filed in the land office as herein provided, and in accordance with law, except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but, if two or more such applicants should offer the same price, the commissioner shall proceed as herein provided for in the first filing. All sales shall date from the day the successful applicant's application was filed in the land office. The applicant shall have ninety days from the date of the acceptance of his application within which to actually settle upon the land so purchased; and he shall within thirty days after the expiration of said ninety days given within which to make settlement, file in the land office his affidavit that he has in good faith actually in person settled upon the land purchased by him. Should the applicant fail to make and file the affidavit and proof of settlement as herein provided within the time specified, the commissioner of the general land office shall indorse that fact upon his application, cancelling the same, and immediately place the same upon the market by notice to the clerk, fixing a date not less than thirty days thereafter when applications may be filed for the purchase thereof; and any sum which may have been paid upon a former application, canceled as aforesaid, shall be forfeited to the fund to which the same belonged. All sums paid in by an unsuccessful applicant shall be returned to him. Provided, if for any cause a designated home tract can not be awarded to an applicant and there be no other obstacle to the award of one or more tracts as additional thereto, such applicant shall be permitted, without prejudice, to designate one of the additional tracts as a home tract, which shall, with such other tracts as he has applied for and are within five miles thereof, be awarded to the applicant. The commissioner shall advise the applicant why he can not award to him the home tract and request a new designation by his affidavit; and, in default of such affidavit being filed in the land office within thirty days after such notice, the commissioner may reject all the applications of such applicant, but, should no rights intervene, such affidavit may be considered at any time prior to a rejection. The affidavit shall be sufficient authority for the change of the home tract, and shall relate back to the date of the filing of the application in the land office. A purchaser may live on any tract

designated as a home, or move from any designated home tract to any of his additional land, at any time during the required three years residence on the land. The applicant shall accompany the application aforesaid with his obligation to the state, duly executed, binding the purchaser to pay to the state at the land office at Austin, Texas, on the first day of November of each year thereafter, until the whole purchase price is paid, one-fortieth of the aggregate price, with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year; and in default of the interest the land shall be forfeited as now provided by law. At the same time the applicant applies to purchase the land, he shall also deposit in the land office one-fortieth of the aggregate price of the same as the first payment thereon. A purchaser shall not transfer his land prior to his actual settlement thereon, and evidence of that fact filed as herein provided; and any attempt to so transfer by deed, bond for title, or other agreement shall operate as a forfeiture of the land to the fund to which the same belonged, together with all the payments made thereon; and when sufficiently informed of the facts which operate as a forfeiture, the commissioner shall note the fact of forfeiture upon the application and proceed to place the land on the market by notice to the proper county clerk and advertisement in the manner provided for canceled leases. [Acts 1905, p. 159, sec. 4.]

Art. 5417. To whom awarded, when application rejected.—If for any cause an application for land or timber which offers the highest price can not be accepted, those offering the next highest price and filed on same day shall be considered in their order of price until one may be awarded. [Acts 1907, p. 490, sec. 6e.]

Art. 5418. Eight section counties; complement of land.—One who has not purchased any land since April 19, 1901, may purchase, on condition of settlement, in the counties of Brewster, Crockett, Edwards, El Paso, Jeff Davis, Kinney, Pecos, Presidio, Sutton, Terrell and Val Verde, not to exceed eight sections of six hundred and forty acres each, more or less, which are wholly within said counties. One who has heretofore, or who may hereafter, purchase a complement as aforesaid, shall not purchase any more. One who has purchased or may hereafter purchase on condition of settlement four sections of six hundred and forty acres each, more or less, wholly or partly within any county other than those hereinabove named since said date, shall not purchase any more on condition of settlement. One who has purchased less than a complement, as aforesaid, may hereafter purchase in any county such number of sections as his lack of a complement in the county of the former purchase bears to a complement in the county of such former purchase. One who has heretofore purchased land on condition of settlement, which lies partly within an eight-section county and partly within a four-section county, shall be considered for the purpose of future purchase by him as having purchased in a four-section county. Every additional survey applied for shall be situated within five miles of the designated home tract, except the survey on which the lessee, who may apply [to buy] out of his lease, may have placed permanent and immovable improvements of the value of five hundred dollars, need not be within such radius. No survey shall be sold in any county except as a whole, notwithstanding it may be leased in two or more parts. [Acts 1907, 1 S. S., p. 490, sec. 6.]

Art. 5419. Settlement and residence.—All of the surveyed school land wholly or partly within the counties of Andrews, Brewster, Cameron, Crane, Crockett, Dimmit, Duval, Ector, Edwards, El Paso, Gaines, Hidalgo, Jeff Davis, Kimble, Kinney, La Salle, Loving, Maverick, McMullen, Midland, Pecos,

Presidio, Reeves, Starr, Sutton, Terrell, Terry, Upton, Uvalde, Val Verde, Ward, Webb, Winkler, Yoakum, Zapata and Zavala shall be sold on condition of settlement as provided by this act and existing statutes, except tracts of one hundred acres or less shall be sold for cash. The land purchased by one, either for cash or on deferred payment without condition of settlement, shall not be computed against him in his purchase on condition of settlement. Every purchaser on condition of settlement shall in person reside continuously on either the designated home tract or on some portion of the land purchased as additional thereto, for three consecutive years next succeeding the date of the award of the home tract, or from the date of the award of the first tract, as additional to a home already owned, as the case may be, including the ninety days allowed to settle. The proof of such settlement and residence shall be made as now provided by statute. [Id. sec. 6a.]

Art. 5420. Limitations as to purchases.—The commissioner of the general land office is hereby prohibited from selling to the same party more than one complement of four or eight sections of land, according to the county; and all applications to purchase land shall also disclose the prior lands purchased by the applicant from the state, if any, and the residence of the applicant, at said time; and, if it appear therefrom, or from the records in the land office, that said applicant has already purchased land aggregating four or eight sections, according to county, since April 19, 1901, his application shall be rejected; provided, this shall not apply to sales made to a purchaser and afterwards canceled as invalid for some reason other than abandonment, and where the purchaser himself was not at fault. [Acts 1901, p. 292, sec. 3.]

Art. 5421. Right of lessees.—An original lessee of a lease executed prior to April 15, 1905, who has never parted with any interest in his lease, except by purchase, may purchase out of such lease in whole surveys only one complement of sections, or such part thereof as will make his total purchase since April 19, 1901, not to exceed eight or four sections, according to the county; provided, an original lessee who has not heretofore exercised his right to buy one complement of sections out of one or more leases and should not hereafter desire to do so, may assign one or more leases to a qualified purchaser, and his assignee shall have the same right to purchase out of the leases one complement of sections, or such number thereof as the assignor may be qualified to purchase, or such number as the assignee may be qualified to purchase; provided, that in case the assignment should have been made and acknowledged before an officer authorized to take acknowledgments the assignee may exercise that right as provided for under the act of April 15, 1905. Only one complement shall be sold out of any lease, including that heretofore sold out of it. One who desires to buy land out of his lease shall first give written notice to the commissioner of the general land office, and specify the land he wants to buy not less than sixty days prior to expiration of the lease. The commissioner shall make, or cause to be made, an inspection of the land, if he is not already in possession of sufficient information, and appraise same at its reasonable market value, and advise such person and the proper county clerk of the value placed thereon. Thereafter the land shall be subject to sale to the lessee only during the life of the lease. After a lease expires or is canceled, no one shall have any preference to purchase any land contained therein. [Acts 1907, p. 490, sec. 5.]

Art. 5422. Sales without settlement.—The surveyed school and asylum land and the timber thereon situated wholly within any county other than those named in article 5419 shall be sold in whole tracts only, and without condition of settlement or limit as to quantity, and either for cash with the right to patent at once, or for one-fortieth cash with five per cent interest on the deferred payment, together with all the pains and penalties of forfeiture for non-pay-

ment as is now or may hereafter be provided by law. All applications for the purchase of land without settlement, and either for cash or on deferred payment, shall be in writing and accompanied by the affidavit of the applicant that he desires the land for his own benefit and not for any other person or corporation. When any such purchase is fully paid for, the land may be patented. No land on which there is merchantable timber shall be sold until the timber is sold for cash and fully paid for. Should two or more applicants offer the same price for any tract on the same date, the same being the highest price offered, and one should offer full cash payment and another should offer one-fortieth cash payment and balance on time, the application on deferred payment shall be accepted. Such of the land in the counties included within this section as is now sold, but which may hereafter become subject to sale, shall not be subject to sale until the former sale shall have been canceled and the land and timber, if any thereon, shall be reappraised by the commissioner, and a date fixed not more than sixty days from the date of such cancellation, when it may be subject to sale to the one offering the highest price therefor. Notice of such cancellation and reappraisal shall be mailed to the proper county clerk, together with the date when the land and timber, if any, will be subject to sale. [Acts 1907, p. 490, secs. 6b and 6e.]

Art. 5423. [4218] **Forfeiture of purchase by non-payment of interest, etc.**—If upon the first day of November of any year any portion of the interest due on any obligation remains unpaid, the commissioner of the general land office shall endorse on such obligation, "Land Forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser; and thereupon said land shall thereby be forfeited to the state without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter, or any future law; provided, the purchaser of land prior to August 20, 1897, shall have the right, at any time within six months after such endorsement of "Lands Forfeited" to institute a suit in district court of Travis county, Texas, against the commissioner of the general land office, for the purpose of contesting such forfeiture and setting aside the same, upon the ground that the facts did not exist authorizing such forfeiture, but, if no such suit has been instituted as above provided, such forfeiture of the commissioner of the general land office shall then become fixed and conclusive. In any cases where lands have been forfeited to the state for the non-payment of interest, the purchasers, or their vendees, may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. In all such cases, the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and exempt from the requirement of settlement and residence thereon; provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months in any one year, for the purpose of earning money with which to pay for the land, or for the purpose of schooling his children, shall not work a forfeiture of his title; provided, further, that nothing in this article contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the state at the time such forfeiture occurred, or to protect any other right to such land; which suits may be instituted by the attorney general, or under his direction, in the proper court of the county in which the land lies, or of the county to which such county is attached for

judicial purposes. [Acts 1895. Acts 1897, p. 39, sec. 1. Art. 4218], Act 1895, Amended Acts 1897, p. 184. Art. 4218], Acts 1895.]

Art. 5424. Permanent improvements to be erected by purchaser; forfeiture.—Every purchaser shall be required within three years after his purchase to erect permanent and valuable improvements on the land purchased by him, which improvements shall be of the reasonable market value of three hundred dollars. If any purchaser shall fail to reside upon and improve in good faith the land purchased by him as required by law, he shall forfeit said land and all payments made thereon to the state, to the same extent as for the non-payment of interest, and such land shall be again upon the market as if no such sale and forfeiture had occurred; and all forfeitures for non-occupancy shall have the effect of placing the land upon the market without any action whatever on the part of the commissioner of the general land office; and, if any purchaser shall be forced to yield possession of the land purchased by him from the state on account of any writ or other judicial process issued from a court of competent jurisdiction, or be compelled to temporarily yield his possession from a well-grounded fear of death or serious bodily injury, such absence shall not work the forfeiture provided by law for non-occupancy; but no writ of injunction shall issue in any case involving the title or possession of lands herein referred to where the applicant has an adequate remedy at law by sequestration or otherwise. [Acts 1901, p. 292, sec. 3.]

Art. 5425. Forfeiture for failure to settle on land, etc.—One who has heretofore, or who may hereafter, purchase land out of a lease or otherwise on condition of settlement in the counties named in article 5419 and fails to settle thereon within the required time, or fails to file in the land office his affidavit of settlement within the required time, or fails to comply with the law as to residence on the land, or executes a transfer contrary to the provisions hereof, except those stated in this chapter as not being void, he shall forfeit the land and all payments made thereon to the fund to which the land belongs; and, when the commissioner shall be sufficiently informed of the facts which operate as a forfeiture, he shall cancel the award or sale by noting the act of forfeiture on the obligation, and mail notice of that fact to the proper county clerk. Such land shall not be subject to sale again at a less price than the former sale price, unless the commissioner shall have re-appraised the land at a less price after noting the act of forfeiture. [Acts 1907, p. 490, sec. 6e.]

Art. 5426. [4218ff] Forfeiture of home tract works forfeiture of other land, when.—When any purchaser buys and settles upon a section, or part of a section, of school lands, and buys, either at the same time or subsequently, other lands in addition thereto, a forfeiture for any legal cause of the part on which he resides, at any time before the three years residence thereon has been completed, shall work a forfeiture of the entire purchase, except such part thereof as he may have previously sold to another. But, after the three years residence has been completed, a forfeiture of the home tract shall not of itself work a forfeiture of the other tract or tracts. [Acts 1895, amended Acts 1897, p. 184.]

Art. 5427. [4218h] Terms of repurchase of forfeited agricultural lands.—The owner of land which is in fact agricultural, purchased prior to August 20, 1897, and which land is not subject to forfeiture at said date, shall not be permitted, in case said land is forfeited, to purchase said forfeited land from the state for a less price per acre than the contract price under the former sale. [Acts 1895, amended Acts 1897, p. 184.]

Art. 5428. [4218f] Purchasers prior to July 30, 1895; rights of under forfeiture.—Where any of the lands referred to have been sold prior to July 30, 1895, in quantities greater or less than forty acres or multiples thereof,

and are in good standing as to interest payments, they may be patented in such quantities. Any owner of land purchased prior to said date, and which land has been or may be forfeited for non-payment of interest, shall have ninety days prior right, after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but, if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years; provided, that, when any forfeiture has been made, the commissioner of the general land office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein. [Acts 1895, amended 1897, p. 184. Art. 4218j, Act 1895.]

Art. 5429. **Timber lands defined; regulations for sale of.**—The commissioner of the general land office shall adopt such regulations for the sale of timber on timbered lands as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued chiefly for the timber thereon. [Acts 1901, p. 296, sec. 8.]

Art. 5430. **Same.**—One who applies to purchase the timber shall file his application in writing in the general land office in the manner now provided for the filing of applications for the purchase of land, and pay to the land office the full cash payment according to the price offered therefor, but not at a less price than that fixed by the commissioner. Should two or more persons each apply to purchase the timber and land on the same day, and one should offer more for the timber but less for the land than a competitor, then the one offering the highest price for the timber shall have an option for thirty days, as now provided by law for designating home tracts, to take the land at the highest price offered by such competitor. Should the one offering the highest price for the timber not want the land at such highest price, but should want the timber, it shall be awarded to him. Should one who applies for both timber and land offer the highest price for the land, but a lower price for the timber, he shall have an option of thirty days as aforesaid to purchase the land, if it should not be purchased by the one who offers the highest price for the timber; but, should the one who offers the highest price for the timber and the lesser price for the land not want the land at such high price, nor should he exercise his option by purchasing the timber alone, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. The commissioner shall appraise all timber at its reasonable market value, and it shall not be sold at a price less than that so fixed by him. Should two or more applications for timber alone be filed on the same day, the one offering the most therefor shall be accepted. All timber shall be sold in full tracts. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award for the purpose of removing or protecting the timber thereon, and the purchaser shall be entitled to all the timber thereon for that period and no longer. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the state, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that event the timber shall revert to the owner of the land. The owners of timber heretofore purchased, which has not been removed and the five years in which to remove same or to purchase the land have not expired, but may expire on or before November 1, 1907, may purchase the land on that date at the price fixed by the commissioner and without condition of settlement, either for cash or on deferred payment, with five per cent interest as provided in this chapter for other

purchasers without settlement. In case the five years do not expire before said date, only the owner of the timber shall have the right to purchase the land as herein provided at any time prior to the removal of the timber and within the five years allowed in which to remove same. Land on which timber has heretofore been sold, and the timber has been or may be removed, or the five years shall have expired and the land not purchased by the owner of the timber, shall not be sold until it is re-classified and re-appraised by the commissioner, and a date fixed not more than sixty days after such action for the sale thereof. Notice of such action and date fixed for sale shall be mailed to the proper county clerk. [Acts 1907, p. 490, sec. 6c.]

Art. 5431. Timber and lands sold prior to August 12, 1907.—The purchaser of timber prior to August 12, 1907, shall have five years from that date within which to remove the timber therefrom, and, in case of failure to do so, such timber shall thereby be forfeited to the state without judicial ascertainment; provided, that all timbered lands sold prior to such date, from which the timber has been cut and taken off, may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the land commissioner; provided, that upon application of the purchaser or his vendees of any such timber made within five years from the purchase of such timber, the commissioner of the general land office shall have said land classified at the expense of the owner of said timber as agricultural or grazing land, and the owner of said timber shall have the right to purchase said land at the valuation fixed by said commissioner on the same terms and conditions as other lands of like classification are sold under the provisions of this chapter. [Acts 1901, p. 296, sec. 8.]

Art. 5432. Unsurveyed or scrap lands.—Any person desiring to purchase any portion of the unsurveyed school lands shall first make a written application to the surveyor of the proper county or district in which the land, or a portion thereof, is situated, signed and sworn to by the applicant, giving his postoffice address, and designating the land he desires by metes and bounds, as nearly as practicable, and stating that he desires to have the land surveyed with the intention of buying it, and that he is not acting in collusion with or attempting to acquire land for another person or corporation. It shall be the duty of the surveyor to file and record such application, and to survey the land and file the application and field-notes in the land office within ninety days from the date of the filing of the application, together with a properly prepared and certified sketch of the survey, with the variations at which all lines were run. The land shall be surveyed under the instructions of the commissioner of the general land office. The applicant shall pay to the surveyor one dollar as a filing fee, and his further lawful fees for surveying the land. When the surveyor returns the application and field-notes to the land office, he shall report under oath the classification and market value of the land, and also the timber thereon and its value, which may be considered in connection with such other evidence as may be required in determining the class and price to be given the land or timber. If, upon inspection of the papers, the commissioner is satisfied, from the report of the surveyor and the records of the land office, that the land is vacant and belongs to the school fund, and the survey has been made according to law, he shall approve same and notify the applicant that the land is subject to sale to him, stating the classification, price and terms, which shall be the same as that for surveyed lands, except as herein provided; provided, all unsurveyed vacant tracts not disclosed by the official maps in use in the land office at the time an application for the survey is filed, may be sold for cash, or for one-fortieth cash with five per cent interest on the deferred principal, and without condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant

tracts which are subject to overflow, or situated in bottoms or swamps or otherwise so as to be unsuitable for settlement, may be sold for cash or for one-fortieth cash, with five per cent interest on deferred principal, and without condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant tracts not exceeding six hundred and forty acres, and not less than one hundred acres, which are disclosed by the official maps in use in the land office at the time an application for a survey is filed, and which are now or may be entirely surrounded by valid surveys or sold school surveys, shall be sold as a whole, and may be sold for cash, or for one-fortieth cash with five per cent interest on deferred principal, and without the condition of settlement and improvement, and with the right to pay same out at any time and obtain patent; all unsurveyed vacant tracts of one hundred acres or less shall be sold for cash only; all other unsurveyed vacant tracts disclosed by the official maps in use in the land office when an application for survey is filed, shall be sold on condition of settlement and improvement as provided by law for the sale of surveyed land; provided, that land heretofore or hereafter recovered by the state from claimants holding or claiming same under Spanish or Mexican titles shall be considered as vacancies disclosed by the official maps, and the person who in good faith so held or claimed such land under the claim aforesaid shall have a prior right for ninety days after the date of the final recovery of such land hereafter, to file on and purchase four sections of six hundred and forty acres each for cash, or for one-fortieth cash with five per cent interest on the deferred principal, and without the condition of settlement, and with the right to pay same out at any time and obtain patent. When the land is applied for and purchased under this article, without condition of settlement and improvement, the application to purchase shall otherwise conform to the requirements of applications for surveyed land, except as to settlement and designation of home tract. In all cases of the sale of any land on deferred payments and without the condition of settlement and improvement, as provided for in this article, the merchantable timber thereon, if any, shall first be paid for in cash. All land appropriated to the public school fund by the act of February 23, 1900, and which has heretofore been surveyed at private expense, may be sold under the provisions of this article relating to undisclosed vacancies and swamp lands. If within sixty days from the date of the notice of approval of any survey as herein provided, the applicant shall not have filed in the land office his purchase application at the appraised value fixed on the land, and in compliance with this article, such land shall be placed on the market for sale, upon the same terms and conditions as other surveyed school land. When any land, lying between older surveys, is held by the commissioner of the general land office to be unsurveyed or vacant land appropriated to the public school fund by the act of February 23, 1900, and is sold as such under the provisions of this chapter, and thereafter any suit arises between the owner or owners of such older surveys, and the purchaser from the state or his vendees, any final judgment rendered in such suit shall be deemed and held conclusive as to the existence or non-existence of such vacancy; provided, if in any suit judgment is obtained through collusion or fraud against the state, the same may be set aside and vacated at the suit of the state any time within five years thereafter. All unsurveyed tracts of six hundred and forty acres or less shall be sold as a whole, and all tracts of more than six hundred and forty acres shall be sold in such tracts as may be required or approved by the commissioner. No one shall hereafter have any preference to purchase any unsurveyed land, except as provided in this chapter for original lessees out of leases. All tracts containing one hundred acres or less, wheresoever situated, shall be sold for cash and without condition of settlement. All applications to purchase land under any preference

right, which were filed in the land office prior to August 12, 1907, shall be accepted. No corporation shall purchase any land under the provisions of this chapter. [Act 1907, p. 490, sec. 8.]

Art. 5433. **Minerals, gayule and lechuguilla reserved.**—The land which is now or may hereafter be classed as mineral may be sold for agricultural or grazing purposes, but all sales of such land shall be upon the express condition that the minerals shall be and are reserved to the fund to which the land belongs, and such reservation shall be stated in all applications to purchase; provided, should any person who has no authority or right to do so cut or remove any mineral, gayule or lechuguilla from the land belonging to the public free school fund, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the Penal Code, and in addition thereto judgment shall be rendered against the defendant in behalf of the state in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the state treasurer and by him credited to the fund to which the land belongs. The commissioner shall adopt all the necessary rules and regulations for the execution of the several provisions of this chapter. [Acts 1907, p. 490, sec. 6f.]

Art. 5434. **Sale of gayule and lechuguilla.**—The commissioner of the general land office may, with the consent and approval of the governor and attorney general, sell the gayule, lechuguilla, growing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the state. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the state. [Act 1907, p. 251.]

Art. 5435. **Transfers.**—One who hereafter buys land on condition of settlement shall not sell any part of such purchase prior to one year after date of award of the home tract, nor prior to one year after date of the award of the first additional tract purchased to a formerly acquired home, unless the required residence has sooner been completed. After the lapse of the time aforesaid, the purchaser may sell all of his land, or any part thereof, in whole tracts, according to his purchase, to another qualified purchaser, who will become an actual bona fide settler on some part thereof at date of his transfer, if the residence is not complete, and such assignee shall complete the residence on the land by continuous residence thereon as required of his vendor; and if the vendor does not sell all of his purchase he shall continue to reside upon his home tract, or on some part of that retained, until the completion of the residence required of him. A purchaser on condition of settlement under this chapter, or any former law, who may have the right to sell his land, or a part of it, may sell his whole home tract, or one or more of his additional tracts, as a whole, according to his purchase, to another purchaser who owns a designated home tract within five miles of each of such tracts as he may purchase as assignee, and the assignee may take each of the tracts as additional to his own designated home tract; provided, the total tracts so purchased by an assignee prior to the completion of the residence of the vendor, together with the former purchase of the assignee, shall not exceed one complement of sections. In such cases, the assignee shall continue to reside in person upon either his formerly designated home tract, or on one of his formerly acquired additional tracts, or on one of his additional tracts purchased as assignee, continuously until the completion of the residence required of him under his former purchase and that of his vendor. No tract hereafter purchased shall

be transferred, except as a whole, prior to the issuance of patent thereon; but, should a transfer of less than a whole tract be made after the purchaser has the right to sell in whole tracts under the provisions of this chapter, such transfer shall not be void, but the owner shall not be substituted as assignee on the records of the land office. The failure to pay the interest on the whole of such tract shall operate as a forfeiture of every part thereof. [Act 1907, p. 490, sec. 6d.]

Art. 5436. [4218k] **Lands patented, when.**—Purchasers shall have the option of paying the purchase money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land for three consecutive years, they shall receive patents for the same upon payment of the patent fee prescribed by law. Purchasers prior to August 12, 1907, may also sell their lands, or a part of the same, in quantities of forty acres, or multiples thereof, at any time after the sale; and in such cases the vendee, or any subsequent vendee, or his heirs or legatees, shall file his own obligation with the commissioner of the general land office, together with the duly authenticated conveyance or transfer from the original purchaser and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies, or to which said county may be attached for judicial purposes, together with his affidavit, in case three years residence has not already been had upon said land and proof made of that fact, stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he has not acted in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase, save himself; and thereupon the original obligation shall be surrendered or canceled or properly credited, as the case may be, and the vendee shall become the purchaser direct from the state, and be subject to all the obligations and penalties prescribed by law, and the original purchaser shall be absolved in whole or in part, as the case may be, from further liability thereon; and, if he or his vendor has already resided on his home section for three years, or when he or his vendor, or both together, shall have resided upon it for three years, the additional lands purchased may be patented at any time. [Acts 1895.]

Art. 5437. **Same.**—Land which has been sold by the state prior to August 12, 1907, and which has been or may be subsequently transferred in tracts other than in legal multiples, may, in the discretion of the commissioner, be so patented. [Acts 1905, p. 159, sec. 9.]

Art. 5438. [4218k] **Payments and patents for town sites.**—Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the state upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such purchaser or owner of such land shall file in the general land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and is being occupied by bona fide citizens, twenty business and residence houses, or either, or both. [Act 1895.]

Art. 5439. **Application of railroad to buy, to contain what.**—Any railroad company owning, operating or constructing a line of railway in this state, desiring to purchase any portion of the public free school, university or asylum lands in this state, under the provisions of this law and the succeeding articles,

for the location and establishment thereon of town sites, depots, stations, yards, divisional terminals, shops, round houses or water stations, shall file with the commissioner of the general land office, if the land desired be public free school or asylum lands, and with the board of regents of the state university, if the land desired is university land, an application to purchase each tract so desired, supported by the affidavit of its president, vice-president or chief engineer, which application shall:

First. Describe by metes and bounds or otherwise sufficient to satisfy the commissioner of the general land office, or the board of regents of the state university, as the case may be, of the particular tract or tracts of land that it desires to purchase under the provisions of this law.

Second. Said application shall show that said land so applied for is desired and needed by said railway company for some one or more of the purposes for which the sale of such lands are authorized by this article, and that it is the intention of said railway company to speedily use said land for such purpose or purposes.

Third. That said application is not made for the use or benefit of any other person or corporation than the applicant, nor in collusion with, or in the interest of any other person or corporation whatsoever; and

Fourth. That said railway company applying for said land shall furnish the commissioner of the general land office, or board of regents of the state university, as the case may be, with a plat and map, together with the field-notes of each tract of land so applied for, if required by such commissioner, or board of regents, which plat and map shall accompany said application and affidavit. [Act 1905, p. 58.]

Art. 5440. Land, how sold and patent issued.—When any such application or applications shall be filed with the commissioner of the general land office for the purchase of public school land, or with the board of regents for the purchase of university land, under the provisions hereof, said commissioner, or said board of regents, as the case may be, shall investigate the matter therein set forth; and, if after such investigation, he or they shall be satisfied that the statements made in such application are true, he or they shall then determine and fix the fair and reasonable value of such tract or tracts of land, regardless of any lease thereon, unless the lessee should have two hundred dollars worth of improvements thereon, in which event the consent of the lessee shall be first obtained, and he or they shall advise the applicant of the price so fixed; and, if said railway company desires said land at the price so fixed, it shall pay therefor in cash to the state treasurer the price so fixed by the commissioner of the general land office, or said board of regents, as the case may be; and the treasurer shall give his receipt showing such payment, whereupon there shall be issued and delivered to the said railway company a patent for said tract or tracts of land, to be properly executed by the governor and the commissioner of the general land office upon payment of the patent fee therefor; provided, that no mineral land shall be sold under this law. [Act 1903, p. 127.]

Art. 5441. Limitations as to purchase.—The amount of land that may be purchased by any one railway company, or for any one railway company, under the provisions of this law, for the several purposes named in these articles, and the conditions and limitations imposed thereon, shall be as follows: If such land is desired for the purpose of the location and establishment thereon of depots, stations, yards, divisional terminals, shops or round houses, said railway company shall be permitted to purchase only such an amount of land as may be necessary for the proper operation and maintenance of said railway, which fact shall be determined by said commissioner of the general land office, or said board of regents, as the case may be; and, if desired by them, they may, for that purpose, have the advice and assistance of the en-

gineer of the railroad commission of Texas; and, if said land applied for be desired for water stations at points on or near said line of railway where it is necessary to construct and maintain a dam and reservoir for the impounding of rain water, for the operation and use of said railway, sufficient land may be sold for such purpose as may be necessary for the proper construction, preservation and maintenance of such water station, not to exceed six hundred and forty acres for each water station. And, if said land be desired for the location and establishment thereon of a town site, not exceeding three hundred and twenty acres shall be sold for each town site. Provided, that, if any railway company shall fail to use said land so purchased by it under any of the provisions of these articles, for the purpose for which same was sold, within five years from the date of the patent for each tract of land sold, said land, and all improvements thereon belonging to said railway company shall revert to the fund to which it formerly belonged. And provided, further, that, if said land is sold for town site purposes, such tract must be at least eight miles distant from any other tract of land sold for the same purpose to said railway company, and, after such sale, no other tract or tracts of land shall ever be sold to said railway company, or its assigns, for town site purposes, adjoining said tract sold for such purpose. And provided, further, that if the land applied for be for the purpose of depots, stations, yards, divisional terminals, shops or round houses, the land applied for for such purposes must adjoin the line of road, railroad tracks or right of way of said railway company; and all lands sold for town sites must either adjoin said railway tracks, line of road or right of way, or adjoin land sold under the provisions hereof to said railway company for depots, stations, yards, divisional terminals, shops or round houses. And provided, further, that all lands acquired for town site purposes under these articles shall be in good faith placed upon the market for sale, and said railway company shall alienate the title to said land so sold to said railway company within the term of ten years after acquiring title to same. And provided, further, that, if said land be desired for a water station and reservoir for the impounding of rain water for the use and operation of said railway, each tract sold for such purpose must be within three miles of the line of road of said railway company, and must be at least eight miles distant from any other tract sold to the same railway company for same purpose; and, when said tract of land sold for water stations does not adjoin said line of road of said railway company, said railway shall have the right of way over any lands belonging to either of the funds mentioned in this act for its water mains from its said water station to its line of railway. Act 1905, p. 58.]

Art. 5442. Applications for less than 320 acres to particularly describe.—If any railway company desires to purchase any public free school land under the conditions and provisions of the foregoing articles out of any tract of such public free school land containing less than three hundred and twenty acres, it shall, in its application therefor, describe by metes and bounds, or otherwise, to the satisfaction of the commissioner of the general land office, the particular portion of any existing survey which it may so desire to purchase, and such commissioner shall be and is hereby authorized to sell such number of acres so applied for, though less than the whole survey, under the provisions and conditions of the foregoing articles, but all sales of less than the entire tract shall be in eighty acre tracts, or multiples thereof. [Id. sec. 4.]

Art. 5443. No actual settlement required.—This law shall not be construed to require any character of actual settlement to be made upon the land sold under its provisions previous to the sale and patent thereof, nor shall it be construed as in any way changing or modifying the present laws in relation to the sale of public free school, university and asylum lands of this state, except as provided for in the preceding articles. Whenever any land is sold to railway companies for the purposes mentioned in this chapter and shall be used

for any other purposes than those mentioned in this chapter, then such land shall revert back to the state. All laws and parts of laws in conflict herewith are hereby repealed. [Act 1903, p. 127.]

Art. 5444. [4218j] **Regulations as to occupancy.**—The commissioner of the general land office shall prescribe suitable regulations whereby all purchasers shall be required to reside upon, as a home, the land purchased by them for three consecutive years next succeeding the date of their purchase, except when otherwise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within two years next after the expiration of said three years, by his affidavit, corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths; and on making such proof the commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact. If any person has sold the whole, or any part of, his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein.

Art. 5445. **Certificates of occupancy to be recorded, etc.**—If a proof of occupancy has heretofore been, or should hereafter be, filed in the general land office, in accordance with the statute under which the purchase was made, or may be made, and it should be approved by the commissioner by the issuance of the certificate of its sufficiency, the said certificate may be recorded in the office of the clerk of the county or counties in which the land is situated, and shall thereafter be a muniment of title of the home tract and additional land purchased to such home tract. [Act 1907, p. 490.]

Art. 5446. [4218m] **Coupling occupancy under second purchase to cure defects of first.**—In all cases where persons have purchased, or may hereafter purchase, state, school or asylum lands under any act of the legislature authorizing the sale thereof and requiring a residence of three years thereon, and said persons have so resided upon said land, or may hereafter reside thereon, for the period of three years as required by law, and their files have been, or may hereafter be, canceled and purchases annulled by the commissioner of the general land office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this article without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the commissioner of the three years' residence under their first purchase. [Acts 1895, p. 163.]

Art. 5447. [4218n] **Vendees of original purchasers protected.**—In all cases where any of the lands mentioned in this chapter have been sold prior to July 30, 1895, under any law authorizing the sale thereof, and the original purchaser shall have sold, or may hereafter sell, any part of his purchase in quantities of forty acres or multiples thereof, and the conveyance to his vendee or vendees is filed in the general land office after having been duly recorded in the proper county, the commissioner shall credit his account with the value of the land sold, and shall open up new accounts with the original purchaser and such vendee or vendees, and the commissioner shall patent said land to the owners thereof in quantities of forty acres or multiples thereof; provided, that when any of such land is situated within three miles of a county seat it may be patented in twenty acre tracts. [Id.]

Art. 5448. [4218o] **Cemetery, church and school house sites.**—The commissioner of the general land office is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any of the lands mentioned in this chapter, as sites for cemeteries, churches or school houses. When the land is

desired as a location for a school house, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and, when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the state and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and to be filed in the general land office, and shall be entitled to credit on his account with the state for the value therefor. The value of the land and patent fee shall be paid to the commissioner of the general land office before patent issues. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be. [Id.]

Art. 5449. [4218p] **Accounts, etc., with purchasers to be kept.**—The commissioner of the general land office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest, and all other moneys arising from the sales or leases of said lands shall be paid by the purchaser or lessee direct to the land commissioner, who shall cause an accurate account to be kept with each purchaser. [Id.]

LEASES.

Art. 5450. [4218y] **Commissioner may withhold agricultural lands from lease, when.**—The commissioner of the general land office may withhold from lease any agricultural lands necessary for the purpose of settlement; and no agricultural lands shall be leased, if, in the judgment of the commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement, and sold to actual settlers only, under the provisions of this chapter. [Amended 1897, p. 184.]

Art. 5451. [4218r] **Commissioner to advertise lands for lease, how.**—All leases under the provisions of this chapter may be advertised by the commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the state not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Art. 5452. **Leases, how and when made.**—Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this chapter shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease; and thereupon the commissioner, if the lands applied for are subject to lease, and not in immediate demand for actual settlement, shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and thereupon he shall execute to the lessee in the name and by the authority of the state of Texas a lease of said lands for such time as may be agreed upon, not to exceed five years; and, when satisfied that the lessee has paid to the state the rent for one year in advance, he shall deliver said lease to the clerk of the county court of the county in which the land is situated, or of the county to which said county is attached for judicial purposes; and it shall be the duty of the clerk to record in a well-bound book kept in his office, open to public inspection, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon payment of said fee, the clerk shall deliver the

lease to the lessee, and no other record of leases hereafter made shall be required, except said memorandum. When any of such leases are filed for record, the clerk shall make the memorandum or abstract above provided for. All lands which may be leased shall be subject to sale at any time, except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made as well as to those hereafter to be made. Any section, or part of a section, which may be leased shall not be sold except to the lessee, nor shall the lessee be disturbed in his possession thereof during the term of his lease, when he has placed on such section, or part of a section, improvements to the value of two hundred dollars. [Acts 1901, p. 292, sec. 4.]

Art. 5453. Regulations as to leases in absolute lease districts.—The following counties shall constitute the absolute lease district, to wit: El Paso, Jeff Davis, Presidio, Brewster, Reeves, Pecos, Loving, Winkler, Ward, Yoakum, Terry, Gaines, Andrews, Ector, Midland, Upton, Crane, Crockett, Sutton, Val Verde, Edwards, Kinney, Maverick, Zavala, Dimmit, La Salle, McMullen, Webb, Duval, Nueces, Kimble, Zapata, Starr, Hidalgo and Cameron. All tracts of land lying partly inside and partly outside of the absolute lease district shall be considered, for the purpose of sale and lease, as being wholly without said district. And lands situated in the absolute lease district which may be leased shall not be sold during the term of the lease, except as provided herein. On the expiration of any lease in the absolute lease district, the lands shall remain subject to sale for a period of ninety days, and, if it has been previously classified and valued by the commissioner of the general land office, and notice given to the county clerk, it shall not be necessary to give the clerk any further notice in order to put the land on the market, but it shall be considered as already on the market and subject to sale. During said period of ninety days, the commissioner of the general land office shall suspend action upon any application to lease said land, and shall award it upon any legal application to purchase made during said time. The party purchasing any of said lands, whether inside or outside of the absolute lease district, within the inclosure of another, shall not turn loose any stock within the inclosure until he shall have provided sufficient water for the stock so turned loose, and any violation of this provision shall be an offense, and, upon conviction, the party so offending shall be punished as provided in the Penal Code. If no application to purchase has been filed within ninety days after the expiration of the lease, then the former lessee shall have a preference right over any one else for thirty days thereafter to re-lease such lands, or any part thereof, but his lease shall run from the expiration of his old lease. In all cases where the lease is terminated under any of the provisions of this chapter before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent or the money refunded to him by the treasurer, as he may elect. On the expiration of his lease or its termination under the provisions of law, or by a final judgment of any court of competent jurisdiction, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises. No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle or in lieu thereof, four head of sheep or goats, for every ten acres of land so purchased, owned or controlled by him and uninclosed. Each violation of the provisions of this chapter which restrict the number of stock which may be turned loose in such inclosure shall be an offense, and the offender, on conviction, shall be punished as provided in the Penal Code. The commissioner of the general land office is hereby prohibited from renewing any lease before its expiration, as shown on the face of the original lease contract; and no lease contract shall be canceled, except in cases where the land has been, or may be, sold as provided by law, or where the lessee fails to pay the annual rental due the state within sixty days from

the date it becomes due. And when the lessee shall fail to pay his annual rental within sixty days after it becomes due, the commissioner of the general land office shall cancel said lease, and immediately notify the county clerk of the county in which the land, or a part thereof, is situated, of the cancellation and the date when canceled, and the clerk shall note the date of cancellation on his lease record. [Act 1901, p. 292, sec. 5.]

Art. 5454. Expired leases; regulations as to.—When a lease expires or is canceled for any cause, the commissioner shall not consider an application to lease the land prior to ninety days from such expiration or cancellation, and no lease on any land shall be made if it is in demand by purchasers. An original lessee, or the assignee of an entire leasehold, who was such owner at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he is willing to pay and will pay as much therefor as another, after due publicity; provided, no lease shall be made at less than three cents per acre. [Act 1905, p. 159, sec. 7.]

Art. 5455. [4218t] Where lessees secure permanent water, rights of.—Any person desiring to lease any portion of the lands aforesaid on which no permanent water supply exists, shall notify the commissioner of the general land office in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the commissioner of the general land office his bond, with good and sufficient personal security, in a sum equal to one year's rental of the quantity of land applied for, payable to the state of Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the commissioner shall for such ninety days withhold the lands thus designated from lease to any other person; within or at the expiration of said ninety days and annually thereafter such applicant to lease shall pay to the state of Texas, in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially and attested by the seal of the land office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If the said lessee shall fail to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to make proof to the satisfaction of the commissioner of the general land office within that time that he has in good faith and diligently used proper means and expended proper efforts to secure a water supply on such land and failed, then and in that case the commissioner shall mark said bond, "Forfeited," and shall deliver the same to the attorney general of the state, who shall at once cause the said bond to be sued upon and collected; and such collection shall become a part of the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the state. Proof satisfactory to the commissioner of the general land office that proper, suitable and diligent effort had been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility therein, and it shall be marked, "Satisfied," by said commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article shall, at the expiration of their lease

contract, have the right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days' written notice to the commissioner, as provided in the preceding article. [Act 1895, p. 63.]

Art. 5456. [4218v] **Lease, how forfeited; lien on improvements for rents.**—If any lessee shall fail to pay the annual rent due, in advance, for any year, within sixty days after such rent shall become due, the commissioner shall cancel said lease by writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the state shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease. [Acts 1901, p. 29, sec. 5.]

Art. 5457. [4218w] **Lessees may remove improvements, when.**—All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same.

Art. 5458. **One year to assert right to leased or sold land.**—All persons claiming the right to purchase or lease any public free school lands, or any lands belonging to the state university, or either of the state asylums, which have been heretofore, or which may be hereafter, sold or leased to any other person under any provision of the law authorizing the sale or lease of any of said lands, shall bring his suit therefor within one year after the date of the award of such sale or lease, and not thereafter. [Act 1905, p. 35.]

Art. 5459. **Same.**—If no suit has been instituted by any person claiming the right to purchase or lease any of said land within the period of time limited in the foregoing article, it shall be conclusive evidence that all the requirements of the law with reference to the sale or lease of such lands have been complied with; provided, that nothing in this and the preceding article shall be construed to affect the state of Texas in any action or proceeding that may be brought by it in respect to any of said lands. [Id.]

CHAPTER TEN.

SUITS TO RECOVER PUBLIC LANDS, RENTS AND DAMAGES.

	Article.		Article.
State land agents, appointment and salary	5460	Suits to recover lands illegally occupied.	5467
Duties of such agents	5461	The attorney general to bring suits for lands	5468
Agents to make monthly reports	5462	Suits for mineral and timber depredations	5469
May administer oaths; traveling expenses paid	5463	Venue	5470
Suits to be brought	5464	To report offenders to attorney general	5471
Damages recoverable	5465	Attorney general may compromise	5472
Sums recovered, how appropriated	5466	Money to be turned over to school fund	5473
		Attorney's fees in such cases	5474

Article 5460. **State land agents, appointment and salary.**—The commissioner of the general land office, with the consent and approval of the governor, shall appoint two state land agents, who shall hold their office at the pleasure of the governor and commissioner, and receive a salary of thirteen hundred dollars each per annum. [Act 1899, p. 176, sec. 1.]

Art. 5461. **Duties of such agents.**—Such agents shall have the power, and it is made their duty, to investigate and make inquiries into and concerning the location, valuation and condition of any and all lands controlled or owned by the state; also concerning the free use, occupancy or inclosure of any of said lands without authority of law, and all depredations upon timber of said lands. They shall also procure and furnish information as to location and quality of such lands to all persons desiring to purchase or lease same. [Id.]

Art. 5462. **Agents to make monthly reports.**—Such agents shall make monthly reports to the commissioner or governor touching any and all matters investigated by them, and make such other reports and perform such other duties relating to such lands as may be required of them by the commissioner and governor. [Id.]

Art. 5463. **May administer oaths; traveling expenses paid.**—For the purpose of this law, such agents shall have authority to administer oaths. In addition to the salary of such agents, they shall be allowed their actual traveling expenses, not to exceed the sum of one thousand and five hundred dollars per annum, for the expenses incurred by both of such agents, the same to be allowed only upon the duly sworn itemized statement that said sum was actually paid and necessary to the discharge of their duties. [Id.]

Art. 5464. **Suits to be brought.**—When said agents shall have reported that any public free school, asylum, or other public lands is or has been used or occupied or inclosed without authority of law, or that any timbered land belonging to any of said fund has been or is being destroyed, or depredated upon to the injury of such land, or the detriment of such fund, the governor shall investigate same, and in his discretion direct that suit be instituted for the recovery of such sums as may appear to be proper under this law and article 5467, or he may transmit such documents as he may deem proper to the proper officer or court for the purpose of criminal proceeding, as provided for in articles 850, 851, 852, 853, 859, 860 of the Penal Code and neither of said remedies shall be exclusive of the other, but the one shall be cumulative of the other, and the state may use either or both remedies; provided, that this shall not repeal any pre-existing criminal law. [Id. sec. 2.]

Art. 5465. **Damages recoverable.**—In civil suits, the amount of damage for use or occupancy, or unlawful inclosure, shall be not less than five cents per acre per annum. [Id.]

Art. 5466. **Sums recovered, how appropriated.**—All recoveries under the preceding articles shall be paid into the state treasury for the benefit of the available school fund, or to the fund to which such land, upon which such recovery is had, may belong. For the purpose of recovery herein, the state

shall not be required to prove a continuous daily use or occupancy or herding or line riding by the defendant, or any one for him; provided, that, if any person who is so unlawfully using any of said lands will either buy or lease same, and pay the arrears due thereon, no action shall be begun or continued against him. This action shall apply to individuals or corporations. [Id.]

Art. 5467. [4218x] **Suits to recover lands illegally occupied.**—If the governor shall at any time be credibly informed that any portion of the public lands, or the lands belonging to any of the several funds named in this chapter, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the attorney general to institute suit in the name of the state for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosures and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. For the recovery by the state of all lands sold under the provisions of this or former laws which have been, or may hereafter be, forfeited to the state for any reason, and for the recovery of any money due the state on leases made under this or former laws, and for the recovery of damages for the unlawful use and occupancy of such lands, as provided in this article, or any former laws, jurisdiction is expressly conferred on the courts of Travis county having jurisdiction thereof under the constitution concurrently with courts of the districts in which the land is situated; and all such suits shall be instituted by the attorney general, or under his direction. In suits provided for in this article, the court shall issue a writ of sequestration directed to any sheriff of the state, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said lands into his actual custody, and hold the same subject to further orders of the court; and the state shall not be required to give bond. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases shall have precedence on the docket and stand for trial before all other cases; and, in case judgment is recovered by the state in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases. If any person shall make a lease contract, and after the same is inclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his inclosure if he only intends to surrender a part of his lease, and shall post and shall keep posted for said sixty days notice on all gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor liable for the damages provided for in this article. [Act 1895, p. 63. amended p. 75. Act 1899, p. 176.]

Art. 5468. **The attorney general to bring suits for lands.**—When any of the lands described in this title, or any of the other public lands of the state held or owned by any fund, or any lands in which this state, or any such funds, have an interest, are held, occupied or claimed by any person or association or corporation adversely to the state, or to such fund, it shall be the duty of the attorney general to institute suit therefor, together for rent thereon, for any damages thereto; and for the purpose of any such suits for such lands, or affecting the title thereto, or right growing out of the same, the venue thereof is fixed in Travis county, Texas, concurrently with the county of defendant's residence, and the county where the land is situated; and the courts of said county shall have the same jurisdiction over the defendant and the subject matter of the same as if such defendant resided, and such property was situated, in said county. [Act 1900, p. 29, sec. 8.]

Art. 5469. **Suit for mineral and timber depredations.**—It shall be the duty of the attorney general of the state of Texas to bring suit against every person, firm, association of persons, or corporations, for the value of all minerals or other property of value taken from school, university, asylum and other public lands and for all timber which has been, or may hereafter be, cut, destroyed, sold, used or otherwise appropriated by them off of any such public lands. [Act 1905, p. 38.]

Art. 5470. **Venue.**—The venue of said suits shall be in any county in Texas, or in the county where the injury occurs, or a part thereof, or in the county of the residence of the defendant, at the discretion of the attorney general. [Id.]

Art. 5471. **To report offenders to attorney general.**—It shall be the duty of the commissioner of the general land office and the county attorneys of the state to report to the attorney general semi-annually, or oftener if they desire, the names and residence of every person, firm, association of persons, or corporations, who have cut, used, destroyed, sold or otherwise appropriated any timber on the aforesaid lands or taken any minerals or other property of value therefrom, and such other data and evidence as shall come to their knowledge. [Id.]

Art. 5472. **Attorney general may compromise.**—The attorney general shall have power by and with the consent of the governor to compromise and settle with or without suit any of the aforesaid liabilities. [Id.]

Art. 5473. **Money to be turned over to school fund.**—Whatever sums are collected or received by the attorney general shall be turned over by him to the permanent funds to which they belong. [Id.]

Art. 5474. **Attorneys' fees in such cases.**—As compensation for said services, the attorney general and county attorneys shall receive the following compensation, respectively, to be paid by the defendant as part of the costs to be taxed against the defendant, to wit: The attorney general, ten per cent; the county attorney, five per cent of the amount recovered if recovered by suit, and if recovered by compromise, then said officers shall receive one-half of the above amounts, respectively; provided, that the county attorneys shall receive compensation only from cases reported by them to the attorney general. It shall be the duty of county attorneys to assist the attorney general in whatever way they may be requested in relation to such cases. [Id.]

TITLE 80.

LANDLORD AND TENANT

[See "Forcible Entry and Detainer," Title 61.]

Article.	Article.
Landlord to have preference lien.....	Judgment against sureties.....
Tenant not to remove property.....	Perishable property sold.....
When lien expires.....	Citation for defendant.....
Lien does not apply to, etc.....	Petition.....
Removal not a waiver, etc.....	Rights of tenant.....
Distress warrant.....	Tenant shall not sub-let without consent, etc.....
Oath and bond.....	Owner of residences, storehouses, etc., have preference lien, etc.....
Distress warrant.....	Distress warrant, how obtained.....
Duty of officer.....	
Defendant may replevy.....	

Article 5475. [3235] **Landlords shall have preference lien.**—All persons leasing or renting lands or tenements, at will or for a term, shall have a preference lien upon the property of the tenant hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to enable the tenant to make a crop on such premises, and to gather, secure, house and put the same in condition for market, the money, animals, tools, provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products, or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant, and to the crop raised on such rented premises. [Act April 4, 1874, p. 55. P. D. 7418c.]

Art. 5476. [3236] **Tenant not to remove property, subject.**—It shall not be lawful for the tenant, while the rent and such advances remain unpaid, to remove, or permit to be removed, from the premises so leased or rented any of the agricultural products produced thereon, or any of the animals, tools or property furnished as aforesaid, without the consent of the landlord. [Id.]

Art. 5477. [3237] **When lien expires.**—Such preference lien shall continue as to such agricultural products and as to the animals, tools and other property furnished to the tenant as aforesaid, so long as they remain on such rented or leased premises and for one month thereafter; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sales. [Id.]

Art. 5478. [3238] **Does not apply to, etc.**—Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant. [Id.]

Art. 5478a. [3239] **Removal not a waiver, etc.**—The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises. [Id.]

Art. 5479. [3240] **Distress warrant.**—When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, it shall be lawful for the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs, or legal representatives to apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists, may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant; provided, that when a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises

may be situated, or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by, the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside. [P. D. 7418d. Act to adopt and establish R. C. S., passed Feb. 21, 1879. Acts of 1881, p. 98.]

Art. 5480. [3241] **Oath and bond.**—The plaintiff, his agent or attorney, shall make oath that the amount sued for is for rent or advances, such as are mentioned in the first article of this title, or shall produce a writing signed by such tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant; and the person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned, that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit shall be finally decided in favor of the defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him by the proper tribunal. [Id.]

Art. 5481. [3242] **Distress warrant, issued by whom.**—Upon the filing of such oath and bond, it shall be the duty of such justice of the peace to issue his warrant to the sheriff or any constable of the county, commanding him to seize the property of the defendant, or so much thereof as will satisfy the demand, which warrant shall be, if the same is within the jurisdiction of a justice of the peace, returnable to said justice; but, if the amount in controversy exceeds two hundred dollars, exclusive of interest, and does not exceed five hundred dollars, exclusive of interest, the writ shall be made returnable to the county court. If the amount in controversy exceeds five hundred dollars, exclusive of interest, and does not exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to either the county or district court of the county, as the plaintiff in such writ may direct. If the amount in controversy shall exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to the district court of the county. When the writ is made returnable to the district or county court, the justice of the peace shall transmit all the papers in said cause to the court to which such writ is made returnable, on or before the first day of the next term thereof.

Art. 5482. [3243] **Duty of officer.**—It shall be the duty of the officer to whom such warrant is directed to seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and the same in his possession safely keep, unless the same is replevied as herein provided, and make due return thereof to the court to which said warrant is returnable, at the next term thereof.

Art. 5483. [3244] **Defendant may replevy.**—The defendant shall have the right at any time within ten days from the date of said levy to replevy the property so seized, by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or, at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Art. 5484. [3245] **Judgment against sureties.**—When the property levied on has been replevied as provided in the preceding article, and final judgment shall be rendered against the defendant, such judgment shall be also against him and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such bond.

Art. 5485. [3246] **Perishable property sold.**—If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff, or the defendant, may apply to the court, or judge thereof, to which the warrant is returnable, either in term time or vacation, for an order to sell such property; and, if any person other than the defendant apply for such order of sale, the court shall not grant such order, unless the person applying shall file with such court an obligation, payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 5486. [3247] **Citation for defendant.**—It shall be the duty of the justice of the peace at the time he issues the warrant to issue a citation to the defendant requiring him to answer before such justice, if he has jurisdiction to finally try the cause, and, upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable, and shall be returned with the other papers to such court; provided, that, if the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case *ex parte*, and may enter the proper judgment. [P. D. 7418f.]

Art. 5487. [3248] **Petition.**—When the warrant is made returnable to the district or county court, the plaintiff shall not be obliged to file his petition before suing out said warrant, but may file the same on or before the appearance day of the term of the court to which said papers are returnable. [Id.]

Art. 5488. [3249] **Rights of tenant.**—Nothing in this title shall be so construed as to prevent landlords and tenants from entering into such stipulations or contracts in regard to rents and advances as they may think proper; and, should the landlord, without any default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and, to secure such damages to such tenant or lessee, he shall have a lien on all the property in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract. [Act Aug. 14, 1876, p. 137.]

Art. 5489. [3250] **Tenants shall not sub-let without consent, etc.**—If lands or tenements are rented by the landlord to any person or persons, such person or persons renting said lands or tenements shall not rent or lease said lands or tenements during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney. [Id.]

Art. 5490. [3251] **Owners of buildings to have preference lien, etc.**—All persons leasing or renting any residence, storehouse or other building, shall have a preference lien upon all the property of the tenant in such residence, storehouse or other building, for the payment of the rents due and that may become due; provided, the lien for rents to become due shall not continue or be enforced for a longer period than the current contract year, it being intended by the term, "current contract year," to embrace a period of twelve months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rented premises, and for one month thereafter: but this article shall not be construed as in any manner repealing or affecting any act exempting property from forced sale. [Acts of 1889, p. 11.]

Art. 5491. [3252] **Distress warrant, how obtained.**—When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant as is now provided by law in this chapter; the object of this and the preceding article being to extend the operation of such law so as to include and protect liens on residences and storehouses and other buildings occupied or used by tenants, and conferring on the owners thereof the same rights and privileges as are now conferred by law on other landlords. [Acts of 1879, ch. 119, p. 128.]

TITLE 81.

LAWS.

Chapter. 1. Common Law. 2. Special Laws.	Chapter. 3. Construction of Laws.
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CHAPTER ONE.

COMMON LAW.

Common law of England adopted.....	Article. 5492	Executors, etc., governed by, when.....	Article. 5493
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Article 5492. [3258] **Common law of England adopted.**—The common law of England, so far as it is not inconsistent with the constitution and laws of this state, shall, together with such constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the legislature. [Act Jan. 20, 1840, p. 3. P. D. 978.]

Art. 5493. [3259] **Executors, etc., governed by, when.**—The rights, powers and duties of executors and administrators shall be governed by the common law, when not otherwise provided by státtute. [Act Aug. 9, 1876, p. 130, sec. 141.]

CHAPTER TWO.

SPECIAL LAWS.

Notice of intention to apply for special law, etc.....	Article. 5494	Affecting persons, where published.....	Article. 5497
Where no newspaper is published, notice, how.....	5495	Where applicant is a non-resident.....	5498
Notice in more than one county, when.....	5496	Details need not be embraced in notice.....	5499
		Proof of publication in newspaper.....	5500
		Proof of posting.....	5501

Article 5494. [3260] **Notice of intention to apply for special law, etc.**—Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once a week for the period of thirty days prior to the introduction into the legislature of such contemplated law. [Const., art. 3, sec. 57. Act May 23, 1876, p. 7, sec. 1.]

Art. 5495. [3261] **Where no newspaper is published, notice, how.**—Where there is no newspaper published in said county, a written copy of such statement shall be posted on the court house door and in five other public places in the immediate locality to be affected thereby in said county, for said thirty days, and such notice shall accurately define the locality to be affected by said law. [Id.]

Art. 5496. [3262] **Notice in more than one county, when.**—Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

Art. 5497. [3263] **Affecting persons, where published.**—Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than

others, such persons, if residing within this state, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality. [Id. sec. 2.]

Art. 5498. [3264] **Where applicant is a non-resident.**—If residing without the limits of this state, said publication need only be made in a newspaper published at the capital, in like manner as if such person resided at the seat of government. [Id.]

Art. 5499. [3265] **Details need not be embraced in notice.**—It shall not be necessary to embrace in said notice the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient. [Id. sec. 3.]

Art. 5500. [3266] **Proof of publication in newspaper.**—The publication in a newspaper at the county of the locality, or at the residence, or at the state capital, as the case may be, may be shown by the affidavit of the publisher, or one of the several publishers of such newspapers, accompanied with the printed copy of the notice as published. [Id. sec. 4.]

Art. 5501. [3267] **Proof of posting.**—The posting on the court house door, and at five other public places of the county, provided for in this chapter, may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law. [Id. sec. 4.]

CHAPTER THREE.

CONSTRUCTION OF LAWS.

	Article.		Article.
General rules of construction.....	5502	Meaning of certain words.....	5504
What shall not vitiate.....	5503		

Article 5502. [3268] **General rules of construction.**—The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, or with reference to such subject matter.
2. The present or past tense shall include the future.
3. The masculine gender shall include the feminine and neuter.
4. The singular and plural number shall each include the other, unless otherwise expressly provided.
5. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.
6. In all interpretations, the court shall look diligently for the intention of the legislature, keeping in view at all times the old law, the evil and the remedy.
7. Whenever one law which shall have repealed another shall itself be repealed, the former law shall not be thereby revived without express words to that effect. [Act Jan. 16, 1840. P. D. 4577.]

Art. 5503. [3269] **Grammatical errors, etc., shall not vitiate.**—Grammatical errors shall not vitiate a law, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands; and

in no case shall the punctuation of a law control or affect the intention of the legislature in the enactment thereof.

Art. 5504. [3270] **Meaning of certain words.**—The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

1. "Property" includes real and personal property.
2. "Person" includes a corporation.
3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.
4. "Oath" includes affirmation.
5. "Swear" or "sworn" includes affirm.
6. "Signature" or "subscribe" includes the mark of a person unable to write.
7. "Justice," when applied to a magistrate, means justice of the peace.
8. "Preceding," when used by way of reference to title, chapter or article, means the next preceding.
9. "Succeeding," in like manner, means the next succeeding.
10. "Month" means a calendar month.
11. "Year" means a calendar year.
12. "Effects" includes all personal property and all interest therein.

TITLE 82.

LEGISLATURE.

[For Compensation of Legislators, see "Salaries."]

Chapter. 1. Time of Meeting. 2. Organization.	Chapter. 3. Investigating Committees—Procedure.
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CHAPTER ONE.

TIME OF MEETING.

Time of meeting.....	Article. 5505
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Article 5505. [3271] **Time of meeting.**—The thirty-third legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1912 [1913] at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law.

CHAPTER TWO.

ORGANIZATION.

Article. Who may organize the legislature.....5506 Secretary of state to preside for purpose of organization.....5507 Secretary of state to attend meeting and appoint clerk.....5508 The clerk to call counties in alphabetical order.....5509 Clerk to administer oath.....5510 All counties to be called whether election returns are made or not.....5511	Article. Parties sworn in on any proper evi- dence.....5512 When quorum not present day of meet- ing.....5513 Election of speaker.....5514 Election of other necessary officers.....5515 In absence of secretary of state, attorney general to preside.....5516
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Article 5506. [3272] **Who may organize the legislature.**—Those persons receiving certificates of election to the senate and house of representatives of the legislature, and those senators whose terms of office shall not have terminated, and none others, shall be competent to organize the senate and house of representatives. [Act Aug. 23, 1876, p. 311, sec. 29.]

Art. 5507. [3273] **Secretary of state to preside for purpose of organization.**—For the purpose of organization, as provided for in the preceding article, it shall be the duty of the secretary of state to preside at each recurring session of the legislature. [P. D. 5437.]

Art. 5508. [3274] **Secretary of state to attend meeting and appoint clerk.**—He shall attend at the time and place designated for the meeting of the legislature, and shall appoint a clerk, who shall have been chief clerk of the house the preceding session, if he be present, to take a minute of the proceedings. [Id.]

Art. 5509. [3275] **The clerk to call counties in alphabetical order.**—The clerk, under direction of the secretary of state, shall call all the counties in alphabetical order. [Id.]

Art. 5510. [3276] **Clerk to administer oath.**—When the counties are called and the members elect appear and present their credentials, it shall be the duty

of the clerk, under the order and direction of the secretary of state, to administer to each the oath prescribed by the constitution. [Id.]

Art. 5511. [3277] **All counties to be called whether election returns are made or not.**—Should returns of election in any county for members of the legislature not be made to the office of secretary of state, the clerk shall nevertheless call such county. [Id. P. D. 5438.]

Art. 5512. [3278] **Parties sworn in on any proper evidence.**—Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of secretary of state. [P. D. 5438.]

Art. 5513. [3279] **When quorum not present on day for meeting.**—Should there not be a quorum in attendance on the day appointed for the meeting of the legislature, it shall be the duty of the secretary of state and clerk to attend from day to day until a quorum shall appear and be qualified as above. [P. D. 5439.]

Art. 5514. [3280] **Election of speaker.**—When a quorum shall have appeared and been qualified, the house shall proceed to the election of a speaker, unless a majority of the members present shall think proper to defer said election. [P. D. 5440.]

Art. 5515. [3281] **Election of necessary officers.**—When an election for speaker shall have been had, the speaker elect shall immediately take the chair, and the house proceed to its further organization by electing the necessary officers, to whom the speaker shall administer the oath of office. [P. D. 5441.]

Art. 5516. [3282] **In absence of secretary of state, attorney general to preside.**—Should there be no secretary of state, or in case he be absent or unable to attend from any cause, the attorney general shall attend and perform the duties prescribed in this title. [P. D. 5442.]

CHAPTER THREE.

INVESTIGATING COMMITTEES—PROCEDURE.

Article.	Article.
May administer oaths, etc.....	Authority of special committee to issue process, etc.....
Sergeant-at-arms may serve process.....	Judges and other officers may take testimony, when.....
Special committee to take certain testimony.....	Process, by whom served.....
Notice of taking special testimony to be given.....	Testimony to be written, etc.....
5517	5521
5518	5522
5519	5523
5520	5524

Article 5517. **May administer oaths, etc.**—In the investigation of any public officer elected by the legislature, or the qualified voters of the state of Texas, or of any nominee of any political party in said state for election by the legislature, or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee, or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected or nominated by any political party, or any investigation of any other matter, or for any other purpose that may be ordered by the legislature of this state, or either house of such legislature, before any committee heretofore appointed by the legislature of this state, or by either house of said legislature, and now pending, or before any committee that may hereafter be appointed by the legislature of this state, or either house thereof, at this or any subsequent session, such investigating committee, and each member thereof, shall have full power and

authority to administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it; and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the legislature then in session; and provided, further, that the testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee. [Acts 1907, p. 6, sec. 1.]

Art. 5518. **Sergeant-at-arms may serve process.**—The sergeant-at-arms, or assistant sergeant-at-arms, of either house of the legislature of this state, or any sheriff or constable of this state, may serve any process that may be issued by said investigating committee, or by any commission by them appointed, for the attendance of witnesses who reside within this state; and, if such service is made by any sheriff or constable, he shall be allowed the same fees and mileage allowed for similar process by the district courts of this state in civil cases. Should said investigating committee so direct, any witness visiting or being within the state may be summoned before such committee by having a brief statement of the process issued for such witness transmitted by telegram to any sheriff or constable of the county within which such witness may reside, or is supposed to be, at the time such process may be issued. [Id. sec. 2.]

Art. 5519. **Special committee to take certain testimony.**—Whenever such investigating committee before which any investigation, such as herein above defined, is pending, shall deem it necessary or advisable to procure the testimony of any witness or witnesses residing or being at a great distance from the city of Austin, within this state, or residing or being without this state, or procure the evidence contained, or supposed to be contained, in any books, papers or written documents without this state, such investigating committee may name, appoint and delegate any two of its members as a special commission to go to any such distant point or points within this state, or beyond the confines of this state, where such witness resides, or is supposed to be, or where such evidence may probably be had, for the purpose of procuring the testimony of such witness or witnesses, or of such evidence, and shall seek to procure the same as hereinafter provided. [Id. sec. 3.]

Art. 5520. **Notice of taking same to be given.**—When such special commission as hereinabove defined shall be appointed and delegated by said investigating committee, notice thereof shall be forthwith given to the party under investigation, or his attorneys of record, and the point or points to which such special commission is directed to go, as far as may then be known, shall be stated in such notice, and the order in which such points are to be visited as far as may then be known; provided, that such special commission may visit any other point or points than those named by such investigating committee, if in the judgment of such commission necessary to procure such testimony or any other material testimony. [Id. sec. 4.]

Art. 5521. **Authority to issue process, etc.**—Such special commission shall have authority to issue any and all process that may be necessary to compel the attendance of witnesses before them, administer oaths to witnesses, compel

witnesses to produce before them any books, papers and other written documents designated in any process by them issued, and take the testimony of any witness in respect to any matters or charges pending before said investigating committee, and to compel any witness to answer any questions propounded by them, or under their direction, pertinent to such matters or charges; and, should said commissioners disagree as to the admissibility of any evidence to which objection is made, they shall receive the same, together with such objections, to be referred to the investigating committee for its decision. Whenever any witness is subpoenaed by said commissioners to appear before them, such subpoena shall state the time when and the place where such witness is expected to appear to testify in respect to such matters and charges; and reasonable time, to be determined by said commissioners, shall be given such witness to make his appearance and produce any books, papers and documents that he may be required by the process served on him to produce before said commissioners. Said commissioners shall employ an expert stenographer to take down all questions propounded to any witness and his answers thereto, whether said witness is examined before them or before some officer of the state in which such examination is being had as hereinafter provided. [Id. sec. 5.]

Art. 5522. Judges and other officers may take testimony, when.—Said commissioners, if they elect so to do, may file with any judge of any court of record, justice of the peace, commissioner of deeds for the state of Texas, or notary public of the county and state where any witness whose testimony is desired may reside or be found, a brief statement of the matters or charges under investigation by the legislature of the state of Texas, or either house of such legislature, in respect to which the testimony of such witness is sought, the name of the witness and where he can probably be found, the reasons why such witness is believed to possess the information sought, and, when books, papers and other documents are accessible to such witness are desired, such a description thereof as will enable the witness to produce the same, and thereupon ask that such judge, justice of the peace, or commissioner of deeds, or notary public, shall summon such witness to appear before him with any books, papers, and other written documents that may be so designated, and testify in answer to any and all pertinent questions that may be propounded to him by said commissioners, or under their direction, in respect to said matters and charges. Any subpoena or other process issued by said judge, justice of the peace, commissioner of deeds, or notary public, shall state the time and place of holding such examination, and otherwise conform to the laws of the state in which the same is issued; and the examination of such witness shall be in the same manner and subject to the same rules of procedure as provided by law for taking the deposition of witnesses in answer to oral interrogatories and cross interrogatories under a commission issued upon agreements of the parties litigant by the district courts of the state of Texas to take the deposition of non-resident witnesses, except, that no notice shall be required to be given to any one other than the witness and the party being investigated by the legislature of the state of Texas, or either house of said legislature. Any process that may be issued by any officer without this state hereinabove named may be served by any sheriff, constable or policeman of the county and state in which such witness may reside or be found, and for such service shall receive the same fees and mileage as may be provided by the law of said state for service of process in the district or circuit courts of such state in civil cases. [Id. sec. 6.]

Art. 5523. Process, by whom served.—Any process issued by said commissioners, or by any of the officers named in article 5522, when the same is to be served without this state, shall be served by any of the officers named

in article 5522, by delivering a true copy of such process to the witness therein named; and such officer shall make his return on such service showing how and when the same has been served and service of process in this state shall be the same as service of similar process in civil cases in the district courts of this state. [Id. sec 7.]

Art. 5524. **Testimony to be written, etc.**—When any witness appears to testify either before said commissioners or any of the officers named in article 5522, the questions propounded and answers thereto shall be taken down by a competent stenographer and thereafter transcribed, together with all objections thereto, and shall be returned to the investigating committee to be incorporated in the record as a part of the evidence in such investigation, subject to the ruling of said investigating committee as to the admissibility of any evidence therein contained. Any officer named in article 5522 shall have power and authority to compel any witness appearing before him to testify in answer to any and all pertinent questions propounded; and upon the failure or refusal of such witness to testify such officer may fine or imprison such witness for contempt to the extent and as may be provided by the laws of the state in which such witness is examined. The commission provided for by this act shall have the authority to employ and have to accompany them not more than one attorney who is not a member of such committee and who is a citizen of the state of Texas, at the expense of the state, but shall not have the authority to employ attorneys who are not citizens of this state at the expense thereof. [Id. sec. 8.]

TITLE 83.

LEVEES, IMPROVEMENT DISTRICTS AND SEAWALLS.

Chapter. 1. State Levee and Drainage Board. 2. Improvement Districts.	}	Chapter. 3. Seawalls.
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CHAPTER ONE.

STATE LEVEE AND DRAINAGE BOARD.

Article. Board, who constitutes.....5525 Commissioner, appointment, qualifica- tions; traveling expenses allowed.....5526 Duties of commissioner.....5527	}	Article. May co-operate with United States geo- logical survey.....5528 To confer with representatives of drain- age districts.....5529
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Article 5525. **Board, who constitutes.**—The state levee and drainage board shall be composed of the governor, who shall be chairman of said board, the attorney general, and the commissioner of the general land office. [Acts 1909, p. 136, sec. 1.]

Art. 5526. **Commissioner, appointment, qualifications, traveling expenses.**—Said board shall have general charge of the work provided for in this chapter and shall appoint a commissioner to be known as state levee and drainage commissioner, who shall act as technical assistant and adviser to the board, and who shall be a thoroughly experienced and skilled topographer, and who shall serve without compensation from the state for a term of two years, and until his successor is appointed and qualified; provided, said commissioner, with the approval of the board, may be reimbursed for his actual and necessary traveling and station expenses while in the field in behalf of the state, and may be reimbursed from any money hereinafter appropriated to carry out the provisions of this chapter. [Id. sec. 2.]

Art. 5527. **Duties of commissioner.**—Such commissioner, with the advice and consent of the board, is authorized to confer with the director or representative of the United States geological survey, and to accept its co-operation with this state in the preparation and completion of contour topographical surveys and maps within this state, which are hereby authorized to be made; and the said commissioner, with the consent of the said board, is further authorized to accomplish an agreement for the co-operation herein provided for, and to arrange, on behalf of the state, the details of such surveys and maps as are necessary in the future work of planning and constructing levee systems and drainage, and such other public improvements as may be required to reclaim for agricultural uses the overflowed valleys of the following rivers within this state, to wit: Red river, the Sulphur river, Navasota river, the Trinity river, the Brazos river below Waco, the Little Brazos, the Colorado river below Austin, and the valleys of such other rivers as may be deemed advisable by the levee and drainage board to carry out the purposes of this chapter; provided, that similar surveys and maps for similar purposes may also be made of the marsh and swamp lands and overflowed areas in the coastal plain of this state; and the said board shall have the power to determine at what point such work shall begin and be continued. [Id. sec. 3.]

Art. 5528. **May co-operate with United States geological survey.**—The commissioner, with the consent of said board, is authorized to expend in co-operation with the said United States geological survey for these purposes all or part of the money appropriated; provided, that the said board may

accept or reject the co-operation of the United States geological survey at any time upon thirty days' notice. [Id. sec. 4.]

Art. 5529. To confer with representatives of drainage districts.—It shall further be the duty of the said commissioner to confer in a technical capacity, from time to time, with the proper representatives of the several state drainage and reclamation districts, with a view to the adequate execution of proposed levee and drainage systems, and, with the approval of the board, to maintain within the state capitol for public reference duplicate or original copies of all final results of this survey, such as field-notes, maps, photographs, photolithographs and other estimates as are or may be of value to the people of the state. [Id. sec. 5.]

CHAPTER TWO.

IMPROVEMENT DISTRICTS.

Article.	Article.
Commissioners' courts to establish improvement districts.....	Bonds, how sold; proceeds, how applied.....
5530	5556
Improvement districts may control levees, etc.	County judge to give bond before selling bonds.....
5531	5557
Petition to establish district and issue bonds.....	Expenses after filing petition, how paid.....
5532	5558
Objection to creation of district, how made.....	Deposit to accompany petition.....
5533	5559
Duty of court on hearing.....	Tax to be levied.....
5534	5560
Engineer appointed, compensation, assistants.....	County assessor to assess property, removal for failure.....
5535	5561
Engineer to give bond.....	County collector to give special bond.....
5536	5562
Duty of engineer.....	Delinquent taxes to be collected as other taxes.....
5537	5563
Report of engineer.....	County treasurer to keep account.....
5538	5564
Hearing on report.....	Tax a lien on property assessed.....
5539	5565
Proceedings on approval of report.....	Treasurer to give additional bond.....
5540	5566
Election, form of ballot.....	Condemnation proceedings; acquisition of right of way.....
5541	5567
Notice of election; election, how conducted.....	Commissioners and employes may enter lands, etc.....
5542	5568
Oath of voters.....	Commissioners to repair and improve levees.....
5543	5569
Returns of election, result disclosed, form of certificate.....	Contracts let to lowest bidder.....
5544	5570
Commissioners appointed, term of office, compensation.....	Bids, how submitted.....
5545	5571
Oath of commissioners.....	Contracts approved and filed.....
5546	5572
Bond of commissioners.....	Contractors bond.....
5547	5573
Commission to organize.....	Construction under supervision of engineer and commissioners.....
5548	5574
Appointment of engineer, compensation, duties.....	Right of way across railroads, etc.....
5549	5575
Map and profile of levees.....	Payment of warrants.....
5550	5576
Bonds to be issued, limitation upon.....	Partial payments.....
5551	5577
Form and terms of improvement bonds.....	Annual report of commissioners.....
5552	5578
Bonds to be submitted to attorney general.....	May employ attorneys.....
5553	5579
To be registered by comptroller, not to be impeached.....	May acquire property, sue and be sued.....
5554	5580
Book of bonds to be kept; sinking fund provided.....	Lease or rent land.....
5555	5581
	May let use of levees, etc.....
	5582
	May dispose of surplus material.....
	5583
	Land to be sold, form of conveyance.....
	5584

Article 5530. Commissioners' court to establish improvement districts.—The commissioners' court of the several counties of this state may hereafter create, establish and define one or more improvement districts in their respective counties in the manner hereinafter provided, and may, or may not include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof; but no land at the same time shall be included within the boundaries of more than one improvement district created under the provisions of this chapter. [Acts 1909, p. 140, sec. 1.]

Art. 5531. Improvement districts may control levees, etc.—Such improvement districts, when so created, established and defined, may build and con-

struct, or cause to be built and constructed and maintained, levees or other improvements on all rivers, creeks and streams within such districts, or which may border on the same, to prevent overflows thereof, and issue bonds in payment therefor, and the maintenance thereof, and levy and collect taxes for the payment of said bonds and interest thereon, as hereinafter provided, and may acquire, by grant, condemnation or otherwise, such levees or other improvements as may have been already constructed in such district. [Id.]

Art. 5532. **Petition to establish district and issue bonds.**—Upon the presentation to the commissioners' court of any county in the state of a petition signed by twenty-five of the resident property taxpayers in the proposed district, or in the event there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such resident property taxpayers of such district, praying for the establishment of an improvement district, the issuance of bonds and levy of a tax in payment thereof, and setting forth the necessity and feasibility and proposed boundaries thereof, and designating the name for such, the name to include the name of the county, the said commissioners' court shall, if in session when said petition is presented at said session of the court, set said petition down for a hearing at some regular or special session of the court called for that purpose, not less than thirty nor more than sixty days from the date of the presentation of said petition, and shall order the clerk of said court to give notice of the filing of the said petition, and of the date and place of hearing, by posting written or printed notices thereof in five public places in said county, one of which shall be at the court house door of the said county, and four of which shall be within the limits of the proposed improvement district. Such notices shall be posted for twenty days prior to the time set for such hearing. Said clerk may depute some other person to perform such service, and the affidavit of such clerk or his deputy that such notices have been so posted shall be held conclusive thereof. Said clerk shall receive as compensation for such services one dollar for each of such notices and five cents per mile for each mile necessary to be traveled in posting same. Should said commissioners' court not be in session, at the time of the filing of said petition, it may be filed with the county judge of the county, who shall thereupon make and enter an order upon the minutes of said commissioners' court, setting said petition for hearing at some regular or special term of said commissioners' court, called for that purpose not less than thirty nor more than sixty days from the filing of said petition, and shall order the clerk of the said commissioners' court to give said notice as is herein provided for in this article, and which notice shall be posted for the time and as is provided for in this article. [Id. sec. 2.]

Art. 5533. **Objection to creation of district, how made.**—At the time set down for the hearing of said petition, any person who would be affected by the creation of said district may appear before the said court and contest or contend for the creation of said district, and may offer testimony to show that the said district is or is not necessary and would or would not be of public utility, and the creation of said district would or would not be feasible or practicable. Said commissioners' court shall have exclusive or final jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the same; and said court shall have exclusive jurisdiction over all subsequent proceedings of said district, when organized, except as herein provided, and may adjourn hearings on any matter connected therewith from day to day; and all judgments, orders or decrees rendered by said court in relation thereto shall be final, except as hereinafter provided. [Id. sec. 3.]

Art. 5534. **Duty of court on hearing.**—If, upon the hearing of said petition,

it shall appear to the court that the improvement of said river or rivers, creek or creeks or streams within such district, or which may border on the same, to prevent overflows, is feasible and practicable, and that it is needed and would be a public benefit, then the court shall so find, and shall render judgment reciting such findings, and create and establish such improvement districts, and cause such judgment to be entered of record. But, if the court should find that the improvement of such river or rivers, creek or creeks and streams is not feasible or practicable, or that it is not needed and would not be a public benefit, then the court shall enter such findings of record and dismiss such petition at the cost of the petitioners. [Id. sec. 4.]

Art. 5535. **Engineer appointed, compensation, assistants.**—Should the court render judgment establishing such improvement district according to the boundaries set out in such petition, then the court shall appoint a competent engineer, who shall receive a sum of not more than ten dollars per day for his services for the time he is actually engaged in the work for which he is appointed; and said engineer may, with the consent of the commissioners' court, or the county judge, employ such assistants as may be necessary, at such compensation as may be fixed by the commissioners' court, or the county judge. [Id. sec. 5.]

Art. 5536. **Engineer to give bond.**—Before entering upon his official duties, the civil engineer shall enter into a bond in the sum of five hundred dollars, with two or more sureties, to be approved by and payable to the county judge for the use and benefit of the improvement district, conditioned for the faithful discharge of his duties under this chapter. [Id. sec. 6.]

Art. 5537. **Duty of engineer.**—Said civil engineer shall, as soon as practicable, go upon the lands and rivers, creeks and streams embraced in said district, or bordering thereon, and examine such river, creek or stream proposed to be improved by levee or otherwise, and make an estimate of the probable cost of making and completing such levee or other improvement, and shall also designate the river or rivers, creek or creeks or streams necessary to be improved and the estimated cost of each, and also the estimated probable cost of maintaining same per year and make a detailed report of his work to the commissioners' court. [Id. sec. 7.]

Art. 5538. **Report of engineer.**—Such report shall be accompanied by maps showing the initial or beginning point of such improvement, and the nature and character and location of same, with the estimated cost thereof, together with the location and size of all levees, and the number of cubic yards of earth necessary to construct the same. [Id. sec. 8.]

Art. 5539. **Hearing on report.**—When the said report is filed with the clerk of the commissioners' court, it shall be the duty of the said court, if then in session, to make and enter of record an order setting said report down for a hearing at some subsequent regular or special term of not less than thirty nor more than forty days from said filing, and to require the clerk to give notice of such hearing by posting written or printed notices in the manner and places and for the length of time and for the same compensation as is provided for in article 5532 of this chapter in regard to original notices of the filing of the petition. Should said court not be in session at the time of the filing of such report, then the county judge shall make the orders and cause written or printed notices to be given and posted as provided for in this chapter; and, if there should be no regular session of the said court within thirty days after such filing, he shall call a special session of the commissioners' court to act on such report, not less than thirty nor more than forty days from such filing. At the hearing of the said report, any taxpayer of said district, whether he resides in said district or not, may appear and object to any and all of such improvements and levees for

the reason that they are located at the place or places, or that they are not sufficient in capacity to prevent an overflow. [Id. sec. 9.]

Art. 5540. **Proceedings on approval of report.**—If there should be no objection to said report, or if there should be objections thereto and the court shall find that the objections are not well taken, the report shall be approved, and the said report and the fact of such approval entered of record in the minutes of said commissioners' court, but the commissioners' court shall not be confined to the nature and character of the improvements or to the initial point, course and end of such improvements as shown by the report of the engineer, but may change the location and add to or reduce the size, length and height of the levees and order the engineer to locate any additional levees and improvements as may be ordered by the commissioners' court, and the commissioners' court, if it is deemed necessary, may refer the entire report back to the engineer for a compliance with the order of said court; provided, that if the said commissioners' court shall not adopt, in whole or in part, the original report of the said engineer, as provided herein, they shall require, and it shall be the duty of the said engineer, to make and file with the said commissioners' court a further report in writing of the probable cost of said improvements, as said improvements may be modified or changed by said commissioners' court, as provided for in this chapter. Before the said commissioners' court shall make any change or alterations in such improvements, as reported by such engineer and as provided for in this article, such proposed action of the court shall be set down for hearing, and notice thereof shall be given by posting written or printed notices for the same length of time and in the same manner as provided for in article 5539 of this chapter, in regard to the hearing of the said original report of said engineer. [Id. sec. 10.]

Art. 5541. **Election, form of ballot.**—After the approval of the engineer's report or reports, as provided for in the preceding articles of this chapter, and at the same session of the said commissioners' court, the said court shall order an election to be held within such improvement district at the earliest possible time, at which time there shall be submitted the following proposition, and none other: "For the improvement district and the issuance of bonds and levies of tax in payment therefor," "Against the improvement district and the issuance of bonds and levies of tax in payment therefor." [Id. sec. 11.]

Art. 5542. **Notice of election; election, how conducted.**—Notice of said election, stating the time and place or places of holding the same, shall be given by the clerk of the county commissioners' court by posting written or printed notices thereof in five public places in such proposed improvement district, and one at the court house door of the county in which such district is situated. Such notices shall contain the propositions to be voted upon as set forth in article 5541 of this chapter, and shall also state the estimated cost of such improvement as reported by the engineer, and approved by the commissioners' court, and also the amount of bonds proposed to be issued, together with the rate of interest the same shall bear, and when the said bonds shall be due, and for a tax to be levied and collected to pay said bonds and interest thereon. The manner of conducting said election shall be governed by the election law of the state of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of the said proposed improvement district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such election. The commissioners' court shall name the polling place or places for such election within the proposed improvement district, and shall also select and appoint judges and other necessary officers of the election, and shall provide one and one-half times as many ballots for

said election as there are qualified resident taxpaying voters within such district as shown by the tax rolls of the county. Such ballots shall have printed thereon these words, and none others: "For the improvement district and issuance of bonds and levy of taxes in payment therefor," "Against the improvement district and issuance of bonds and levy of taxes in payment therefor." [Id. secs. 12 and 13.]

Art. 5543. **Oath of voters.**—Every person who offers to vote in any election held under the provisions of this chapter, shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of.....county, and that I am a resident property taxpayer of the proposed improvement district voted on in this election, and I have not voted before at this election." [Id. sec. 14.]

Art. 5544. **Returns of election; result disclosed; form of certificate.**—Immediately after the election, the presiding judge at each polling place shall make returns of the result in the same manner as provided for in elections for state and county officers and return the ballot boxes to the county clerk, who shall keep the same in a safe place, and deliver them, together with the returns from the several polling places, to the commissioners' court at its next regular session, or special session called for the purpose of canvassing the votes; and the county commissioners' court shall at such session canvass the vote; and, if it be found that a two-thirds of all of the resident property taxpayers voting thereon shall have been cast in favor of the improvements and the issuance of bonds and levy of taxes, then the court shall declare the result of the election to be in favor of the said improvement district, and bonds and taxes, and shall enter the same in the minutes of the said court as follows:

"The county commissioners' court of.....county, Texas,.....term, A. D....., in the matter of the petition of.....and others, praying for the establishment of an improvement district, the issuance of bonds and the levy of a tax in payment thereof, in said petition fully described and designated by the name of.....Improvement District....." Be it known that at an election held for said purposes in said district on the.....day ofA. D.....a two-thirds of all of the resident property taxpayers voting at said election, voted in favor of the creation of said improvement district and the issuance of bonds and the levy of taxes. Now, therefore, it is considered and ordered by the court that said improvement district be and the same is hereby established by the name ofImprovement District within the following named metes and bounds, to wit: (Giving boundaries of the district). [Id. sec. 15.]

Art. 5545. **Commissioners appointed; term of office; compensation.**—After the establishment of this district, as herein provided, the commissioners' court shall appoint three improvement commissioners, by a majority vote of said court, whose duty shall be as hereinafter provided, who shall each receive for his services a sum of not more than three dollars per day for the time actually engaged in the work of said district; provided, that the compensation, if any, shall have been definitely fixed in the order of the court making said appointment; and, before any amount shall be paid to said commissioners, or either of them, they shall make a detailed report to the commissioners' court of the time actually engaged in the work for said district, and of the work done; and such report shall be audited and approved by the commissioners' court. Said improvement commissioners shall hold office for a term of two years and until their successors shall be qualified, unless

removed by a majority vote of the commissioners' court for malfeasance, or for non-feasance, in office; upon the expiration of the term of office of the said improvement commissioners, or in case of the resignation, death or refusal to act of any such improvement commissioners, the commissioners' court shall appoint their successors by a majority vote of said court. [Id. sec. 16.]

Art. 5546. **Oath of commissioners.**—Before entering upon their duties, all improvement commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court by which they are appointed, whenever required to do so, which oath shall be filed by the clerk of the said commissioners' court and preserved as a part of the records of said improvement district. [Id. sec. 17.]

Art. 5547. **Bond of commissioners.**—Before entering upon their duties, each of the said improvement commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars payable to the county judge for the use and benefit of said improvement district, conditioned upon the faithful performance of their duty. [Id. sec. 18.]

Art. 5548. **Commission to organize.**—The improvement commissioners shall organize by electing one of their number chairman and one secretary, and two of whom shall constitute a quorum, and the concurrence of two shall be sufficient in all matters pertaining to the business of said district. [Id. sec. 19.]

Art. 5549. **Appointment of engineer; compensation and duties.**—After the establishment of said district, the improvement commissioners shall employ a competent civil engineer, upon a salary not to exceed the sum of ten dollars per day, for the time actually engaged in the work, whose term of office shall be at the will of said commissioners, which civil engineer shall proceed to make a map of such improvement district, showing the boundary lines thereof, with the original surveys therein, and also make maps and profiles of the several levees, or such other improvements located in such district; but a copy of the land map of the county, as it applies to such district, showing the name and number of surveys and showing the area or number of acres contained in such district, shall be a sufficient compliance with such order, in so far as making a map of the district is required; and any recognized map of any city or town which may be embraced within the boundaries of the district shall be sufficient as to such site of the town; provided, however, that where boundary lines of such improvements, or any of them, cornered at original surveys, the map shall show how many acres of such original survey are included within such improvement district. [Id. sec. 20.]

Art. 5550. **Maps and profiles of levees.**—The map and profile of such levees and other improvements required by the provisions of this chapter to be made shall show the relations that each levee or other improvement bears to each tract of land through which it passes, and the shape in which it divides each tract; and, where the levee or other improvements cut off any tract of land less than twenty acres, then the map shall show the number of acres so divided therefrom, and the number of acres in the whole tracts, and its relation to such levees or other improvements; and such profile map shall also show the number of cubic yards of earth necessary to be excavated to make each levee or other improvement located in such district, and give the estimated cost of each; and when said maps, profiles and estimates shall have been completed by the said engineer, he shall sign the same in his official capacity and file them with the clerk of the said commissioners' court. It is hereby further made the duty of such engineer to supervise and control the construction of any levee or other improvements made in said district as hereinafter provided. [Id. sec. 21.]

Art. 5551. Bonds to be issued; limitations upon.—After the establishment of any such improvement district, and after the making and filing of such maps and profiles and estimates; as herein provided for, and after said election authorizing the issuance of bonds and levy of tax, the commissioners' court shall make an order directing the issuance of improvement bonds for such districts sufficient to pay for such proposed improvements, and the maintenance thereof for a period of not exceeding two years; provided, however, that said bonds shall not exceed in the amount one-fourth of the assessed value of the real property of such district, as shown by the last annual assessment thereof made for the state and county taxation, and shall not exceed the estimate made by such engineer made before the election, and voted on at the election in this chapter provided for; provided, however, that, if after an election has been held establishing the district, levying a tax and issuance of bonds it should become necessary for said improvement district to make further improvements, or alterations in the improvements already constituted, or to repair or maintain the improvements so created, and there shall be no sufficient funds in the construction and maintenance funds with which such improvements, alterations, repairs and maintenance may be made, then the improvement commissioners may apply to the commissioners' court for an election to be ordered by said court to issue additional bonds, stating the necessity therefor and the amount of bonds necessary, and the character of such improvements, repairs and maintenance, and the estimated cost therefor as made by such engineer, which shall accompany said application; and, upon the filing of such application, the commissioners' court shall set same down for hearing at some future regular or special session, and cause the county clerk to give notice of such hearing, which notice shall state the character of such improvements, etc., together with the estimated cost therefor and the amount of such bonds and the rate of interest thereon, and the date when due. Said written or printed notices shall be posted in the same manner and places and for the same length of time as required by this chapter for the original petition for the creation of such district. If, upon said hearing, the court should find that the necessity for the issuance of such additional bonds, and that the taxable values of the real property of the said district as shown by the last annual assessment rolls for state and county taxes will admit of an additional bond issue, then the court shall order an election within said district for the purpose of voting on said proposed bond issue and the levy of taxes to pay said bonds and the interest thereon. The manner of holding such election and making returns, and the notices for said election, manner and time of giving notice thereof, and the qualifications of the persons entitled to vote therein, shall be the same as, and in all things governed by, the provisions of this chapter for the election held for the issuance of bonds and levy of tax in the first instance; and the commissioners' court shall meet and canvass the returns of such election as in the said first election; and, if it be found that two-thirds of the resident property taxpayers voting at said election vote in favor of the issuance of said additional bonds and the levy of said tax, then the said commissioners' court shall enter an order reciting the result of said election, and ordering the issuance of said additional bonds and issuance and sale and registration of such additional bonds and levy of said tax; and the issuance and sale and registration of such additional bonds shall in all things be governed by the provisions of this chapter in regard to the bonds first issued. [Id. sec. 22.]

Art. 5552. Form and terms of improvement bonds.—All bonds issued under the provisions of this chapter shall be issued in the name of the improvement district, and shall be signed by the county judge and attested by the clerk of the county court with the seal of the county court affixed thereto;

and such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and shall bear interest at a rate of interest not to exceed five per cent per annum, payable semi-annually at such times as may be specified therein. Such bonds and interest shall be made payable at the county treasurer's office of the county in which such improvement district is located, or in the city of Austin, and no bond shall be made payable for more than forty-years after its date. [Id. sec. 23.]

Art. 5553. Bonds to be submitted to attorney general.—Any improvement district in the state of Texas, desiring to issue bonds in accordance with this chapter, shall, before such bonds are offered for sale, forward to the attorney general of this state a copy of the bond to be issued, a certified copy of the order of the commissioners' court levying the tax to pay interest and providing a sinking fund for the payment of such bonds, and a statement of the total bonded indebtedness of such improvement district as such, including the series of bonds proposed and the assessed value of the property for the purpose of taxation, as shown by the last official estimate by the county, together with such other information as the attorney general may require. Whereupon, it shall be the duty of the attorney general to carefully examine the said bonds in connection with the facts and the constitution and laws of the state of Texas governing and controlling the execution of said bonds; and, if as a result of the examination, the attorney general shall find that such bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations upon said improvement district in which they are issued, he shall officially so certify. [Id. sec. 24.]

Art. 5554. To be registered by comptroller; not to be impeached.—When such bonds have been examined by the attorney general, and his certificate attached thereto, they shall be registered by the state comptroller in a book to be kept for that purpose; and the certificate of the attorney general as to the validity of such bonds shall be preserved of record for use in event of litigation. Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office, as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is, or may be brought into question, a prima facie, valid and complete obligation; and in every action brought to enforce the collection of such bonds, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received in evidence on the validity of such bonds, together with the interest coupons thereto attached; provided, that the only defense that can be offered against the validity of such bonds shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limits fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess levy, be void. [Id. sec. 25.]

Art. 5555. Books of bonds to be kept; sinking fund provided.—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall first provide a well-bound book in which a record shall be kept by the clerk of said court of all bonds issued, with their number, amount, rate of interest and date of issuance, when due, where payable, and amount received for the same, and the tax estimate to pay the interest on said bonds; and said commissioners' court shall provide for a sinking fund for their payment, which shall be set forth in said book; and said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bondholders; and, upon the payment of any bond, an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the

improvement district, the same fees as provided for other like records. [Id. sec. 26.]

Art. 5556. **Bonds, how sold; proceeds, how applied.**—When such bonds have been registered as provided for in the preceding articles of this chapter, the county commissioners' court may appoint the county judge, or some other suitable persons, to sell said bonds on the best terms and for the best price possible; provided, that none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all money received therefrom shall be paid into the county treasury and shall by him be placed to the credit of such improvement district. [Id. sec. 27.]

Art. 5557. **County judge to give bond before selling bonds.**—Before the county judge, or such other person as may be appointed by the commissioners' court, shall be authorized to sell any of said improvement bonds, the county judge, or other person so appointed, shall execute a good and sufficient bond payable to the commissioners of such improvement district, to be approved by the commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duty, which bonds shall be subject to the approval of said improvement commissioners; and the person selling said bonds shall be allowed one-half of one per cent of the amount received for sale of the bonds sold by him in full payment for his services in their behalf. [Id. sec. 28.]

Art. 5558. **Expenses after filing petition, how paid.**—All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any improvement district under the provisions of this chapter, shall be paid out of the construction and maintenance funds of such improvement district; which funds shall consist of all moneys received from the sale of bonds and all other moneys or property received by such district whatsoever the source, except tax collections applied to the sinking funds and the payment of interest on the improvement bonds; provided, that should the proposition for the creation of such improvement district and the issuance of bonds be defeated at the election called to vote upon the same, then all expense up to and including said election shall be paid for as provided in this chapter. [Id. sec. 29.]

Art. 5559. **Deposit to accompany petition.**—When the petition praying for the establishment of an improvement district is filed with the county commissioners' court, it shall be accompanied by two hundred dollars in cash, which shall be deposited with the clerk of the said county commissioners' court, and by him held until after the result of the election for the creation of said improvement district has been declared and entered of record by the commissioners' court, as hereinbefore provided; and, should the result of said election be in favor of the establishment of such district, then the said two hundred dollars shall be by the said clerk returned to the signers of the said original petition, or their treasurer or attorney; but, should the result of said election be against the establishment of said improvement district, then the said clerk shall pay out of the said sum of two hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed improvement district up to and including the said election, and shall return the balance, if any, to the signers of said original petition, or their agent or attorney. [Id. sec. 30.]

Art. 5560. **Tax to be levied.**—Whenever any such improvement bonds shall have been voted, the commissioners' court shall levy, and cause to be assessed and collected, improvement taxes upon all property within said improvement district, whether real, personal or mixed, or otherwise, and

sufficient in amount to pay the interest on such bonds as it shall fall due, together with an additional amount to be annually placed in the sinking funds sufficient to discharge and redeem said bonds at their maturity. If advisable, the sinking fund shall, from time to time, be invested in such county, municipal, district or other bonds as shall be approved by the attorney general of the state. If any of said bonds shall be offered for payment and redemption before the date of their maturity, it shall be the duty of the county judge of the county, and the county treasurer, to pay and redeem same upon request of the improvement commissioners, if there be at the time a sufficient amount of money in said sinking fund for that purpose. [Id. sec. 31.]

Art. 5561. **County assessor to assess property; removal for failure.**—The county commissioners' court shall provide all necessary additional books for the use of the assessor and collector of taxes and the county clerk for such improvement district, and charge the cost of same to the said district. It shall be the duty of the county tax assessor, when ordered to do so by the commissioners' court, to assess all property within such improvement district and list the same for taxation in the books or rolls furnished by the said commissioners' court for that purpose and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval; if the said commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor, to be paid from the funds of said improvement district. The tax assessor shall receive for his services such compensation as the said county commissioners' court shall deem proper to compensate him for the amount of work done; provided, that the said county assessor shall in no event be allowed less than what he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. [Id. sec. 32.]

Art. 5562. **Tax collector to give special bond.**—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the improvement district, and he shall be allowed such compensation for the collection of such taxes as he is now allowed for the collection of other taxes. The county commissioners' court shall require the tax collector of the county to give an additional bond of security, in such sum as they may deem proper and safe, to secure the collection of said taxes; and, should any collector of taxes fail or refuse to give such additional bond or surety as herein provided when required by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Id. sec. 33.]

Art. 5563. **Delinquent taxes to be collected as other taxes.**—It shall be the duty of the tax collector to make a certified list of all delinquent property, upon which the improvement taxes have not been paid, and return the same to the county commissioners' court, and said court shall proceed to have said taxes collected by the sale, by the collector, or by suit, in the same manner as now provided for the collection of delinquent state and county taxes; and at any sale of such property for such delinquent improvement taxes, the improvement commissioners may become the purchasers of the same for the benefit of the improvement district. [Id. sec. 34.]

Art. 5564. County treasurer to keep account.—It shall be the duty of the county treasurer to open an account with the improvement district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money, except upon a voucher signed by two of the improvement commissioners and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and, as often as required by the said improvement commissioners or the commissioners' court, he shall render a correct account to them on all matters pertaining to the financial condition of such district. [Id. sec. 35.]

Art. 5565. Tax a lien on property assessed.—All taxes levied, or authorized to be levied by this chapter shall be payable and shall mature and become delinquent as is provided by the laws of this state for state and county taxes, and, upon the failure to pay such taxes when due, the same penalties shall accrue and be collected as provided by the laws of the state of Texas for the non-payment of state and county taxes. All taxes shall be a lien upon the property for which said property is assessed. In the assessment and collection of the taxes levied, or authorized to be levied, by this chapter, the assessor and collector of taxes shall, respectively, have the same powers and shall be governed by the same rules and regulations as provided by the laws of the state of Texas for the assessment and collection of state and county taxes, unless herein otherwise provided. [Id. sec. 36.]

Art. 5566. Treasurer to give additional bond.—The county treasurer shall execute a good and sufficient bond, payable to the improvement commissioners and their successors in office of such district, and in the county where said district is located, in a sum equal to one and one-fourth the amount of the bonds issued, conditioned for the faithful performance of his duty as treasurer of such district, which bond shall be approved by said improvement commissioners; and the treasurer shall be allowed as compensation for his services as such treasurer, one-half of one per cent. Such treasurer may make said bond with any guaranty or surety company as may be approved by such improvement commissioners; and the premiums due such guaranty or surety company making said bond shall be paid out of the maintenance fund of the improvement district, and shall not be a charge against the county treasurer. [Id. sec. 37.]

Art. 5567. Condemnation proceedings. Acquisition of right of way.—The right of eminent domain is hereby expressly conferred upon all improvement districts established under the provisions of this chapter for the purpose of acquiring the fee-simple title, easement or right of way to and over and through any and all lands, waters, or lands under waters, private or public (except land and property used for cemetery purposes) within or bordering on such districts, necessary for making, constructing and maintaining all levees and all other improvements for the improvement of a river or rivers, creek or creeks or streams within or bordering on such districts, to prevent overflows thereof. All condemnation proceedings or suits in the exercise of eminent domain under this chapter shall be instituted under the direction of the improvement commissioners and in the name of the improvement district, and all suits or other proceedings for such purposes and for the assessing of damages shall be in conformity to the statutes of the state of Texas for condemning and acquiring land or the right of way thereon, by eminent domain, by railroad corporations; provided, that no appeal from the judgment or order of condemnation of the commissioners assessing damages to any one whose land is sought to be condemned shall have the effect of preventing the said improvement district from going upon and using the land so sought to be condemned during the pendency of said appeal; pro-

vided, however, that the said improvement district shall deposit with the county clerk of the county, in which such proceedings are pending, a sum equal to double the amount of money adjudged by them to be paid for said land, or the right of way thereon, and all costs thereon accrued.

The improvement commissioners of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings, and may by the same method acquire any levees or other improvements already constructed within the territory in any such improvement district, and, if acquired by grant or purchase, such purchase shall be subject to the approval of the county commissioners' court. [Id. secs. 38-39.]

Art. 5568. Commissioners and employes may enter upon lands, when.—The improvement commissioners of any district and the civil engineer, from time of their appointment, are hereby authorized to go upon any lands or water courses lying within said districts, or bordering thereon, for the purpose of examining the same, and locating all levees and other improvements, making plans, surveys, maps and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass. [Id. sec. 41.]

Art. 5569. Commissioners to repair and improve levees.—It shall be the duty of such improvement commissioners to keep the levees and other improvements made under the provisions of this chapter in repair, and they shall be given authority to supervise and control the construction and maintenance of same; and no county or improvement district, nor the taxpayers therein, shall be held for damages occasioned by the construction, maintenance or repair of levees or other improvements under the provisions of this chapter. [Id. sec. 42.]

Art. 5570. Contracts let to lowest bidder.—Contracts for making and constructing levees and other improvements, and all necessary work in connection with any improvement district, shall be let by the improvement commissioners to the lowest bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the state of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said improvement district; and the contract for such levee and other improvement may be let in separate sections or parcels, or all together; provided, that all the improvements included in the report of improvement engineer and approved by the court as provided for in this chapter, shall be constructed. [Id. sec. 43.]

Art. 5571. Bids, how submitted.—Any person, or corporation, or firm desiring to bid on the construction of any work, advertised as provided for in this chapter, shall, upon application to the improvement commissioners, be furnished a copy of the engineer's report, showing location, profile and estimate of such as is provided for in this chapter; provided, such person shall pay the county clerk for making same, and all bids or offers to do any work shall be in writing and sealed and delivered to the chairman of the improvement commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into the proper contract, if his bid is accepted, and any and all bids may be rejected by the said commissioners. [Id. sec. 44.]

Art. 5572. Contracts approved and filed.—All contracts made by the improvement commissioners shall be reduced to writing and signed by the con-

tractor and the commissioners, and approved by the county judge, and a copy of same shall be filed with the county clerk for reference. [Id. sec. 45.]

Art. 5573. **Contractor's bond.**—The party, firm, or corporation, to whom any such contract is let, shall give bond payable to the improvement commissioners for said district, and in the county where said district is located, in double the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contracts, and in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such commissioners and the county judge. [Id. sec. 46.]

Art. 5574. **Construction under supervision of engineer and commissioners.**—The improvement engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the height, width and slope, brim and location of all levees and the number of cubic yards of earth to be removed and other work to be done by the contractor, together with drawn plans and specifications for such work; and such work shall be done by the contractor under the management and control and supervision of said improvement engineer and improvement commissioners, who shall indicate to the said contractor the beginning point and termination of all levees and other improvements called for by said contract; and, when such work is completed according to the contract, the engineer shall make a detailed report of the same to the improvement commissioners, showing whether the contract has been fully complied with according to its terms, and, if not, in what particular it has not been complied with. [Id. sec. 47.]

Art. 5575. **Right of way across railroads, etc.**—The said improvement commissioners are hereby authorized and empowered to make all necessary levees, bridges and culverts to, across, and under any railroad tracks and right of way of any such railroads to enable them to construct and maintain any levees or other improvements necessary to be constructed as a part of the levee system of such district, such levees, bridges, or culverts to be paid for by such improvement district; provided, however, that notice shall first be given by such improvement commissioners to the railroad authorities to build or construct levees, bridges or culverts; and the railway company shall be allowed thirty days in which to build or construct the same at its own expense, if it should so desire according to its own plans; provided, that such levees, bridges, or culverts shall be constructed so as not to interfere with the purpose of said levee or other improvement, nor with the operation of said railway. [Id. sec. 48.]

Art. 5576. **Payment of warrants.**—The said improvement commissioners shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under contract, to inspect the same; and upon the completion of any contract to their satisfaction, and when they have accepted the improvements as completed according to contract, they shall draw a warrant on the county treasurer for the amount of the contract price, or so much thereof as remains unpaid at that time, in favor of the contractor, or his assigns, which warrant shall, when approved by the county judge, be paid out of the improvement funds of said district. [Id. sec. 49.]

Art. 5577. **Partial payments.**—If the said improvement commissioners shall deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate seventy-five per cent of the amount to be paid under the contract, the amount of work completed to be shown by certified report of the engineer, and no payment to be made for work not completed. [Id. sec. 50.]

Art. 5578. **Annual report of commissioners.**—The improvement commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year, which report shall show in detail the kind, character and amount of work done in the district, the cost of the same, and other data necessary to show the conditions of improvements under the provisions of this chapter. [Id. sec. 51.]

Art. 5579. **May employ attorneys.**—The improvement commissioners are hereby empowered and authorized to employ counsel to represent such districts in the preparation of any contracts, or the conducting of any proceedings in or out of court, and to be the legal adviser of such improvement commissioners upon such terms and for such fees as may be agreed upon by them and approved by the county judge; and such commissioners may draw a warrant in payment of such legal services, to be paid out of the fund of said district upon approval by the county judge. [Id. sec. 52.]

Art. 5580. **May acquire property; sue and be sued.**—The improvement districts established under this chapter may acquire property, and, through the improvement commissioners, sue and be sued in all the courts of this state in the name of such improvement district; and all courts of this state shall take judicial notice of such said districts. [Id. sec. 54.]

Art. 5581. **May lease or rent land.**—The improvement commissioners, for the purpose of protecting any levees or other improvement constructed under the authority of this chapter, shall be authorized to keep the space between any levees or other improvement, and the stream or streams the overflow of which is intended to be prevented, free and clear from all obstructions; and, if any district should by gift, purchase, or condemnation become the owner of any such land, or any other land not needed and used for the purpose of drainage, the said improvement commissioners shall have authority to lease any such land for any purpose which shall not interfere with the work or use of such district, on such terms and for such rental as said improvement commissioners may see fit; and all moneys received therefrom shall be paid to the county treasurer for the use of said district. [Id. sec. 55.]

Art. 5582. **May let use of levees, etc.**—The improvement commissioners shall have the authority, with the consent of the county judge, to let the use of any levee for a public highway, or street, or railway, or street railway, or interurban railway right of way, or for telegraph, telephone, or electric poles upon such terms as such improvement commissioners and the county judge shall deem proper; but provisions shall be made in any such contract for the payment by the levy of an equitable portion of the cost and expense of thereafter maintaining such levee in good condition for the purposes for which such levee was constructed; and any money received for such rental use shall be paid to the county treasurer for the use of such district. [Id. sec. 56.]

Art. 5583. **May dispose of surplus material.**—The improvement commissioners shall have authority to dispose of, by sale, any and all earth or any material acquired by the district and not needed for the construction or maintenance of the improvements being constructed under the provisions of this chapter pertaining to this district; and any money received from same shall be paid to the county treasurer for the use and benefit of the district. [Id. sec. 57.]

Art. 5584. **Land to be sold; form of conveyance.**—The improvement commissioners, with the consent of the commissioners' court, shall have authority to sell and convey any land, the fee of which has been acquired by such district by purchase, gift, or condemnation, and not needed at the time, or likely to be thereafter needed, for the use of the district, upon such terms as said improvement commissioners and the county judge may deem best

for the district; and the money received from any such sale shall be paid to the county treasurer for the use of the district. The deed of conveyance of such lands shall be executed by the chairman of such improvement district commissioners, in the name of the improvement district. [Id. sec. 58.]

CHAPTER THREE.

SEAWALLS.

	Article.		Article.
Seawalls and breakwaters, how established	5585	Election returns, canvass, two-thirds vote required	5590
Burdens on streets and highways for seawalls	5586	Interest, sinking fund, levy of taxes for	5591
To take land for, exercise of right of eminent domain	5587	Cession of state lands for benefit of	5592
Issue of bonds, election, qualification of voters	5588	City and county treasurer custodian of funds, exclusive use of	5593
Election, how conducted; board of inquiry, duties of	5589	Bonds to be issued as in case of counties, cities and towns	5594

Article 5585. **Seawalls and breakwaters, how established.**—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized to establish, locate, erect, construct, maintain and keep in repair, seawalls and breakwaters, and to incur indebtedness and issue bonds therefor, and to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment thereof as hereinafter provided. [Act 1901, 1. S. S., p. 23, sec. 1.]

Art. 5586. **Burdens on streets and highways for seawalls.**—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls and breakwaters, and to license, regulate or grant such additional uses of said seawalls or breakwaters as will not impair their efficiency. [Id. sec. 2.]

Art. 5587. **To take land for; exercise right of eminent domain.**—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls and breakwaters, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, or the city council, define and describe lands needed, and determine whether an easement or fee-simple estate in said land shall be taken. [Id. sec. 3.]

Art. 5588. **Issue of bonds; elections; qualification of voters, etc.**—Before incurring any indebtedness, and before issuing the bonds of the county, or city, for the purposes authorized by this chapter, said county commissioners' court, or municipal authorities, shall prescribe the amount of the bonds to be issued, the rate of interest thereon, and provide for an election, at which all taxpayers who are qualified voters entitled to vote in said county, or city, shall be allowed to vote for or against the proposed taxation for the payment of said bonds and interest thereon. [Id. sec. 4.]

Art. 5589. **Election, how conducted; board of inquiry, duties of.**—For the purpose of ascertaining whether two-thirds of the taxpayers of said county, or city, have voted in favor of the proposed taxation, the county judge, the county assessor and the county collector, or three members of their own body selected by the municipal authorities, as the case may be, are hereby constituted and appointed a board of inquiry. Whenever an election is ordered hereunder, said board shall make out from the latest completed assessment rolls of said county, or city, a list of all taxpayers of said county, or city, who are qualified voters and taxpayers entitled to vote hereunder; and from the date of the notice of said election until five days before the day thereof, said board shall sit daily for the purpose of making additions to and corrections of said list, and all taxpayers being qualified voters shall, during said period, have the right to apply to said board and to have their names entered on said list. During the period of five days before said election, said board shall make out under certificate and file with the county or city clerk, as the case may be, a complete alphabetical list of all taxpayers who are qualified voters at said election, and shall furnish printed copies of said list to the officers at each poll at said election. Said printed list furnished by said board, and the returns and poll lists of said election, shall be returned to the county, or city clerk, as the case may be. The ballots at said election shall be printed or written on white paper, without any outward mark or device to distinguish the same, and shall contain the words, in substance, "In favor of the proposed tax," or, "Against the proposed tax." Said election shall, except as herein otherwise provided, be ordered and conducted in the same manner in all respects as are general state and county, or municipal, elections, so far as the same are applicable, not including, however, registration, and provisions incidental thereto, and the returns thereof shall be made in like manner, as far as may be; provided, nevertheless, that said election may be held on thirty days' notice thereof at any time fixed by the county commissioners' court, or municipal authorities. And the proposition to levy a tax hereunder may be renewed until the power to tax hereunder shall have been exhausted. [Id. sec. 5.]

Art. 5590. **Election returns; canvass; two-thirds vote required.**—The county commissioners' court, or municipal authorities, shall, as soon as practicable after said election, meet and canvass the returns thereof, and with the aid of the returns and lists herein provided for, together with such other evidence as may be required, ascertain and record in the minutes of the commissioners' court, or of the municipal authorities, the total number of taxpayers of said county or city who are qualified voters on the day of said election, the number of said taxpayers voting in favor of the proposed taxation, and the number of said taxpayers voting against the same. In the event that two-thirds of the taxpayers of said county or city, who are qualified voters therein, shall have voted in favor of the proposed tax, the said county or city shall thereupon have power to issue its bonds for the construction and maintenance of seawalls and breakwaters. [Id. sec. 6.]

Art. 5591. **Interest, sinking fund; levy of taxes for.**—Whenever bonds are issued under the preceding article, the county commissioners' court, or municipal authorities, shall annually levy, assess and collect, in the mode pre-

scribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county, or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds; and all taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, however, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in bonds of the state of Texas, or of the United States. [Id. sec. 7.]

Art. 5592. **Cession of state lands for the benefit of.**—The better to enable said counties and cities to secure the protection herein provided for, and to aid in the construction of said works, the right to the use and control for the purposes prescribed by this chapter, of so much of the land or sea bottom below high tide as may be deemed necessary by said county commissioners' court, or municipal authorities, is hereby ceded by the state of Texas to counties and cities availing themselves of the provisions of this chapter. [Id. sec. 8.]

Art. 5593. **City and county treasurers custodian of funds, exclusive use of.**—All funds, revenues and moneys derived from the sale of the bonds herein authorized, and from the sale or rent of reclaimed or other lands acquired under this chapter and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this chapter; and the use or diversion of such moneys for any other purposes whatsoever is hereby prohibited, and a violation of this article shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided in article 96 of the Penal Code of the State of Texas. [Id. sec. 9.]

Art. 5594. **Bonds to be issued in cases of counties, cities and towns.**—All bonds issued hereunder shall be issued under and subject to the provisions of articles 616-620, 622-625, inclusive, of the Revised Statutes of this state now in force, in so far as said articles do not conflict with the provisions of this chapter, and this chapter shall apply to all cities bordering on the coast of the Gulf of Mexico, whether said cities are incorporated by general or special laws; and all laws and parts of laws in conflict herewith are hereby repealed. [Id. sec. 10.]

[Note.—For local statute as to Galveston seawall, see act 1905, p. 54.]

TITLE 84.

LIBEL.

	Article.	Article.
Definition	5595	What matters deemed privileged..... 5597
Mitigation of damages.....	5596	To be construed, how..... 5598

Article 5595. **Definition.**—A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings, tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury. [Acts 1901, p. 30, sec. 1.]

Art. 5596. **Mitigation of damages.**—In any action for libel, the defendant may give in evidence, if specially pleaded, in mitigation of exemplary or punitive damages, the circumstances and intentions under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of. The truth of the statement or statements in such publication shall be a defense to such action. [Id. sec. 2.]

Art. 5597. **What matters deemed privileged.**—The publication of the following matters by any newspaper or periodical, as defined in article 5595, shall be deemed privileged, and shall not be made the basis of any action for libel without proof of actual malice:

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of the same, when in the judgment of the court the ends of justice demand that the same should not be published, and the court so orders; or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings that are made a matter of record, including reports of legislative committees, and of any debate in the legislature and in its committees.

3. A fair, true and impartial account of public meetings, organized and conducted for public purposes only.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information. [Id. sec. 3.]

Art. 5598. **To be construed, how.**—Nothing in this chapter shall be construed to amend or repeal any penal law on the subject of libel. [Id. sec. 4.]

TITLE 85.

LIBRARY AND HISTORICAL COMMISSION.

Article.	Article.		
Object and purposes of commission.....	5599	Books, pictures, papers, etc., transferred	
Commission, how constituted.....	5600	from department of insurance and	
Meetings; salary and duties of state libra-		banking.....	5605
rian.....	5601	Duties of state librarian.....	5606
Powers and duties of the commission.....	5602	Books, pictures, papers, etc., transferred	
Commission may receive gifts of money,		from other departments.....	5607
etc.....	5603	Assistant librarian for legislature; duties,	
State library, all books, pictures, etc.,		etc.....	5608
belong to.....	5604	Biennial report of commission shall con-	
		tain what.....	5609

Article 5599. **Object and purposes of commission.**—The Texas library and historical commission shall consist of five members, which commission shall be assigned suitable offices at the capitol; and whose object and purposes shall be to control and administer the state library, and to adopt and to enforce reasonable rules and regulations governing its administration and control, to aid and encourage libraries, to collect materials relating to the history of Texas and the adjoining states, to preserve, classify and publish the manuscript archives and such other matters as it may deem proper, to diffuse knowledge in regard to the history of Texas, to encourage historical work and research, to mark historic sites and houses and secure their preservation, to aid those who are studying the problems to be dealt with by legislation, and to perform such other duties as may be enjoined by law. [Acts 1909, p. 122, sec. 1.]

Art. 5600. **Commission how constituted.**—The governor shall, by and with the advice and consent of the senate, appoint three persons who, together with the superintendent of public instruction and the head of the school of history of the state university, shall constitute the Texas library and historical commission. Appointments shall be made for the term of two years, except appointments to fill vacancies, which shall be made by the governor for the unexpired term. [Id. sec. 2.]

Art. 5601. **Meetings; salary and duties of state librarian.**—The commission shall hold at the state capitol at least one regular meeting annually, and as many special meetings as may be necessary. The state librarian, hereinafter provided for, shall be secretary of the library and historical commission. No member of the commission shall receive any salary or per diem or other compensation for his services as such commissioner, but the actual expenses incurred in attending the meetings of the commission, or by any member thereof in visiting and establishing libraries, shall be paid for by the state. The commission shall elect a state librarian, who shall not be of their number, and who shall be an experienced librarian. Said state librarian shall serve at the will of the commission, shall receive a salary of fifteen hundred dollars per annum, and shall give to the governor an acceptable bond in the sum of five thousand dollars for the proper care of the state library and its equipment. He shall record the proceedings of the commission, keep an accurate account of its financial transactions, and perform such other duties as may be assigned him by said commission. In addition to his salary, the state librarian shall be allowed his actual expenses when traveling in the services of the commission. Such expenses shall be certified to under oath and approved by the chairman or acting chairman of the commission. [Id. sec. 2.]

Art. 5602. **Powers and duties of the commission.**—The commission is authorized and empowered to purchase, within the limits of the annual appropriation allowed by act of the legislature from time to time, suitable books.

pictures, etc., the same to be the property of the state. The commission shall give advice to such persons as contemplate the establishment of public libraries, in regard to such matters as the maintenance of public libraries, selection of books, cataloguing, and library management. The commission shall have conducted library institutes and encourage library associations. The state librarian shall ascertain the condition of all public libraries in this state and report the results to the commission. [Id. sec. 3.]

Art. 5603. **Commission may receive gifts.**—The commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the state. [Id. sec. 4.]

Art. 5604. **State library, all books, etc., belong to.**—All books, pictures, documents, publications and manuscripts received through gift, purchase or exchange, or on deposit, from any source, for the use of the state, shall constitute a part of the state library, and shall be placed therein for the use of the public. [Id. sec. 5.]

Art. 5605. **Books, pictures, etc., transferred from department of insurance and banking.**—So much of the law relating to the department of insurance and banking as places under the jurisdiction of that department the custody and control of books, documents, newspapers, manuscripts, archives, relics, mementoes, flags, works of art, etc., now in said department, and places upon said department the duty of collecting and preserving historical data, is hereby repealed. The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementoes, flags, works of art, etc., and the duty of collecting and preserving historical data, is transferred to the Texas library and historical commission. To avoid all misunderstanding, it is hereby expressly declared that the gallery of the portraits of the presidents of the republic and of the governors of the state of Texas constitutes a part of the state library. The commission shall adopt such rules and regulations for the government of the state library as will insure the careful preservation of the books, documents, newspapers, manuscripts, archives, relics, mementoes, flags, works of art, etc., deposited therein and particularly shall all materials relating to the history of Texas be carefully safeguarded. [Id. sec. 7.]

Art. 5606. **Duties of state librarian.**—The duties of the state librarian, acting under the direction of the Texas library and historical commission, shall be as follows:

First. He shall have charge of the state library, and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementoes, flags, etc., therein contained.

Second. He shall endeavor to collect all manuscript records, relating to the history of Texas, in the hands of private individuals, and, where the originals can not be obtained, he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this state. He shall collect portraits or photographs of as many of the prominent men of Texas as possible. He shall endeavor to complete the files of the early Texas newspapers in the state library, and he shall cause to be bound the current files of not less than ten of the leading newspapers of the state, and the current files of not less than four leading newspapers of other states, and of as many of the county papers, professional journals, denominational papers, agricultural papers, trade journals and other publications of this state as seem necessary to preserve in the state library an accurate record of the history of Texas.

Third. He shall demand and receive from the officers of state departments, having them in charge, all books, maps, papers, manuscripts, docu

ments, memoranda and data not connected with or necessary to the current duties of said officers relating to the history of Texas, and carefully classify, catalogue and preserve the same. The attorney general shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

Fourth. Any state, county or other official is hereby authorized and empowered in his discretion to turn over to the state library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his offices, and the state librarian shall receipt for the same.

Fifth. The state librarian shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof; and, in case he can not procure the originals, he shall endeavor to procure authentic copies thereof. In like manner, he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this state, in so far as said manuscripts relate to the history of Texas.

Sixth. He shall preserve all historical relics, mementoes, antiquities, and works of art connected with, and relating to, the history of Texas, which may in any way come into his possession as state librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this state.

Seventh. He shall make and certify to copies of papers or documents in the state library, upon application of any person interested, and shall charge the same fees as are allowed the secretary of state for similar services. And such certified copies of papers and documents shall be received in evidence by the courts the same as like papers and documents of other state departments. He shall collect all such fees in advance and turn them over to the state treasurer quarterly, and shall be authorized to approve the vouchers for all expenditures made in connection with the state library.

Eighth. He shall give careful attention to the proper classification, indexing, and preservation of the official archives that are now or may hereafter come into his custody.

Ninth. He shall make a biennial report to the Texas library and historical commissioners to be by them transmitted to the governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance. [Id. sec. 9.]

Art. 5607. Books, pictures, etc., transferred from other departments.—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, republic, or state, which have been, or may hereafter be, delivered to the state librarian by the secretary of state, comptroller, commissioner of the general land office, or by any of the heads of the departments, or by any persons or officers in pursuance of law, shall be deemed books and papers of said state library, and shall constitute a part of the archives of said state library; and copies therefrom shall be made and certified by the said state librarian upon application of any person interested: which certificate shall have the same force and effect as if made by the officer originally in custody of them, and for which the same fees shall be charged, to be collected in advance and turned over to the state treasurer quarterly. [Id. sec. 10.]

Art. 5608. Assistant librarian for legislature; duties, etc.—The said library and historical commission is authorized and directed to maintain for the use and information of the members of the legislature, the heads of the several state departments, and such other citizens as may desire to consult the same, a section of the state library for legislative reference and information. The commission shall appoint an assistant librarian competent to conduct the

work of said legislative reference section. Said assistant librarian shall have available for use explanatory check lists and catalogues of the current legislation of this and other states, catalogues of the bills and resolutions presented in either branch of the legislature, check lists of the public documents of the several states, including all reports issued by the various departments, boards and commissions of this state, digests of such public laws of this and other states as may best be made available for legislative use. Said assistant librarian shall give the members of the legislature such aid and assistance in the drafting of bills and resolutions as may be asked. [Id. sec. 11.]

Art. 5609. **Biennial report of commission shall contain what.**—The commission shall make a biennial report to the governor, which shall include the biennial report of the state librarian. Said report shall present a comprehensive view of the operation of the said commission in the discharge of the duties imposed by this chapter, shall present a review of the library conditions in this state, present an itemized statement of the expenditures of the commission, make such recommendations as their experience shall suggest, and present careful estimates of the sum or sums of money necessary for the carrying out of the provisions of this chapter. Said report shall be made and printed, and by the governor be laid before the legislature as are other department reports. [Id. sec. 12.]

TITLE 86.

LIENS.

[For "Lis Pendens and Levies," see Articles 6837 to 6840. For "Attachment Liens," see Article 6858 and Article 267.]

Chapter.

1. Judgment Liens.
2. Mechanics, Contractors, Builders and Material Men.
3. Liens of Railroad Laborers.
4. Liens of Accountants, Bookkeepers, Artisans, Craftsmen, Factory Operatives, Mill Operatives, Servants, Mechanics, Quarrymen, Common Laborers and Farm Hands.

Chapter.

5. Liens on Domestic Vessels.
6. Liens on Live Stock.
7. Chattel Mortgages.
8. Other Liens.

CHAPTER ONE.

JUDGMENT LIENS.

[Note—For judgment liens against receivers, see Title 37, Chapter 21, Article 2138.]

	Article.
Clerk of county court shall keep judgment record.....	5610
Clerks of courts shall make and deliver abstracts of judgments.....	5611
Abstract shall show what.....	5612
Justice of peace shall deliver abstracts.....	5613
Clerks of county courts shall record and index abstracts.....	5614

	Article.
Index shall show, what.....	5615
Lien of judgments, when.....	5616
Lien exists, how long.....	5617
Satisfaction of, shown how.....	5618
Satisfaction of to be entered on judgment record.....	5619
Abstracts from United States courts may be recorded, etc.....	5620

Article 5610. [3283] **Clerk of county court shall keep a judgment record.**—Each clerk of the county court shall keep in his office a well-bound book, to be called the "Judgment record," in which he shall record all abstracts of judgments filed in his office for record, which are authenticated in the manner hereinafter, required.

Art. 5611. [3284] **Clerks of courts shall make and deliver abstracts of judgments.**—It shall be the duty of each clerk of a court, when the person in whose favor the judgment was rendered, his agent, attorney or assignee, applies therefor, to make out and deliver to such applicant, upon the payment of the fee allowed therefor by law, an abstract of such judgment, and certify thereto under his hand and official seal.

Art. 5612. [3285] **Abstract shall show what.**—The abstract provided for in the preceding article shall show:

1. The names of the plaintiff and of the defendant in such judgment.
2. The number of the suit in which the judgment was rendered.
3. The date when such judgment was rendered.
4. The amount for which the same was rendered and the amount still due upon the same.
5. The rate of interest, if any is specified in the judgment.

Art. 5613. [3286] **Justice of the peace shall deliver abstracts.**—It shall also be the duty of each justice of the peace to make out and deliver an abstract of any judgment rendered in his court in the manner provided in the two preceding articles, certified to under his hand.

Art. 5614. [3287] **Clerk of county court shall record and index abstracts.**—When any such abstract, as is provided for in the three preceding articles,

is presented to the clerk of the county court for record, he shall file and immediately record the same in the judgment record, noting in such record the day and hour of such record, and shall also at the same time enter it upon the index.

Art. 5615. [3288] **Index shall show what.**—The index to such judgment record shall be alphabetical, and shall show the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded.

Art. 5616. [3289] **Lien of judgment, when.**—When any judgment has been recorded and indexed, as provided in the preceding articles, it shall, from the date of such record and index, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire situated in said county.

Art. 5617. [3290] **Lien exists, how long.**—When a lien has been acquired, as provided in this chapter, it shall continue for ten years from the date of such record and index, unless the plaintiff shall fail to have execution issued upon his judgment within twelve months after the rendition thereof, in which case said lien shall cease to exist.

Art. 5618. [3219] **Satisfaction of judgment, shown how.**—Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the date and amount of the judgment, the court in which rendered, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record in the same manner as deeds are required to be.

Art. 5619. [3292] **Satisfaction of judgment to be entered on judgment record.**—Sufficient space shall be left at the foot of each abstract of a judgment recorded in the judgment record for the entry of credits upon and satisfaction of such judgment, and it shall be the duty of the clerk to enter such credits and satisfaction whenever the same are made to appear, as provided in the preceding article.

Art. 5620. [3293] **Abstract from U. S. courts may be recorded, etc.**—An abstract of a judgment rendered in this state by any United States court may be recorded and indexed in the same manner provided for the judgments of the courts of this state, upon the certificates of the clerks of such United States courts; and the record and index of such judgments shall have the same force and effect as that of a judgment of a court of this state.

CHAPTER TWO.

MECHANICS, CONTRACTORS, BUILDERS AND MATERIAL MEN.

In favor of whom.....	Article. 5621	On homesteads, how fixed.....	Article. 5631
When to be filed.....	5622	Notice to owner of property.....	5632
Written notice to owner.....	5623	Diligence, what is sufficient.....	5633
Form of fixing lien on unwritten con- tracts	5624	Contractor to be furnished by owner with account	5634
Form when material is furnished to con- tractor or builder.....	5625	Original contractor to defend suit by sub- contractors, etc.....	5635
Description of property.....	5626	When indebtedness accrues.....	5636
What is sufficient diligence.....	5627	Liens upon equal footing.....	5637
Priority of lien.....	5628	Speedy enforcement of.....	5638
When sold separately purchaser may re- move	5629	Release to be filed by mechanics, etc., when	5639
Sale must be under judgment.....	5630		

Article 5621. [3294] **In favor of whom.**—Any person, or firm, lumber dealer, or corporation, artisan, laborer, mechanic, or sub-contractor, who may labor or furnish material, machinery, fixtures or tools to erect any house or improvement or to repair any building or improvement whatever, or furnish any material for the construction or repair of any railroad within this state under or by virtue of a contract with the owner or his agent, trustee, receiver, contractor or contractors, upon complying with the provisions of this chapter, shall have a lien on such house, building, fixtures, improvements or railroad, and all its properties, and shall also have a lien on the lot or lots of land necessarily connected therewith, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement," as used herein, shall be construed so as to include wells, cisterns, tanks, reservoirs or artificial pools or lakes made for supplying or storing water, and all pumps, syphons, wind mills or other machinery or appliances used for raising water for stock, domestic use, or for irrigation purposes. [Amend. 1895, p. 194.]

Art. 5622. [3295] **When to be filed.**—In order to fix and secure the lien herein provided for, it shall be the duty of every original contractor, within four months, and every journeyman, day laborer or other person seeking to obtain the benefits of the provisions of this law, within thirty days after the indebtedness shall have accrued, to file his or their contract in the office of the county clerk of the county in which such property is situated, and cause the same to be recorded in a book to be kept by the county clerk for that purpose; provided, that, if such journeyman, day laborer or other persons have no written contract, it shall be sufficient for them to file an itemized account of their claim, supported by affidavit, showing that the account is just and correct, and that all just and lawful offsets, payments and credits known to the affiant have been allowed. [Acts of 1889, p. 110.]

Art. 5623. [3296] **Written notice to owner.**—Any person, firm, or corporation, who may furnish any material to any contractor, sub-contractor, agent, or receiver, to be used in the erection of any house, building or improvement, or to repair any house, building or improvement, or to construct or repair any railroad, or its properties, by giving written notice to the owner or his agent of such house, building or improvement, or the railroad company, its agent or receiver, of each and every item furnished, and by showing how much there is due and unpaid on each bill of lumber or material furnished by said lumberman, corporation, or material man under said contract, or at any time within ninety days after the indebtedness shall have accrued, may fix and secure the lien provided for in this chapter as to the material furnished at the time or subsequent to the giving of the written notice above provided for by filing in the office of the county clerk of the county in which such property is situated, and, if it be a railroad company,

in any county through which its road may pass, an itemized account of his or their claim, as provided in this article, and cause the same to be recorded in a book kept by the county clerk for that purpose; provided, that in no case shall the owner be compelled to pay a greater sum for or on account of labor performed or material, machinery, fixtures and tools furnished as provided in this chapter than the price or sum stipulated in the original contract between such owner and the original contractor or builder of such house, building, fixtures, improvements or repairs. [Amend. 1895, p. 194.]

Art. 5624. [3297] **Form of fixing lien on unwritten contract.**—If there be no written contract, it shall be the duty of the person seeking to obtain the benefit of this chapter to deliver to the clerk of the county court a sworn account as provided for in articles 5622 and 5623, to be filed and recorded as therein provided, and in such cases when the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of any railroad, the following form may be used, and will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,
County of _____.

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) C D, of _____ county, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished, or both) for said C D at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C D, and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with article 3296 [5623]; and affiant further makes oath and says that he is informed that C D was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements.) And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C D, and which is described as follows: (Here describe the lot or lots or the land.) And this affiant (or his principal) claims a lien upon said house (or improvements) and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property); provided, however, a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien. [Id. sec. 4. Amend. 1895, p. 194.]

Art. 5625. [3298] **Form when material is furnished to contractor or builder and not the owner of property.**—If the labor is performed for, or the material is furnished to, a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,
County of _____.

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C D, a contractor (builder, agent, or receiver) by affiant (or his principal), and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of \$——, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits

known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C D, to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improvement, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E F, of _____ county, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C D, under and by virtue of his contract between affiant (or his principal) and said C D. (And in case of material furnished, affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in article 3296 [5623] as the same was furnished to said C D; provided, however, that a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien.) [Id. sec. 5. Amend. 1895, p. 194.]

Art. 5626. [3299] **Description of property.**—In case the contract is filed and recorded as provided for in article 5527 [5622], a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath. [Id. sec. 6.]

Art. 5627. [3300] **What is sufficient diligence; what included on property in city and country.**—When a contract or account is filed and recorded as required by the preceding article, it shall be deemed sufficient diligence to fix and secure this lien. If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and, if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property. [Id. sec. 7. Amend. 1895, p. 194.]

Art. 5628. [3301] **Priority of lien.**—The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished, or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad, have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for. [Id. sec. 8. Amend. 1895, p. 194.]

Art. 5629. [3302] **When improvements sold separately, purchaser may remove.**—When the house, building, improvement, or any piece of the railroad's property are sold separately, the officers making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of the purchase. [Id. sec. 9. Amend. 1895, p. 194.]

Art. 5630. [3303] **Sale must be under judgment.**—Every sale must be upon judgment rendered by some court of competent jurisdiction, foreclosing such lien and ordering sale of such property. [Id. sec. 10.]

Art. 5631. [3304] **On homestead, how fixed.**—When material is furnished, labor performed, erections or repairs made upon a homestead, if the owner thereof is a married man, then to fix and secure the lien upon the same, it shall be necessary for the person or persons who furnished the material or performed the labor, before such material is furnished or labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner and his wife, and privily acknowledged

by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well-bound book to be kept for that purpose; provided, when such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder. [Id. sec. 11.]

Art. 5632. [3305] **Notice of sub-contractor or laborer to owner of property.**—Every person, except the original contractor or builder, or those claiming under article 5523 [5623] who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of the lien, as herein required, to the owner or owners, or agent, or either of them, that he holds a claim against such house, building or improvement, setting forth the amount, and from whom the same is due; and thereafter said owner, or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. [Id. sec. 12.]

Art. 5633. [3306] **Diligence, what is sufficient.**—A compliance with the provisions of the preceding article shall be deemed sufficient diligence to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law. [Id. sec. 13.]

Art. 5634. [3307] **Contractor to be furnished by owner with account.**—Whenever any such account shall be placed in the hands of such owner, or his authorized agent, it shall be the duty of such owner, or his agent, to furnish his contractor with a true copy of said attested account; and, if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he intends to dispute said claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due. [Acts of 1876, p. 91, sec. 7.]

Art. 5635. [3308] **Original contractor to defend suits by sub-contractors, etc.**—In all cases when a lien shall be filed under a provision of this chapter by any person other than the original contractor or builder, it shall be the duty of the original contractor to defend any action brought thereupon, at his own expense; and, during the pending of such action, the owner may withhold from the contractor or builder the amount of money for which such lien shall be filed, and, in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from any amount due by him to the contractor the amount of said judgment and costs; and, if he shall have settled with the contractor or builder in full, he shall be entitled to recover back from the contractor any amount so paid by the owner for which the contractor or builder was originally the party liable. But no owner or proprietor shall in any case be required to pay, nor his property be liable for, any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt; and all sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder; provided, further, a copy of each bill of lumber furnished to the contractor or builder, as the same is furnished, shall be delivered to the owner of said homestead, said bill specifying each item so furnished, how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto; provided, when the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or

builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men. [Id. sec. 14.]

Art. 5636. [3309] **When indebtedness accrues.**—When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time. [Id. sec. 15.]

Art. 5637. [3310] **Liens upon equal footing.**—The liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing, without reference to date of filing the account or lien; and, in all cases when a sale shall be ordered and the property sold, which may be described in any account or lien, the proceeds arising from such sale, if not sufficient to discharge all the liens against the same, without reference to the date of filing the account or lien, shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law; provided, that nothing in this law shall be so construed as in any manner affecting the contract between said owner and original contractor as to the amount, manner or time of payment of said contract price. [Id. sec. 16.]

Art. 5638. **Enforcement of.**—Whenever any mechanic or artisan shall perform any labor or service for any contractor, sub-contractor, agent or receiver, in the erection of any house, building, fixture or improvement, or to repair any house, building, fixture or improvement, or as a necessary incident in connection with such work of construction or repair, it shall be the duty of the owner of such property, or such agent or receiver, to retain in his hands, to secure the payment of the artisans and mechanics who may perform such labor or service, ten per cent of the contract price of such building, fixture or improvement, or the repair thereof, and, in the event there be no fixed contract price, then a sum equivalent to ten per cent of the value of such building, fixture or improvement, or the repair thereof; provided, that the amount so retained by the owner, agent or receiver as the work progresses shall not fall below one-tenth of the value of such building, fixture or improvement, or the repair thereof, measured by the proportion that the work done bears to the work to be done thereon, and using the contract price or the reasonable value of the completed building, fixture or improvement, or the repair thereof, as a basis of computation of value. Such fund or funds shall be retained by the owner, or agent, or receiver for the purpose herein named during the progress of the work of construction upon such building, fixture or improvement, or the repair thereon, and for thirty days subsequent to the completion thereof. Any mechanic or artisan who may file a mechanic's lien upon said building, fixture or improvement so made or erected or repaired in accordance with the law applying thereto, shall have a preference lien upon said fund so retained in the hands of such owner, or agent, or receiver; provided, that all mechanics and artisans filing such lien shall be entitled to share ratably therein. In the event the owner of such building, fixture or improvement, or such agent, or receiver shall refuse or fail to comply with the provisions of this law, and to retain such fund or funds in his hands as herein provided, the mechanics and artisans performing work thereon and in connection therewith, who may file liens thereon in accordance with law, shall have ratably among themselves preference liens, to be preferred above all other liens and claims whatsoever upon such house, building, structure, fixture or improvement, and all its properties, and on the lot or lots of land necessarily connected therewith, to secure payment for

such labor thereon. The provisions of this article shall not be construed to deprive artisans and mechanics of the remedies given them for enforcement of their liens as set out in other provisions of this chapter, except in so far as they may be in conflict herewith; and the provisions of this article shall be cumulative of the other provisions of this chapter. [Acts 1909, p. 184, sec. 1.]

Art. 5639. **Release to be filed by mechanics, etc., when.**—All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien. [Acts 1876, p. 91, sec. 18.]

CHAPTER THREE.

LIENS OF RAILROAD LABORERS.

	Article.		Article.
Railroad laborers to have lien.....	5640	Venue	5642
Lien, how foreclosed.....	5641	Lien ceases, when.....	5643

Article 5640. [3312] **Railroad laborers, etc., to have lien, when.**—All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad, locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall hereafter have a lien prior to all others upon such railroad and its equipments for the amount due him for personal services, or for the use of tools or teams. [Acts of 1887, p. 17, sec. 1.]

Art. 5641. [3313] **Lien, how foreclosed.**—In all suits for wages due by a railroad company for such labor as heretofore mentioned, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor or sub-contractor, or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, it shall be the duty of the court having jurisdiction to try the same to render judgment for the amount of wages found to be due, and to adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court. [Acts of 1879, p. 8, sec. 2.]

Art. 5642. [3314] **Venue.**—Suits by mechanics, laborers and operatives for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated, and in all such suits service of process may be made in the manner now required by law. [Id. sec. 3.]

Art. 5643. [3315] **Lien ceases, when.**—The lien created by article 5640 shall cease to be operative in twelve months after the creation of the lien, if no steps be sooner taken to enforce it. [Id. sec. 4.]

CHAPTER FOUR.

LIENS OF ACCOUNTANTS, BOOKKEEPERS, ARTISANS, CRAFTSMEN,
FACTORY OPERATIVES, MILL OPERATIVES, SERVANTS, ME-
CHANICS, QUARRYMEN, COMMON LABORERS AND
FARM HANDS.

Who entitled to liens.....	Article. 5644	Right of assignment.....	Article. 5647
Liens, how fixed.....	5645	Lien ceases when.....	5648
Wages, when paid.....	5646	Laws not repealed.....	5649

Article 5644. **Who entitled to liens.**—Whenever any clerk, accountant, bookkeeper, artisan, craftsman, factory operative, mill operative, servant, mechanic, quarryman, or common laborer, farm hand, male or female, may labor or perform any service in any office, store, saloon, hotel, shop, mine, quarry, manufactory or mill of any character, or on any farm, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm, corporation, or his, her, or their agent or agents, receiver or receivers, trustee or trustees, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employes shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels or thing or things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service, which may be owned by, or in the possession of, the aforesaid employer, person, firm, corporation, or his, her, or their agent or agents, receiver or receivers, trustee or trustees; provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien now provided by law. [Act 1897, p. 218, sec. 1.]

Art. 5645. **Liens, how fixed.**—Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, farm hand, artisan, craftsman, operative, servant, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. [Id. sec. 2.]

Art. 5646. **Wages, when paid.**—Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or, if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States. [Id. sec. 3.]

Art. 5647. **Right of assignment.**—Any of the parties named in article 5644 may transfer or assign their rights hereunder, and their assignee or assignees shall have the same rights and privileges as are conferred upon such persons enumerated in article 5644. [Id. sec. 4.]

Art. 5648. **Lien ceases, when.**—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit is brought within said time to enforce such lien. [Id. sec. 5.]

Art. 5649. **Laws not repealed.**—This chapter shall not be so construed as to repeal chapter 2 of this title, relating to liens of mechanics, contractors, builders and material men. [Id. sec. 6.]

CHAPTER FIVE.

LIENS ON DOMESTIC VESSELS.

Lien on vessels, when.....	Article. 5650	Law not affected.....	Article. 5651
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Article 5650. [3316] **Lien on vessels, when.**—Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this state, shall have a lien on such vessel, her tackle, apparel, furniture and freight money, for the security and payment of the same. [Act Feb. 3, 1848. P. D. 4600.]

Art. 5651. [3317] **Not to affect laws of liens for seamen's wages.**—The provisions of the preceding article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels. [P. D. 4601.]

CHAPTER SIX.

LIEN—LIVE STOCK.

	Article.		Article.
Lien of keeper of stallion.....	5652	Period of such lien.....	5653

Article 5652. [3335] **Keeper of stallion, etc., a lien.**—The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar, to secure the payment of the amount due such owner or keeper, for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but that such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. [Acts of 1889, p. 115, amended 1905, p. 24.]

Art. 5653. [3336] **Period of such lien.**—The lien herein provided for shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth. [Id.]

CHAPTER SEVEN.

CHATTEL MORTGAGES.

	Article.		Article.
Reservation of title in chattel mortgages.....	5654	County clerk to keep book, etc.....	5658
All instruments intended to operate as liens to be recorded.....	5655	Satisfaction to be entered.....	5659
Duty of clerk receiving.....	5656	Property not to be removed.....	5660
Copy to be received in evidence.....	5657	Not to be recorded at length.....	5661
		Provision for destruction of.....	5662

Article 5654. [3327] **Reservations of title, mortgages, and to be recorded.**—All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages; provided, that nothing in this law shall be construed to contravene the landlord and tenant act. [Acts of 1885, p. 76.]

Art. 5655. [3328] **All instruments intended to operate as liens to be recorded.**—Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage of or lien upon personal property, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged or pledged by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, and as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resi-

dent of this state, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipments and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, shall be recorded in the office of the secretary of state, in a book of records to be kept by him for that purpose; and, on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record. [Act of 1879, p. 134, sec. 1. Amended act 1897, p. 209.]

Art. 5656. [3329] **Duty of clerk receiving.**—Upon the receipt of such instrument, the clerk shall endorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided in article 5659; provided, that if a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and a copy can be filed only when the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded. [Sen. Jour., 1895, p. 479.]

Art. 5657. [3330] **Copy of instrument evidence of what.**—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of the clerk of the county court in whose office the same shall have been filed, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby; provided, that the party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards; and such certified copy shall in all cases be received as evidence of filing and entry thereof in chattel mortgage record according to the endorsement of the clerk thereon. [Id. 480.]

Art. 5658. [3331] **County clerk to keep book.**—The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of property mortgaged, it will be sufficient to enter a general description of the property pledged and the particular place where located, and index shall be kept in the manner as required for other records. [Id. sec. 4.]

Art. 5659. [3332] **Satisfaction to be entered.**—When the debt secured by any such instrument shall have been paid or satisfied, it shall be the duty of the mortgagee, his assignee, attorney or legal representative to enter, or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks;" and any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as

above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. [Sen. Jour., 1895, p. 480.]

Art. 5660. [3333] **Property not to be removed.**—The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same without the consent of the mortgagee; and, in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. [Id. sec. 6.]

Art. 5661. [3334] **Not to be recorded at length.**—Chattel mortgages and other instruments intended to operate as mortgages of or liens upon personal property shall not hereafter be recorded at length as heretofore required; and, when deposited and filed in accordance with the provisions of this law, shall have the force and effect heretofore given to a full registration thereof, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representative thereunder, but nothing herein contained shall be so construed as to in any manner affect the rights of any person under any instrument heretofore recorded as required by law. [Id. sec. 7.]

Art. 5662. **Destruction of chattel mortgages.**—All chattel mortgages filed with the county clerks of this state in accordance with law shall be prima facie presumed to have been paid after the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgage, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the expiration of said time, make disposition of such mortgage, either by delivering the same to the maker or by burning the same. [Act 1907, p. 272.]

CHAPTER EIGHT.

OTHER LIENS.

(For Lien of Landlord, see "Landlord and Tenant.")

	Article.		Article.
In favor of hotels, etc.....	5663	Non-resident owner.....	5668
Livery stable keepers.....	5664	Balance, how disposed of.....	5669
Possession may be retained, when.....	5665	Final disposition of balance.....	5670
Where no price agreed upon.....	5666	Other liens, etc., not affected.....	5671
Sales may be made for charges.....	5667		

Article 5663. [3318] **Lien in favor of hotels and boarding houses.**—Proprietors of hotels and boarding houses shall have a special lien upon all property or baggage deposited with them for the amount of the charges against them or their owners if guests at such hotel and boarding house. [Act May 2, 1874, p. 200, sec. 1. P. D. 7116f.]

Art. 5664. [3319] **Lien of livery stable keepers and pasturers.**—Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage. [Id. Amend. 1895, p. 96.]

Art. 5665. [3320] **Mechanics may retain possession of article repaired, when.**—Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material, by any carpenter, mechanic, artisan or other workman in this state, such carpenter, mechanic, artisan or other workman is authorized to retain possession of said article, implement, utensil or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. [Act April 7, 1874, p. 68, sec. 1. P. D. 7116a.]

Art. 5666. [3321] **Where no price is agreed upon.**—In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan or other workman shall retain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full. [Id. sec. 1.]

Art. 5667. [3322] **When property may be sold for charges.**—When possession of any of the property embraced in the four preceding articles has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due, and, on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days' notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same.

Art. 5668. [3323] **When owner lives out of the state or residence is unknown.**—If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give the ten days' notice mentioned in the preceding article before proceeding to sell.

Art. 5669. [3324] **Balance, how disposed of.**—If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the state or from the county in which such repairing was done, or such property was so held, it shall be the duty of the person so holding said property to pay the balance to the county treasurer of the

county in which said property is held, and take his receipt therefor. [Id. sec. 3.]

Art. 5670. [3325] **What is to be done finally with the balance.**—Whenever any balance mentioned in this chapter shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was so sold, and shall be applied as any other county fund or money of such county is applied or used. [Id. sec. 4.]

Art. 5671. [3326] **Other liens and contracts not affected.**—Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state, or any other lien not treated of under this title.

TITLE 87.

LIMITATIONS.

(See "Taxation.")

Chapter.	Chapter.
1. Limitation of Actions for Lands.	3. Limitations in General.
2. Limitation of Personal Actions.	

CHAPTER ONE.

LIMITATION OF ACTIONS FOR LANDS.

	Article.		Article.
Three years' possession, when a bar.....	5672	Same subject.....	5678
"Title" and "color of title" defined.....	5673	Possession gives full title, when.....	5679
Five years' possession, when a bar.....	5674	"Peaceable possession" defined.....	5680
Ten years' possession, when a bar.....	5675	"Adverse possession" defined.....	5681
Ten years' possession construed to embrace what.....	5676	Possession by different persons.....	5682
Lands surrounded by other lands, peaceable possession of defined.....	5677	Right of state not barred.....	5683
		Does not run against infants, etc.....	5684

Article 5672. [3340] **Three years' possession, when a bar.**—Every suit to be instituted to recover real estate, as against any person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action shall have accrued, and not afterward. [Act Feb. 5, 1841, p. 119, sec. 15. P. D. 4622.]

Art. 5673. [3341] **"Title" and "color of title" defined.**—By the term "title," as used in the preceding article, is meant a regular chain of transfer from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfer down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of head-right, land warrant, or land scrip, with a chain of transfer down to him in possession. [Id. sec. 15. P. D. 4622.]

Art. 5674. [3342] **Five years' possession, when a bar.**—Every suit to be instituted to recover real estate as against any person having peaceable and adverse possession thereof, cultivating, using or enjoying the same and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after the cause of action shall have accrued, and not afterward; provided, that this article shall not apply to any one in possession of land, who in the absence of this article would derain title through a forged deed; provided, further, that no one claiming under a forged deed, or deed executed under a forged power of attorney, shall be allowed the benefits of this article. [Id. sec. 16. P. D. 4623. Acts of 1879, ch. 125, p. 132.]

Art. 5675. [3343] **Ten years' possession, when a bar.**—Any person who has the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. [Id. sec. 17. P. D. 4621-4624.]

Art. 5676. [3344] **Ten years' possession construed to embrace, what.**—The peaceable and adverse possession contemplated in the preceding article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or

the number of acres actually inclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. [Id. P. D. 4624.]

Art. 5677. [3345] **Land surrounded by other lands, etc., peaceable possession of defined.**—A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by article 5675, unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes. [Acts of 1891; p. 76.]

Art. 5678. [3346] **Same subject.**—Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by article 5675, unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining, or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes, or used for manufacturing purposes, or unless there be actual possession thereof. [Id.]

Art. 5679. [3347] **Possession gives full title, when.**—Whenever in any case the action of a person for the recovery of real estate is barred by any of the provisions of this chapter, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

Art. 5680. [3348] **"Peaceable possession" defined.**—"Peaceable possession," within the meaning of this chapter, is such as is continuous and not interrupted by adverse suit to recover the estate. [Acts of 1841, p. 119, sec. 14. P. D. 4621.]

Art. 5681. [3349] **"Adverse possession" defined.**—"Adverse possession" is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

Art. 5682. [3350] **Possession may be held by different persons.**—Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

Art. 5683. [3351] **Right of the state not barred, etc.**—The right of the state shall not be barred by any of the provisions of this chapter, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, sidewalk or grounds which belong to any town, city or county, or which have been donated or dedicated for public use to any such town, city or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city or county in this state; provided, this law shall not apply to any alley laid out across any block or square in any city or town. [Id. secs. 15-17. P. D. 4622-4. Acts of 1887, p. 28.]

Art. 5684. [3352] **Does not run against infants, etc.**—If a person entitled to commence suit for the recovery of real property, or to make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence—

1. Under the age of twenty-one years; or,
2. Of unsound mind; or,

3. A person imprisoned; the time during which such disability shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this chapter; provided, that limitation shall not begin to run against married women until they arrive at the age of twenty-one years; and, further, that their disability shall continue one year from and after July 29, 1895, and that they shall have thereafter the same time allowed others by the provisions hereof; and, further, that this article shall in no way affect suits then pending, and all such suits shall be tried and disposed of under the law then in force. [Acts of 1841, p. 109, secs. 14-17. P. D. 4621-4. Amend. 1895, p. 35.]

CHAPTER TWO.

LIMITATION OF PERSONAL ACTIONS.

Article.	Article.
Actions to be commenced in one year.....5685	Rights under vendor's lien barred, when.....5694
Survival of causes of action.....5686	Contracts of extension, how made and construed.....5695
Actions to be commenced in two years.....5687	Judgments shall be revived, when.....5696
What actions barred in four years.....5688	On motion for not returning execution.....5697
On bond of executor, etc.....5689	On action of forcible entry, etc.....5698
All other actions barred, when.....5690	On action to contest a will.....5699
All foreign judgments barred.....5691	In case of forgery, etc., action accrues, when.....5700
Actions for specific performance.....5692	
Time in which power of sale may be exercised.....5693	

Article 5685. [3353] **Actions to be commenced in one year.**—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.

2. Actions for damages for seduction, or breach of promise of marriage. [Acts Feb. 5, 1841, sec. 1; Feb. 2, 1860, sec. 1. Amended act 1897, p. 12.]

Art. 5686. [3353a] **Survival of cause of action.**—Causes of action upon which suit has been or may hereafter be brought by the injured party for personal injuries other than those resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, shall not abate by reason of his death, nor by reason of the death of the person against whom such cause of action shall have accrued; but, in the case of the death of either or both, such cause of action shall survive to and in favor of the heirs and legal representatives of such injured party and against the person, receiver or corporation liable for such injuries and his legal representatives; and so surviving, such cause may be thereafter prosecuted in like manner and with like legal effect as would a cause of action for injuries to personal property. [Act of 1895, p. 143.]

Art. 5687. [3354] **Actions to be commenced in two years.**—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such personal property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitations shall run against each item from the date of such delivery, unless otherwise specially contracted.

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured. [Acts Feb. 5, 1841, p. 163, sec 1; Feb. 16, 1852, p. 128, sec. 1. P. D. 4604. Amended act 1897, p. 12.]

Art. 5688. [3356] **What actions barred in four years.**—There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. [Act Feb. 5, 1841, p. 163, sec. 1. P. D. 4604.]

Art. 5689. [3357] **On bond of executor, administrator or guardian.**—All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter. [Acts March 20, 1848; Aug. 9, 1876, p. 102, sec. 42. P. D. 1375, 3923.]

Art. 5690. [3358] **All other actions barred, when.**—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward.

Art. 5691. [3359] **Actions on foreign judgments barred, when.**—Every action upon a judgment or decree rendered in any other state or territory of the United States, in the District of Columbia, or in any foreign country, shall be barred, if by the laws of such state or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and, whether so barred or not, no action against a person who shall have resided in this state during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Art. 5692. [3360] **Actions for specific performance.**—Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within ten years next after the cause of action shall have accrued, and not afterward.

Art. 5693. **Time in which power of sale may be exercised.**—No power of sale conferred by deed of trust or mortgage on real estate executed after

July 14, 1905, shall be enforced after the expiration of ten years from the maturing of the indebtedness secured thereby; and any sale under such power after the expiration of such time shall be void, and such sale may be enjoined. [Act 1905, p. 334, sec. 1.]

Art. 5694. **Rights under vendor's lien barred, when.**—When a vendor's lien is retained to secure purchase money in any sale of real estate after July 14, 1905, the right to recover such real estate by virtue of the superior title retained shall be barred after the expiration of ten years from the maturity of the debt; and if suit is not brought for recovery of such real estate within such term, the purchase money therefor shall be conclusively presumed to have been paid. [Id. sec. 2.]

Art. 5695. **Contracts of extension, how made and construed.**—When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is not signed and acknowledged according to law by the parties to the contract of extension, and filed in the county clerk's office of the county in which the land is situated, the date of maturity as set out in the deed of trust, mortgage or deed, as the case may be, or, if there be one or more extensions of the date of maturity, the date of maturity set out in the latest contract of extension so acknowledged and filed shall be conclusive evidence of the date of maturity of the indebtedness. [Id. sec. 3.]

Art. 5696. [3361] **Judgment shall be revived, when.**—A judgment in any court of record within this state, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after the date of such judgment, and not after. [Act Feb. 5, 1841, sec. 2. P. D. 4608.]

Art. 5697. [3362] **On motion for returning execution.**—Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same within five years from the day on which it was returnable, and not after. [Id. P. D. 4608.]

Art. 5698. [3363] **On the action of forcible entry, etc.**—No action of forcible entry or forcible detainer, as provided for by law, shall be prosecuted at any time after two years from the commencement of the forcible entry or detainer.

Art. 5699. [3364] **On actions to contest a will.**—Any person interested in any will which shall have been probated under the laws of this state may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward. [Act. Aug. 9, 1876, p. 94, sec. 3.]

Art. 5700. [3365] **In case of forgery, etc., action accrues, when.**—Any heir at law of the testator, or any other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward. [Id. sec. 3.]

CHAPTER THREE.

GENERAL PROVISIONS.

Article.	Article.
Suspension of during late war.....5701	Debts incurred prior to removal of per-
Time of temporary absence not counted..5702	son to this state.....5710
Death of owner stops limitation, until..5703	One disability not tacked to another.....5711
Death of person, etc., against whom, etc.5704	Claims barred under pre-existing laws,
Acknowledgment must be in writing.....5705	etc. ....5712
Limitation must be pleaded, etc.....5706	No agreement to shorten period of limi-
Presumption of death, etc., when, etc.....5707	tation valid.....5713
No limitation against infants.....5708	Limitation of notice of claim for dam-
Action against immigrant barred, when,	ages .....5714
etc. ....5709	

Article 5701. [3366] **Suspension during late war.**—The laws of limitation of civil suits in this state shall be considered as suspended during the late civil war, commencing on the twenty-eighth day of January, 1861, and ending on the thirtieth day of March, 1870; but nothing herein shall be held to revive any cause of action heretofore barred. [Const., art. 16, sec. 18.]

Art. 5702. [3367] **Time of temporary absence not counted.**—If any person against whom there shall be cause of action shall be without the limits of this state at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the state, and the time of such person's absence shall not be accounted or taken as a part of the time limited by any of the provisions of this title. [Act Feb. 5, 1841, sec. 22. P. D. 24.]

Art. 5703. [3368] **Death of owner, etc., shall stop limitation until, etc.**—In case of the death of any person in whose favor there may be cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification. [Act Feb. 16, 1852, sec. 3. P. D. 4607.]

Art. 5704. [3369] **Death of person, etc., against whom, etc.**—In case of the death of any person against whom there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification. [Id. sec. 2. P. D. 4606.]

Art. 5705. [3370] **Acknowledgment must be in writing.**—When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby. [Act Feb. 5, 1841, sec. 12. P. D. 4617a.]

Art. 5706. [3371] **Limitation must be pleaded, etc.**—The laws of limitation of this state shall not be made available to any person in any suit in any of the courts of this state, unless it be specially set forth as a defense in his answer. [Act Feb. 16, 1852, sec. 5. P. D. 4629.]

Art. 5707. [3372] **Presumption of death when, etc.**—Any person absenting himself beyond sea or elsewhere for seven years successively shall be presumed to be dead, in any cause wherein his death may come in question, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him who shall have been evicted, and he may moreover demand and recover the rents

and profits of the estate during such time as he shall be deprived thereof, with lawful interest. [Act Feb. 5, 1841, sec. 10. P. D. 23.]

Art. 5708. [3373] **Limitation shall not run against infants, etc.**—If a person entitled to bring any action other than those mentioned in chapter one of this title be at the time the cause of action accrues, either—

1. Under the age of twenty-one years;
2. A married woman;
3. Of unsound mind; or
4. A person imprisoned; the time of such disability shall not be deemed a portion of the time limited for the commencement of the action; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

Art. 5709. [3374] **Action against immigrant barred, when.**—No action shall be brought against any immigrant of the state to recover a claim which was barred by the law of limitations of that state or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the state or country from which he emigrated. [Id. sec. 13. P. D. 4618.]

Art. 5710. [3375] **Debts incurred prior to removal of person to this state.**—No demand against any person who shall hereafter remove to this state, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this state for the space of twelve months; provided, that nothing in this article shall be construed to affect the provisions of the preceding article. [Id. sec. 4. P. D. 4620.]

Art. 5711. [3376] **One disability not tacked to another.**—The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

Art. 5712. [3377] **Claims barred under pre-existing laws, etc.**—No one of the provisions of this title shall be so construed as to revive any claim which is barred by pre-existing laws; and all claims against which limitation under said laws had commenced to run shall be barred by the lapse of time which would have barred them had those laws continued in force; provided, the said time be shorter than that by which they would have been barred by the other articles of this title.

Art. 5713. [3378] **No agreement shortening period of limitation valid.**—It shall be unlawful for any person, firm, corporation, association or combination of whatsoever kind to enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this state. [Acts of 1891, p. 20, sec. 1.]

Art. 5714. [3379] **Notice of claims for damages; rule as to.**—No stipulation in any contract requiring notice to be given of any claim for damages as a condition precedent to the right to sue thereon shall ever be valid, unless such stipulation is reasonable; and any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and, when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same; provided, that no stipulation in any contract between a person, corporation or receiver operating railroad, or street railway, or interurban railroad, and an employe or servant requiring notice of a claim by an employe or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employe for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid.

In any suit brought under this and the preceding article it shall be presumed that notice has been given, unless the want of notice is especially pleaded under oath. [Amended act 1907, p. 241, sec. 1.]

TITLE 88.

LOCAL OPTION.

(See "Injunctions," Penal Code, Code of Criminal Procedure.
Also "Taxation.")

Article.	Article
Order for election.....	5715
What not prohibited.....	5716
Where voting to take place.....	5717
Notice.....	5718
Form of ballot, etc.....	5719
How election to be held.....	5720
Session for counting votes, when.....	5721
Result to be declared.....	5722
Order when against prohibition.....	5723
	Second election, when.....
	Order on second election.....
	Second election in subdivisions.....
	Penalty, etc.....
	Election, how contested.....
	Refunding license tax.....
	District judge to give in charge to grand jury, what.....
	5724
	5725
	5726
	5727
	5728
	5729
	5730

Article 5715. [3384] **Commissioners' courts may order elections.**—The commissioners' court of each county in the state, whenever they deem it expedient, may order an election to be held by the qualified voters of said county, or of any commissioner's or justice's precinct, or school district, or any two or more of any such political subdivisions of a county, as may be designated by the commissioners' court of said county, to determine whether or not the sale of intoxicating liquors shall be prohibited in such county, or commissioner's or justice's precinct, or school district, or any two or more of any such political subdivisions of such county, or in any town or city; provided, it shall be the duty of said commissioners' court to order the election as aforesaid whenever petitioned so to do by as many as two hundred and fifty voters in any county, or fifty voters in any other political subdivision of the county or school district, as shall be designated by said court, or in any city or town, as the case may be; provided, that if the precinct or precincts designated embrace within the limits an incorporated town or city, then such election shall only be ordered when the petition for the same is signed by qualified voters, not less than one-tenth in number of the total vote cast for governor at the next preceding general election in such incorporated town or city; and, in case an election is asked for a subdivision of said county, composed of two or more complete commissioners' or justices' precincts, or school districts, such petition shall describe such subdivision by metes and bounds, as well as by the proper numbers of such precincts, or school districts; and said petition and the description of such subdivision shall be recorded in full in the minutes of the commissioners' court, and such description shall be embraced in the notice given for such election; provided, that where a school district, city or town, may be composed in part of two or more subdivisions of the county, named hereinbefore, the right to order and hold an election in such school district, city or town, shall not be denied; and provided, further, that no city or town shall be divided in holding a local option election for any of the other subdivisions named herein; nor shall any school district which has adopted local option be divided in a subsequent election held for any other of such subdivision covering a part of the territory of such school district. [Acts of 1887, p. 96; amend. 1893, p. 48. Amended act 1897, p. 235.]

Art. 5716. [3385] **What not prohibited.**—The preceding article shall not be so construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, but such stimulant shall only be sold upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he

finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the profession of medicine as his principal and usual calling shall not be authorized to give the prescription provided for in this article; and provided, further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physician not herein authorized to give it, nor on a prescription which is not dated, signed, and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for shall cancel such prescription by indorsing thereon the word "canceled," and file the same away. [Id. sec. 5. Amend. 1893, p. 48.]

Art. 5717. [3386] **Where voting to take place.**—When the commissioners' court, of their own motion, or upon the petition provided for in article 5715, shall order the election as herein provided for, it shall be the duty of said court to order such election to be held at the regular voting place or places within the proposed limits, upon a day not less than fifteen nor more than thirty days from the date of said order; and the order thus made shall express the object of such election, and shall be held to be prima facie evidence that all the provisions necessary to give it validity, or to clothe the court with jurisdiction to make it, have been fully complied with; provided, that if there is no regular voting place within the proposed limits of a subdivision less than a justice's or voting precinct, then the commissioners' court shall designate some suitable place within said subdivision, where said election shall be held, and said place shall be named in the notices of election, and said court will appoint such officers to hold such election as are now required to hold general elections. [Id. Amend. 1893, p. 48.]

Art. 5718. [3387] **Notice.**—The clerk of said court shall post, or cause to be posted, at least five copies of said order at different places within the proposed limits, for at least twelve days prior to the day of election, which election shall be held and the returns thereof made in conformity with the provisions of the general laws of the state, and by the officers of election appointed and qualified under such laws. [Id. Amend. 1893, p. 48.]

Art. 5719. [3388] **Form of ballot, etc.**—At said election the vote shall be by official ballot, which shall have printed or written at the top thereof in plain letters the words "Official Ballot." Said ballot shall have also written or printed thereon the words "For Prohibition" and the words "Against Prohibition;" and the clerk of the county court shall furnish the presiding officer of each voting box within the proposed limits with a number of such ballots, to be not less than twice the number of qualified voters at such voting boxes; and the presiding officer of each such voting box shall write his name on the back of each ballot before delivering the same to the voter, and the person offering to vote at such election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot; and no voter shall be permitted to depart with such ballot, and shall not be assisted in voting by any person except such presiding officer or by some officer assisting in the holding of such election, under the direction of such presiding officer when requested to do so by such voter.

Those who favor the prohibition of the sale of intoxicating liquors within the proposed limits, shall erase the words "Against Prohibition" by making a pencil mark through same, and those who oppose it shall erase the words "For Prohibition" by making a pencil mark through same. No ballot shall be received or counted by the officers of such election that is not an official ballot, and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer, as required by this article. [Acts of 1893, p. 48. Amended act 1909. 1 S. S., p. 338.]

Art. 5720. [3389] **How election to be held.**—The officers holding said election shall, in all respects not herein specified, conform to the general election laws now in force regulating elections; and after the polls are closed shall proceed to count the votes, and, within ten days thereafter, make due report of said election to the aforesaid court. [Amended act 1909, 1 S. S., p. 338.]

Art. 5721. [3390] **To hold session for counting votes, when.**—Said court shall hold a special session on the eleventh day after the holding of said election, or as soon thereafter as practicable, for the purpose of opening the polls and counting the votes; and, if a majority of the votes are "For prohibition," said court shall immediately make an order declaring the result of said vote, and absolutely prohibiting the sale of intoxicating liquors within the prescribed limits, except for the purposes and under the regulations specified in this title, until such time as the qualified voters therein may at a legal election held for that purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election, and in counting and returning the votes and declaring the result thereof. [Acts of 1887, p. 96; amend. 1893, p. 48.]

Art. 5722. [3391] **Result to be declared.**—The order of court declaring the result and prohibiting the sale of such liquors shall be published for four successive weeks in some newspaper published in the county wherein such election has been held, which newspaper shall be selected by the county judge for that purpose. If there be no newspaper published in the county, then the county judge shall cause publication to be made by posting copies of said order at three public places within the prescribed limits for the aforesaid length of time. The fact of publication in either mode shall be entered by the county judge on the minutes of the commissioners' court. And entry thus made, or a copy thereof certified under the hand and seal of the clerk of the county court, shall be held sufficient prima facie evidence of such fact of publication. [Id. Amend. 1893, p. 48.]

Art. 5723. [3392] **Order when against prohibition.**—If a majority voting at such election vote "Against prohibition," the court shall make an order declaring the result, and have the same entered of record in the office of the clerk of said court. [Acts of 1893, p. 48.]

Art. 5724. [3393] **Second election, when.**—No election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this title has been held therein, the result declared, and the notices published as provided in the preceding articles. Such time shall date from the time of publication of the last notice; provided, that, where no such notice is required to be published, then such time shall date from the time such result is declared; but at the expiration of that time the commissioners' court of each county in the state, whenever they decree it expedient, may order another election to be held by the qualified voters of said county, or of any justice's precinct, or such subdivision of a county as may be designated by the commissioners' court of such county, for the same purpose; provided, it shall be the duty of such court to order the election aforesaid whenever petitioned to do so by as many as two hundred voters in any county, or fifty voters in any justice's precinct, or subdivision of such county, as the case may be, to order an election for the same purpose, which election shall be ordered held, notice thereof given, the votes returned and counted, and the result declared and published, in all respects as provided by this title for a first election; and the order granting such other elections, as well as that declaring the result, shall, if prohibition be carried, have the same force and effect, and the same conclusiveness, as

are given to them in the case of a first election by the provisions of this title; provided, that, where no such notice is required to be published, then such time shall date from the time such result is declared. [Amended act 1905. p. 378.]

Art. 5725. [3394] **Order, etc., on second election.**—When such second election results against prohibition, the court shall enter an order setting aside the previous order enforcing prohibition, and shall officially announce and publish the same as provided where the election resulted in prohibition. [Acts of 1887, p. 96; amend. 1893, p. 48. Id.]

Art. 5726. [3395] **May hold second election in subdivision.**—The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a justice's precinct, or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but, when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct. [Amend. 1893, p. 48.]

Art. 5727. [3396] **Penalty.**—When any such election has been held and has resulted in favor of prohibition, and the aforesaid court has made the order declaring the result, and the order of prohibition, and has caused the same to be published as aforesaid, any person who shall thereafter, within the prescribed bounds of prohibition, sell, exchange, or give away, with the purpose of evading the provisions of this title, any intoxicating liquors whatsoever, or in any way violate any of the provisions of this title, shall be subject to prosecution by information or indictment, and shall be punished as prescribed in the Penal Code. [Acts of 1893, p. 48. P. C. 378.]

Art. 5728. [3397] **Election, how contested.**—At any time within thirty days after the result of the election has been declared, any qualified voter of the county, justice's precinct or subdivision of such county, or any town or city of such county in which such election has been held, may contest the said election in the district court of the county in which such election has been held, which shall have original and exclusive jurisdiction of all suits to contest such election; and the proceedings in such contest shall be conducted in the same manner as has been, or may hereafter be, prescribed; and said court shall have jurisdiction to try and determine all matters connected with said election, including the petition of such election and all proceedings and orders relating thereto, embracing final count and declaration and publication of the result putting local option into effect; and it shall have authority to determine questions relating to the legality and validity of said election, and to determine whether by the action or want of action on the part of the officers to whom was entrusted the control of such election, such a number of legal voters were denied the privilege of voting as had they been allowed to vote might have materially changed the result; and, if it shall appear from the evidence that such irregularities existed in bringing about said election or in holding same, as to render the true result of the election impossible to be arrived

at, or very doubtful of ascertaining, the court shall adjudge such election to be void, and shall order the proper officer to order another election to be held, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer upon whom is devolved by law the duty of ordering such election. It is further provided that all such cases shall have precedence in the district court and appellate courts, and that the result of such contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding; and provided, further, that if no contest of said election is filed and prosecuted in the manner and within the time provided above, it shall be conclusively presumed that said election as held and the result thereof declared, are in all respects valid and binding upon all courts; provided, also that pending such contest the enforcement of local option law in such territory shall not be suspended, and that all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Act 1887, p 96, amended 1893, p. 48. Amended act 1907, 1 S. S., p. 447.]

Art. 5729. [3398] **Refunding of license tax.**—In all cases where any person, firm or association of persons pursuing the occupation of liquor dealers under license issued in accordance with the laws of this state has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county, precinct, subdivision of such county, town or city, a proportionate amount of the taxes paid by him for the unexpired term shall be refunded to him. [Acts of 1883, p. 110; amend. 1893, p. 48.]

Art. 5730. [3399] **District judges to give in charge to grand juries.**—It is hereby made the duty of the district judges to give this law in charge to the grand juries; and it is made the special duty of the county attorneys to file or have filed a complaint in the county court of said county against all houses, and the keepers thereof, used for the sale, exchange or gift of any kind of intoxicating liquors, in any county, justice's precinct or subdivision of such county, or of any town or city in such county in this state when local devices are resorted to, to prevent or avoid detection of the keeper thereof; and, upon said complaint being filed with any justice of the peace, describing the place where the device is kept, and the name of the person violating this law, if known, said justice of the peace shall issue his warrant commanding any sheriff or constable to search said place, and, if the law is being violated, to arrest the person or persons so violating the law; and it shall be the duty of the sheriff of the county wherein such house or place where such device is kept, for the sale or gift of intoxicating liquors, to demand admission into the same; and, upon admittance being refused, the sheriff is hereby authorized and required by law to force open the same and arrest and hold for trial before the courts all such persons who shall violate any of the provisions of this title; and it is the duty of the county judges and justices of the peace, having jurisdiction in the premises, to see that this law is rigidly enforced; provided, no arrest or search shall ever be made until the sheriff shall first procure a warrant therefor, issued by the proper authority. [Acts of 1879, p. 41; amend. 1893, p. 48.]

TITLE 89.

MANDAMUS.

No mandamus on ex parte hearing.....	Article. 5731	Mandamus, etc., not to issue against officer of executive department, except by supreme court.....	Article. 5732
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Article 5731. [1450] **No mandamus on ex parte hearing.**—No mandamus shall be granted on ex parte hearing; and any peremptory mandamus granted without notice shall be abated on motion. [Acts May 11, 1846, p. 300, sec. 4. P. D. 1407.]

Art. 5732. [4861] **Mandamus, etc., not to issue against officer of executive department, except by supreme court.**—No court of this state (except the supreme court, as provided by article 1526) shall have power, authority or jurisdiction to issue the writ of mandamus or injunction or any other mandatory or compulsory writ of process against any of the officers of the executive departments of the government of this state to order or compel the performance of any act or duty which, by the laws of this state, they, or either of them, are authorized to perform, whether such act or duty be judicial, ministerial or discretionary. [Acts of 1881, p. 7, sec. 4.]

[Note.—For jurisdiction of the several courts in mandamus, see articles 1526, 1528, 1592, 1713, 1772.]

TITLE 90.

MEDICINE—PRACTICE OF.

Chapter.
 1. Physicians and Surgeons.
 2. Nurses.

Chapter.
 3. Anatomical Board.

CHAPTER ONE.

PHYSICIANS AND SURGEONS.

Article.	Article.
Medical board established.....5733	Examination, how conducted, and to in-
Qualifications of members.....5734	clude what.....5741
Board shall keep register.....5735	Does not apply to whom.....5742
Physicians required to keep register.....5736	Board may refuse to admit certain per-
District clerks to keep register.....5737	sons.....5743
Reciprocity allowed.....5738	Revocation of license.....5744
Applicants for license to pass examina-	Who regarded as practicing medicine...5745
tion, etc.....5739	Definitions.....5746
Disposition of fees.....5740	Malpractice, cause for revoking license..5747

Article 5733. **Medical board established.**—A board, to be known as the board of medical examiners for the state of Texas, shall consist of eleven men learned in medicine, legal and active practitioners in the state of Texas, who shall have resided and practiced medicine in this state under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong for more than three years prior to their appointment, and no one school shall have a majority representation on said board. Said board shall be appointed by the governor of this state within ninety days after his inauguration, and the term of office of its members shall be two years or until their successors shall be appointed and qualified. No member of said board shall be a stockholder or a member of the faculty or a board of trustees of any medical school. Vacancies occurring in the board shall be filled by the governor. The word "medicine," as used in this article, shall have the same meaning and scope as given to it in article 5745. [Act 1907, p. 224, sec. 1.]

Art. 5734. **Organization, meetings, etc., of the board.**—The members of said board shall qualify by taking the oath of office before a notary public, or other officer empowered to administer oaths, in the county in which each shall respectively reside. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Six members shall constitute a quorum. Regular meetings shall be held at least twice a year, at such times and places as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this chapter, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics. Said board, or any member, shall have power to administer oaths for all purposes required in the discharge of its duties, and to adopt a seal to be affixed to all of its official documents. [Id. sec. 2.]

Art. 5735. **Board shall keep register.**—The board of examiners shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters

contained therein. The secretary of the board shall, on March 1 of each year, transmit an official copy of said register to the secretary of state for permanent record, certified copy of which, with hand and seal of the secretary of said board, or secretary of state, shall be admitted in evidence in all courts. [Id. sec. 3.]

Art. 5736. **Physicians required to register.**—It shall be unlawful for any one to practice medicine in any of its branches upon human beings within the limits of this state, who has not registered, in the district clerk's office of the county in which he resides, his authority for so practicing, as herein prescribed, together with his age, postoffice address, place of birth, school of practice to which he professes to belong, subscribed and verified by oath, which, if wilfully false, shall subject the applicant to conviction and punishment for false swearing as provided by law. The fact of such oath and record shall be indorsed by the district clerk upon the certificate. The holder of the certificate must have the same recorded upon each change of residence to another county, and the absence of such record shall be prima facie evidence of the want of possession of such certificate. [Id. sec. 4.]

Art. 5737. **District clerks to keep register.**—It is hereby made the duty of the district clerk of each county in this state to purchase a book of suitable size, to be known as the "Medical Register" of such county, and set apart one full page for the registration of each physician, and to record in the same the name and record of each practitioner who presents a certificate from the state board of examiners, issued under this law. The clerk shall receive the sum of one dollar from each physician so registered, which shall be his full compensation for all duties required under this law. When any physician shall die, or remove from the county, or have his license revoked, it shall be the duty of said clerk to make a note of facts at the bottom of the page as closing the record. On the first day of January in each year, said clerk shall, on request of the board, certify to the office of the state board of medical examiners a correct list of the physicians then registered in the county, together with such other information as said board may require. A copy from the medical register pertaining to any person, certified to by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named has or has not registered in said office as required by this chapter, shall be admitted as evidence in all trial courts. [Id. sec. 5.]

Art. 5738. **Reciprocity allowed.**—The board of medical examiners may, at its discretion, arrange for reciprocity in license with the authorities of other states and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity on payment of twenty dollars. [Id. sec. 6.]

Art. 5739. **Applicants for license to pass examination, etc.**—All applicants for license to practice medicine in this state, not otherwise licensed under the provisions of law, must successfully pass an examination before the board of medical examiners established by this law. Applicants to be eligible for examination must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable medical schools. Such schools shall be considered reputable within the meaning of this law, whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of fifteen dollars; except when an applicant desires to practice obstetrics alone, the fee shall be five dollars. Such applicants shall be given due notice of the date and place of examination. Ap-

plicants to practice obstetrics in the state of Texas, upon proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. In case any applicant, because of failure to pass examination, be refused a license, he or she shall, after one year, be permitted to take a second examination without an additional fee. [Id. sec. 7.]

Art. 5740. **Disposition of fees.**—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the board of examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. [Id. sec. 8.]

Art. 5741. **Examination, how conducted, and to include what.**—All examinations shall be conducted in writing, and in such manner as shall be entirely fair and impartial to all individuals and every school of medicine, the applicants being known by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify such papers, until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of medicine only, and shall include anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination under the rules of the board, applicants shall be granted licenses to practice medicine. All questions and answers, with grades attached, shall be preserved for one year. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be attested by the seal and signed by all members of the board, or a quorum thereof. [Id. sec. 9.]

Art. 5742. **Does not apply to whom.**—Nothing in this law shall be so construed as to discriminate against any particular school or system of medical practice. This law shall not apply to dentists legally qualified and registered under the laws of this state who confine their practice strictly to dentistry; nor to nurses who practice only nursing; nor to masseurs, in their particular sphere of labor, who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States army, navy or public health and marine hospital service, in the performance of their duties, but such shall not engage in private practice without license from the board of medical examiners; nor to legally qualified physicians of other states called in consultation, but who do not open offices or appoint places in this state where patients may be met or called to see. This law shall be so construed as to apply to persons other than licensed druggists of this state not pretending to be physicians, who offer for sale on the streets or other public places remedies which they recommend for the cure of disease. [Id. sec. 10.]

Art. 5743. **Board may refuse to admit certain persons.**—The state board of medical examiners may refuse to admit persons to its examinations, or to issue the certificate provided for in this law, for any of the following causes:

1. The presentation to the board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

2. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring, or aiding or abetting the procuring of a criminal abortion.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients; provided, that any applicant who may be refused admittance to examination before said board shall

have his right of action to have such issue tried in the district court of the county in which some member of the board shall reside. [Id. sec. 11.]

Art. 5744. **Revocation of license.**—The right to practice medicine in this state may be revoked by any court of competent jurisdiction, upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the state board of medical examiners is authorized to refuse to admit persons to its examinations as provided in the preceding article; and it shall be the duty of the several district and county attorneys of this state to file and prosecute appropriate judicial proceedings in the name of the state, on request of any member of said board. [Id. sec. 12.]

Art. 5745. **Who regarded as practicing medicine.**—Any person shall be regarded as practicing medicine within the meaning of this law:

1. Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. [Id. sec. 13.]

Art. 5746. **Definitions.**—The terms, “physician,” and, “surgeon,” as used in this law, shall be construed as synonymous, and the terms, “practitioners” and “practitioners of medicine,” and, “practice of medicine,” as used in this law, shall be construed to refer to and include physicians and surgeons. [Id. sec. 16.]

Art. 5747. **Malpractice cause for revoking license.**—Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they use the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form as is provided for revoking or suspending license of attorneys at law in this state. [Act 1905, p. 370, sec. 1.]

CHAPTER TWO.

NURSES.

Article.	Article.
Board of nurse examiners.....	Board to have power to revoke certifi-
By whom appointed.....	cates, etc.....
Regulations governing board.....	Disposition of fees, etc.....
Board to meet, examine applicants, etc.....	Law does not apply, when.....
Persons entitled to registration without examination	
5748	5753
5749	5754
5750	5755
5751	
5752	

Article 5748. **Board of nurse examiners.**—The board of nurse examiners for the state of Texas shall be composed of five members who shall be trained nurses of at least twenty-three years of age, of good moral character, and graduates of a training school connected with a general hospital or sanitarium of good standing, presided over by a graduate nurse where a two years training with a systematic course of instruction is given in the wards. [Acts 1909, p. 228, sec. 1.]

Art. 5749. **By whom appointed.**—Said board shall be appointed by the governor of this state biennially, within sixty days after his inauguration, and the term of office shall be two years, or until their successors shall be appointed and qualified. Vacancies occurring in the board shall be filled by the governor. [Id. sec. 1.]

Art. 5750. **Regulations governing board.**—The members of said board shall as soon as organized, annually in the month of April, elect from their members a president and secretary who shall also be the treasurer. Three members shall constitute a quorum, and special meetings shall be called by the secretary upon the written request of any two members. The board is authorized to make such by-laws and rules as shall be necessary to govern its proceedings, and to carry into effect the purpose of this law. The board shall adopt Robert's Rules of Order to guide it in the transaction of its business. The secretary shall keep a record of all the meetings of said board, including a register of the names of all nurses duly registered under this law, which shall at all seasonable times be open to public scrutiny; and said board shall cause the prosecution of all persons violating any of the provisions of this law, and may incur necessary expenses on that behalf. The president and secretary shall make biennial report to the governor on or before the first day of January immediately preceding the convening of the legislature, together with a statement of the receipts and disbursements of said board. [Id. sec. 2.]

Art. 5751. **Board to meet, examine applicants, etc.**—After organization, it shall be the duty of said board to meet regularly once in every six months, notice of which meeting shall be given to the public press and in one nursing journal one month previous to the meeting. At every regular meeting, namely, every six months, it shall be the duty of the board to examine all applicants for registration under this law. Upon filing application for examination, each applicant shall pay an examination fee of ten dollars, which shall in no case be returned to the applicant whether the examination be passed or not, but, in case the applicant passes the examination, then no further fee shall be required for registration. The examination shall be of such a character as to determine the fitness of the applicant to practice professional nursing as contemplated by this law; provided, said board shall prepare questions for examinations and shall examine applicants on the following subjects: Practical nursing, surgical nursing, obstetrical nursing, materia medica, anatomy, physiology, hygiene, dietetics, and gynecology. If the result of the examination shall be satisfactory to the majority of the board, the board shall sign and issue a certificate to the applicant to that effect, which certificate shall be attested by the secretary;

whereupon the person named in the certificate shall be duly qualified to practice professional nursing in this state. Any registered nurse from any other state where the laws with reference to professional nursing are up to the standard of the laws of the state of Texas, who shall show to the satisfaction of the board that he or she is a trained, graduate nurse of a hospital or sanitarium, the standard of instruction and training of which shall meet the requirements of the rules prescribed by said board, and who shall be otherwise properly qualified, may receive a certificate and be registered as a nurse of this state without examination. [Id. sec. 3.]

Art. 5752. Persons entitled to registration without examination.—All nurses who were engaged in nursing on the eleventh day of June, 1909, and who show to the satisfaction of the said board that they are of good moral character and were graduated prior to April, 1906, from a training school, connected with a hospital or sanitarium giving a two years general training, or prior to the year, 1901, having given eighteen months general training and which maintains in other respects proper standards, shall be entitled to registration without examination. All persons who were in training in the wards of a general hospital or sanitarium in this state where a two years training with a systematic course of instruction is given on the eleventh day of June, 1909, and shall graduate thereafter, and possess the above qualification, shall be entitled to registration without examination; provided, such application has been made to said board before the first regular meeting. All nurses who have served in the army or navy of the United States and have been honorably discharged shall be entitled to registration without examination. It shall be unlawful hereafter for any person to practice nursing as a trained, graduate, or registered nurse without a certificate from the state board of nurse examiners. A nurse who has received his or her certificate according to the provisions of this law shall be styled and known as a "Registered Nurse." No other person shall assume such title or use the abbreviation "R. N.," or any other letters to indicate that he or she is a trained, graduate, or registered nurse. The board in each instance shall require a registration fee of ten dollars. [Id. sec. 4.]

Art. 5753. Board to have power to revoke certificates, etc.—The state board of nurse examiners shall have the power to revoke any certificate issued in accordance with this law, by a unanimous vote of said board, for gross incompetency, dishonesty, habitual intemperance, or any act derogatory to the morals or standing of the profession of nursing as may be determined by the board; but, before any certificate shall be revoked, the holder thereof shall be entitled to at least thirty days notice in writing of the charge against him or her and of the time and place of hearing and determining of such charges, at which time and place he or she shall be entitled to be heard; and, in the event said certificate shall be revoked by said board, the holder of such certificate shall have right of action within thirty days thereafter in the district court of the county of the residence of any member of the board, and said certificate shall remain in force until the question is finally decided by the courts. Upon revocation of any certificate, it shall be the duty of the secretary of the board to strike the name of the holder thereof from the roll of registered nurses. [Id. sec. 5.]

Art. 5754. Disposition of fees.—All fees received by the state board of nurse examiners under this law shall be paid to the treasurer of said board, who shall pay the same out on vouchers issued and signed by the president and secretary of said board upon warrants drawn by the president of the state board of examiners. All money so received and placed in said fund may be used by the state board of nurse examiners in defraying its expenses in carrying out the provisions of this law. [Id. sec. 6.]

Art. 5755.—**Law does not apply, when.**—This law shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family, or to any person nursing the sick for hire who does not in any way assume the practice as a trained, graduate, or registered nurse. [Id. sec. 7.]

CHAPTER THREE.

ANATOMICAL BOARD.

	Article.		Article.
Board, how constituted; duties of.....	5756	Schools, colleges, etc., may dissect bodies.....	5760
Regulations for delivering dead bodies.....	5757	Parties receiving bodies to give bond.....	5761
Distribution of bodies to various institu- tions.....	5758	Expenses, by whom paid.....	5762
Regulations for moving bodies; records to be kept.....	5759	Compensation of board.....	5763

Article 5756. **Board, how constituted; duties of.**—The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and the several medical and dental schools and colleges which may hereafter be incorporated in this state are constituted a board, to be known as the anatomical board of the state of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this chapter, are entitled thereto. The said board shall have the power to establish rules and regulations for its government, and to appoint and remove proper officers, and shall keep full and complete minutes of its transactions, and records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this state. [Act 1907, p. 117, sec. 1.]

Art. 5757. **Regulations for delivering dead bodies.**—All public officers, agents, and servants, and all officers, agents, and servants of any county, city, town, district, or other municipality, and of any and every almshouse, prison, morgue, hospital, or any other public institution, other than the state orphans' home, the confederate home, the state blind institute, and the state deaf and dumb institute, insane asylum, and epileptic colony, or any other home for the indigent, or other eleemosynary institution maintained by the state, having charge of, or control of, dead human bodies required to be buried at public expense, are hereby required, after notification in writing by said board of distribution or its duly authorized officers, or persons designated by the authorities of said board, then and thereafter to announce to said board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge, or control, and shall without fee or reward greater than the value of such fee as may be paid in any county, city, town, or municipality on the third day of April, 1907, for the burial of pauper bodies, deliver such body or bodies, and permit and suffer the said board and its agents and the physicians and surgeons, from time to time designated by them, who may comply with the provisions of this chapter, to take and remove all such bodies as are not desired for post mortem examinations by the medical staff of public hospitals or institutions for the insane, to be used within this state for the advancement of medical science; but no

such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, shall claim the said body for burial, but it shall be surrendered, without cost to such claimant for interment, or shall, upon such claimant's request, be interred in the manner provided for the interment of bodies not coming within the operation of this chapter, nor shall notice be given for the body to be delivered, if the deceased died of contagious disease, save tuberculosis, or syphilis; nor shall notice be given, if such deceased person were a traveler who died suddenly, in which case, the body shall be buried. It is further required that due effort be made by those in charge of such almshouse, prison, morgue, hospital, or other public institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and notify him or her of the death; and failure to claim such body by kindred or relation within twenty-four hours after receipt of such notification shall be recognized as bringing such body under the provisions of this chapter, and delivery shall be made as soon thereafter to said board, its officers, or agents as may be possible. Such person in charge of such public institution shall file with the county judge an affidavit that he has made diligent inquiry and stating such inquiry as he has made. In case a body is claimed by relatives within ten days after it has been delivered to an institution or person entitled to receive the same under the provisions of this chapter, it shall be delivered to them for burial and without cost. [Id. sec. 2.]

Art. 5758. Distribution of bodies to various institutions.—The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver to and among the schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration, in the said incorporated schools and colleges, shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent, authorize physicians and surgeons who shall receive them, and the number which each shall receive. [Id. sec. 3.]

Art. 5759. Regulations for moving bodies; records to be kept.—The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. Sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, mail or otherwise safely convey to sender a receipt for the same in the full terms of the description furnished by sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this state. [Id. sec. 4.]

Art. 5760. **Schools, colleges, etc., may dissect bodies.**—Any and all schools, colleges, and persons who may be designated by said anatomical board of the state of Texas, shall be, and are, by this chapter authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any already existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated. [Id. sec. 5.]

Art. 5761. **Parties receiving bodies to give bond.**—No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the state by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and all such experiments on the lower animals shall be conducted only for the promotion of medical science; and whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey, or cause or procure to be transmitted or conveyed, said bodies to any place outside the state, shall be guilty of a misdemeanor, and shall, on conviction, be punished as provided in the Penal Code. [Id. sec. 6.]

Art. 5762. **Expenses, by whom paid.**—Neither the state, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said anatomical board of the state of Texas, or otherwise agreed upon. [Id. sec. 7.]

Art. 5763. **Compensation of board.**—No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board. [Id. sec. 9.]

TITLE 91.

MILITIA.

[See "Rangers, State," Title 116.]

- Chapter.
- 1. General Provisions.
- 2. Reserve Militia.

- Chapter.
- 3. National Guard.

CHAPTER ONE.

GENERAL PROVISIONS.

	Article.		Article.
Active and reserve militia.....	5764	Exemptions	5766
Who are subject to military duty.....	5765	Governor to be commander-in-chief.....	5767

Article 5764. **Active and reserve militia.**—The militia of this state shall be divided into two classes, the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of this state, which shall be known as the Texas national guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas national guard. [Acts 1905, p. 167, sec. 2.]

Art. 5765. **Who are subject to military duty.**—All able-bodied male citizens, and able-bodied males of foreign birth who have declared their intention to become citizens, who are more than eighteen and less than forty-five years of age, who are residents of this state, and who are not exempted by the laws of the United States, or of this state, shall constitute the militia and be subject to military duty. [Id. sec. 1.]

Art. 5766. **Exemptions.**—In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty in this state, namely:

1. The lieutenant governor and the heads of the several departments.
2. The judges and clerks of all courts of record.
3. The members and officers of both houses of the legislature.
4. The sheriffs, district attorneys, county attorneys, county assessors, county collectors, county treasurers, and county commissioners.
5. The mayor, alderman, assessor and collector of incorporated cities and towns.
6. The officers and guards of state prisons, houses of correction, and the officers and instructors and attendants of other state institutions; keepers, attendants and assistants of poor houses; superintendents, nurses and assistants of all hospitals.
7. The members of any regularly organized and paid fire or police department in any city or town, but no member of the active militia shall be relieved from duty because of his joining any such fire company or department.
8. All ministers of the gospel exclusively engaged in their calling; all teachers engaged in public institutions and public schools.
9. All persons who shall have served in the active militia of this state for the term of seven years, and have been honorably discharged therefrom.
10. Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.
11. Any person who conscientiously scruples to bear arms; provided he shall pay an equivalent for personal service.

12. All such exempted persons, except those enumerated in subdivision 10, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof. [Id. sec. 3.]

Art. 5767. **Governor to be commander-in-chief.**—The governor of this state, by virtue of his office, shall be the commander-in-chief of the military forces of this state, except of such portions as may at times be in the service of the United States. Whenever the governor is unable to perform the duties of commander-in-chief, the adjutant general of this state shall command the military forces of this state, except in cases where the lieutenant governor, or the president of the senate, under the laws of this state, is required to perform the duties of governor. [Id. sec. 4.]

CHAPTER TWO.

RESERVE MILITIA.

Article.	Article.
Reserve militia not subject to military duty, except, etc.....5768	Governor may draft for military duty, when .....5772
Governor may order enrollment.....5769.	Persons drafted shall report, etc.....5773
Officer making enrollment to serve notice etc. ....5770	Persons drafted may furnish substitute..5774
Persons making enrollment to have access to assessment rolls.....5771	Officer neglecting or refusing to perform duty in drafting liable to penalty.....5775
	Power of governor to call out militia...5776
	Reserve militia to be mustered in, when..5777

Article 5768. **Reserve militia not subject to military duty, except, etc.**—The reserve militia shall not be subject to active military duty, except when called into the service of this state, or of the United States, in case of war, insurrection, invasion, or for the prevention of invasion, the suppression of riot, tumults and breaches of the peace, or to aid the civil officers in the execution of the law and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise, as the governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the governor may assign them to existing organizations of the active militia, or organize them as the exigency of the occasion may require. [Id. sec. 5.]

Art. 5769. **Governor may order enrollment.**—Whenever the governor deems it necessary, he may order an enrollment of all persons, other than members of the active militia, liable to military duty, to be made by the county assessor of each county, or by other persons designated by the governor. Such enrollment shall state the name, residence, age, color, and occupation of the persons enrolled. Enrolling officers shall have power to question under oath, which they are hereby authorized to administer, any person deemed liable to perform military duty, but who denies the same; and, if any person refuses to be sworn, the enrolling officer shall enroll his name in the same manner as though he had admitted his liability. The assessor, or such other person as may be designated by the governor to act as enrolling officer, shall, within such time as may be required by the governor, prepare and file three copies of such enrollment, properly certifying that he has enrolled all persons residing in his county, who are liable to perform military duty, one copy to be filed in the office of the adjutant general, one copy in the office of the county clerk of the county in which the enrollment was made, and one

copy retained by the enrolling officer. Upon filing the lists of enrollment, as herein provided, the enrolling officer shall be paid eight cents for each person so enrolled and notified, as hereinafter set out, out of the treasury of the county. [Id. sec. 6.]

Art. 5770. Officer making enrollment to serve notice, etc.—The officer making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him, or leaving it with some person of suitable age and discretion, at his place of residence, or by mailing such notice at the expense of the county to his last known place of residence or abode. All persons claiming exemption must, within ten days after receiving such notice, file a written statement of such exemption, verified by affidavit, in the office of the county clerk. Such clerk shall thereupon, if such person be exempted according to law, mark the word, "exempt," opposite his name; and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the militia of this state and be subject to military duty; and such clerk shall transmit a copy of such corrected list of enrollment to the adjutant general within twenty days after the filing of the original list of enrollment by the enrolling officer, for which he shall be allowed two cents for each name on such list, to be paid by the county. The officer highest in rank in the active militia, and the heads of the fire and police departments in each city or town, shall, whenever an enrollment is ordered, file, within ten days, in the office of such county clerk a certified list of the names of all persons in the active militia of such county or in such department. [Id. sec. 7.]

Art. 5771. Persons making enrollment to have access to assessment rolls.—The assessor in each county of this state shall allow persons appointed to make such enrollment, if persons other than the assessor be appointed, at all proper times to examine their assessment rolls and make copies thereof. All persons shall, upon the application of any person making such enrollment, give the name of and all other information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment, or false information, or refusal to give the information requested, to be recovered in the name of the state of Texas by a judge advocate, district or county attorney in the justice court, Austin, Texas, or precinct of his residence, with costs. The officer making the enrollment shall, within ten days, report all persons who shall fail or neglect to give information to the adjutant general. [Id. sec. 8.]

Art. 5772. Governor may draft for military duty, when.—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the governor may apportion the number by draft according to the population of the several counties of the state, or otherwise, as he shall direct. The governor shall direct his order to the sheriff of each county from which any draft is required, setting forth the number of persons such county is to furnish. Upon the requisition of the governor being received by the sheriff, he shall immediately personally notify the county clerk, who shall repair to his office and in public shall copy by name or number, from the corrected list of enrollment of such county on file in his office, all persons who are so returned as liable to perform military duty; such names, or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips, so named or numbered, shall be placed in a box suitable for that purpose, and the number required to fill such draft or requisition shall be drawn therefrom, in the same manner as jurors are by law now drawn. All persons so drawn and liable to perform military duty shall be determined to be legally held to serve, in the manner and for the purpose and time specified in the requisition; and the sheriff shall notify the persons so drafted by registered letter, or personally in writ-

ing, at what time and place they shall appear; for which service he shall receive expense of postage and five cents each, to be paid by the county. [Id. sec. 9.]

Art. 5773. Persons drafted shall report, etc.—Every member of the reserve militia ordered out, or who volunteers, or is drafted, under the provisions of this law, who does not appear at the time and place designated by the sheriff, or his commanding officer, within twenty-four hours from such time, or who does not produce a sworn statement of physical disability from a physician in good standing, to so appear, shall be taken to be a deserter and dealt with as prescribed for deserters by law. [Id. sec 10.]

Art. 5774. Persons drafted may furnish substitute.—Any person in the reserve militia of this state, who has been drawn to perform military duty, may, at any time, be exempt until again required in his turn to serve, by furnishing an acceptable substitute on or before the day fixed for his appearance; but, if, during any period of service, any man who is serving in the active militia as a substitute for another, becomes liable to service in his own person, he shall be taken for such service, and his place as substitute shall be supplied by the man in whose stead he was serving, or another substitute. [Id. sec. 11.]

Art. 5775. Officer neglecting or refusing to perform duty in drafting, liable for penalty.—If any sheriff, or constable, county assessor, or county clerk, shall neglect or refuse to perform any duty enjoined upon him by this law, in addition to criminal liability, the person or persons guilty of such refusal or neglect shall be liable to a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered against him or his bondsmen in the name of the state of Texas, by suit instituted by a judge advocate, district or county attorney, in the proper court of Travis county, or the county of which such person is the sheriff, constable, assessor or clerk. [Id. sec. 12.]

Art. 5776. Power of governor to call out militia.—The governor shall have power, in case of insurrection, invasion, tumult, riot, or breach of peace, or imminent danger thereof, to order into the active service of this state any part of the militia that he may deem proper. When the militia of this state, or a part thereof, is called forth under the constitution and laws of the United States, the governor shall order out for service the active militia, or such part thereof as may be necessary; and, if the number available be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the militia in the service of the United States, their state designations shall not be given to new organizations. [Id. sec. 13.]

Art. 5777. Reserve militia to be mustered in, when.—The portion of the reserve militia ordered out or accepted into the service, as indicated in articles 5768 and 5772 of this chapter, shall be immediately mustered into the service for such period as the governor may direct, and shall be organized into troops, batteries, companies and such other organizations as may be necessary, which may be arranged in squadrons, battalions, regiments, or corps, or assigned to organizations of the active militia already existing. The governor is authorized to appoint the officers necessary to commence or complete, or to command any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military laws and military regulations of this state. [Id. sec. 14.]

CHAPTER THREE.

NATIONAL GUARD.

Organization.	Article.	Article.	
National guard to consist of existing military organizations.....	5778	Non-commissioned officers, how appointed.....	5824
Governor to prescribe regulations for government of national guard.....	5779	Discharged and re-enlisted men entitled to credit.....	5825
Governor to make and publish regulations.....	5780	Governor may appoint second lieutenants by brevet.....	5826
Governor's staff.....	5781	Physical examination.....	5827
Military organizations deemed to be bodies corporate, etc.....	5782	Assignment of pay invalid.....	5828
Discipline to conform to that of the United States army.....	5783	Veterans of Spanish-American war entitled to credit for time served in the service of the United States.....	5829
Prohibiting organization of militia companies, except, etc.....	5784	No fees allowed for administering oaths to soldiers.....	5830
Adjutant General.		Service and Duties.	
Adjutant general's department.....	5785	Governor may call out militia, when....	5831
Rank of adjutant general.....	5786	Same.....	5832
Term of office and salary of adjutant general.....	5787	Duty of officer on receipt of order.....	5833
Oath and bond of adjutant general.....	5788	Commanding officer's duty in case of riot.....	5834
Adjutant general to have seal.....	5789	Governor may order active militia to assist civil authorities, etc.....	5835
Adjutant general to control the military department of the state.....	5790	Commanding officer may order closing of saloons, etc, when.....	5836
Duties of adjutant general.....	5791	Organizations shall drill, etc.....	5837
Same.....	5792	Shall participate in practice, marches, etc.....	5838
Same.....	5793	Compensation and Privileges.	
Annual report to be printed.....	5794	Pay, etc., of militia when in active service.....	5839
Adjutant general to hire clerks and laborers.....	5795	Same.....	5840
Assistant adjutant general.....	5796	Members of militia exempt from certain taxes.....	5841
Assistant adjutant general to be appointed by the governor.....	5797	Same.....	5842
Assistant adjutant general authorized to administer oaths to officers of militia, etc.....	5798	Same.....	5843
Adjutant general to issue certificate of organization, etc.....	5799	Same.....	5844
Adjutant general to purchase certain military stores, etc.....	5800	Same.....	5845
Assistant Quartermaster General.		State to provide for wounded or disabled, etc, when.....	5846
Assistant quartermaster general.....	5801	State to pay for transportation, etc.....	5847
Commissioned Officers.		Members of militia exempt from arrest, when.....	5848
Officers to be commissioned by the governor.....	5802	Arms, Equipment, etc.	
Commissions.....	5803	Enlisted men to return property.....	5849
Qualifications of commissioned officers.....	5804	Officers and soldiers liable for damage to equipment, etc.....	5850
Officers to pass examinations.....	5805	Government property not to be put to private use.....	5851
Board of examiners to be appointed by the governor.....	5806	Arms, equipment, etc., to be provided by state.....	5852
Officers to take oath within ten days after appointment.....	5807	Sheriff may seize arms, etc., when.....	5853
Governor may confer brevet commissions.....	5808	Sheriff in executing such warrant may call on militia.....	5854
Supernumerary list.....	5809	Sheriff shall collect arms, etc., when.....	5855
Retirement.....	5810	Arms, equipment, etc., exempt from forced sale.....	5856
Governor may order board to examine character, capacity, etc., of officers.....	5811	Governor to draw arms, equipment, etc., from United States government.....	5857
Governor may require bond from officers.....	5812	Arms, etc., to be stored, where.....	5858
Bond admissible as evidence.....	5813	Uniform same as that prescribed for United States army.....	5859
Commanding officers may make certain deductions.....	5814	Articles of War.	
Company commanders custodians of company funds.....	5815	Rules and articles for the government of the military forces.....	5860
In case of absence or disability, duty assigned to officer shall descend to next ranking officer.....	5816	Courts Martial.	
Officer can excuse from duty, when.....	5817	Evidence in courts martial.....	5861
Commissioned officers to furnish arms, equipment, etc.....	5818	Privileges of accused.....	5862
Certain applicants for commissions exempt from examination.....	5819	Counsel for defendant to be detailed, when.....	5863
Non-commissioned Officers and Enlisted Men.		Judge advocate to appoint reporter.....	5864
Who may voluntarily enlist in militia.....	5820	Judge advocate may issue process, etc.....	5865
Enlistment for term of three years.....	5821	Process generally.....	5866
Person enlisting shall take oath.....	5822	Penalty for disobeying, etc.....	5867
Disqualifications for enlistment, how removed.....	5823	Witnesses entitled to transportation.....	5868
		Compensation of.....	5869
		Same.....	5870
		Attachment may issue for witnesses.....	5871

Article.	Article.		
No fees allowed, except, etc.....	5872	Sheriff to execute lawful process from courts martial.....	5884
Governor may order arrest, etc.....	5873	Jurisdiction presumed.....	5885
Suit on bonds, etc.....	5874	Acts by or under military authority exempt from punishment.....	5886
Code of Criminal Procedure to govern in giving bail, etc.....	5875	Change in venue in certain cases.....	5887
Warrant of arrest to extend to every part of the state, etc.....	5876	Generally.	
Defendant liable for costs.....	5877	Commissioners' court and city council may make appropriations for militia.....	5888
Same.....	5878	Militia entitled to right of way on streets.....	5889
Procedure in cases of conviction of felony.....	5879	Unlawful disposition of property, illegal wearing of uniform, etc.....	5890
Procedure in cases of misdemeanor with jail sentence.....	5880	Arrest of trespassers; may prohibit sale of liquors, etc.....	5891
Conviction in cases of fine and cost.....	5881	Insurrection may be declared, when.....	5892
Fines to be paid to whom in cases of general court martial.....	5882	Troops to enter state only by permission.....	5893
Fines to be paid in cases of summary courts.....	5883		

ORGANIZATION.

Article 5778. **National guard to consist of existing military organizations.**—The Texas national guard shall consist of the existing military organizations, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this state, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein; as provided in articles 5768 and 5777 of this title; but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this state, shall the maximum strength thereof exceed seven thousand officers and enlisted men. [Id. sec. 15.]

Art. 5779. **Governor to prescribe regulations for government of national guard.**—The governor is hereby authorized, and it shall be his duty, to prescribe such regulations as he may see fit for the organization of the Texas national guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this chapter, and conform as near as practicable to the organization of the regular army of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas national guard or the reserve militia, or discharge any officer or enlisted man thereof, and he shall have full control and authority over all matters touching the military forces of this state, its organization, equipment and discipline. [Id. sec. 16.]

Art. 5780. **Governor to make and publish regulations.**—The governor is hereby authorized, and it shall be his duty, to make and publish regulations in accordance with existing military laws, for the government of the military forces of this state, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts martial; the existing regulations to remain in force until the governor shall have published such regulations. The governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations. [Id. sec. 17.]

Art. 5781. **Governor's staff.**—The governor shall have a staff consisting of the adjutant general and nine aids-de-camp. The adjutant general shall have rank and be appointed as provided by this chapter, the nine aids-de-camp shall have the rank of lieutenant colonel while so serving, and shall be appointed by and serve during the pleasure of the governor. Three of the aids-de-camp shall be selected from officers of the Texas national guard below the grade of colonel, and six shall be selected without restriction as to source of selection. [Id. sec. 18.]

Art. 5782. **Military organizations deemed bodies corporate, etc.**—Whenever any troop, battery, company, signal corps, or band is mustered into the active militia of this state by the authority of the governor, such troop, battery, company, signal corps, or band shall, from the date of such muster-in, be deemed and held in law a body corporate and politic, with power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of this state, or elsewhere; to have and use a common seal, of such devices as it may adopt; to ordain and establish by-laws for the government and regulation of the company affairs not inconsistent with the constitution and laws of this state and of the United States, and the orders and regulations of the governor; and such by-laws to alter and amend at will; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers, and in case of a band, the non-commissioned officer shall be directors, the senior president. [Id. sec. 54.]

Art. 5783. **Discipline to conform to that of the United States army**—The system of discipline and exercise of the active militia of this state shall conform generally to that of the army of the United States, as it is now or may hereafter be prescribed by the president, and to the provisions of the laws of the United States, except as otherwise provided by law, or by the regulations issued by the governor. [Id. sec. 67.]

Art. 5784. **Prohibiting organization of military companies, except, etc.**—No body of men, other than the regularly organized militia of this state and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city or town of this state; but students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States, and confederate veterans, may, with the consent of the governor, drill and parade with firearms in public. This article shall not be construed to prevent parades by the active militia of any other state as hereinafter provided. [Id. sec. 74.]

ADJUTANT GENERAL.

Art. 5785. **Adjutant general's department.**—There shall be at the seat of government of this state an executive department known as the adjutant general's department, and the adjutant general shall be the head thereof. [Id. sec. 19.]

Art. 5786. **Rank of adjutant general.**—The adjutant general shall have the rank of brigadier general, and shall be appointed by the governor, by and with the advice and consent of the senate, if in session. [Id. sec. 20.]

Art. 5787. **Term of office and salary of adjutant general.**—The adjutant general shall hold his office for the term of two years, and until the appointment and qualification of his successor in office. In case of a vacancy in such office, the appointment shall be made for the unexpired term only. He shall receive an annual salary of two thousand dollars. [Id. sec. 21.]

Art. 5788. **Oath and bond of adjutant general.**—Before entering upon the duties of his office, the person appointed adjutant general shall enter into a bond with two or more good and sufficient sureties, to be approved by the governor, which bond shall be in the sum of ten thousand dollars, payable to the governor of this state and his successors in office, and conditioned for the faithful performance of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution for all officers, which oath and bond shall be deposited in the office of the secretary of state. [Id. sec. 22.]

Art. 5789. **Shall have a seal.**—The adjutant general shall procure and keep in his office, a seal for the authentication of all certificates and other

instruments emanating from his office, when such authentication is required by law or necessary, the device upon which seal shall consist of a star of five points with the words, "Office of Adjutant General, State of Texas," around the margin. [Id. sec. 23.]

Art. 5790. **Shall have control of military department of the state.**—The adjutant general shall be in control of the military department of this state and subordinate only to the governor in matters pertaining to said department, or the military forces of this state; and he shall perform such duties as may, from time to time, be entrusted to him by the governor relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the department in such manner as the governor shall direct. And he shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his department; and shall perform, as near as practicable, such duties as pertain to the chief of staff, the military secretary and other chiefs of staff departments, under the regulations and customs of the United States army. [Id. sec. 24.]

Art. 5791. **Duties of adjutant general.**—The adjutant general shall, from time to time, define and prescribe the kind as well as the amount of supplies to be purchased for the military forces of this state, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations of companies, or other necessary places for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safe-keeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipments, military property and stores throughout the state. [Id. sec. 25.]

Art. 5792. **Same.**—The adjutant general is authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under the adjutant general's department; and he may, at his discretion, require any bid to be accompanied by a bond in such penal sum as he may deem advisable, with good and sufficient security, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to him, within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within the said period of sixty days. [Id. sec. 26.]

Art. 5793. **Same.**—The adjutant general is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, the custody, use and preservation of the records, papers and property appertaining to it. He shall superintend the preparation of such returns and reports as may be required by the laws of the United States from this state, and perform such other duties prescribed for him by this act or by other laws of this state, or by the governor. He shall keep a register of all officers of the militia of this state, and keep in his office all records and papers required to be kept and filed therein. He shall, at the expense of this state, when necessary, cause the military law and regulations of this state to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of this state at the rate of one copy to each; and to each commissioned officer and headquarters he shall issue one copy of the necessary text books, and of such annual reports concerning the militia as the governor

may direct. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this act. All such books and blanks shall be and remain the property of this state. He shall make such regulations pertaining to the preparation of the reports and returns, and to the care and preservation of property for military purposes, whether belonging to this state or to the United States, as, in his opinion, the conditions demand; such regulations to be operative and in force when promulgated in the form of general orders, circulars, or letters of instruction. He shall report annually to the governor:

1. A statement of all moneys received or disbursed by him since his last annual report.

2. An account of all arms, ammunition, and other military property belonging to this state, or in possession of this state, from what source received, to whom issued, and its present condition, so far as he may be informed.

3. The number, condition and organization of the Texas national guard and reserve militia.

4. Any suggestions which he may deem of importance to the military interests and conditions of this state and the perfection of its military organization. [Id. sec. 27.]

Art. 5794. **Annual report to be printed.**—The annual report provided for in the preceding article shall be printed annually and laid before the legislature for its information. [Id. sec. 28.]

Art. 5795. **To hire clerks and laborers.**—All necessary clerks and employes will be appointed and laborers will be hired by the adjutant general. [Id. sec. 29.]

Art. 5796. **Assistant adjutant general.**—The adjutant general shall have one assistant adjutant general, who shall fill the position of chief clerk, with the rank of colonel, one assistant quartermaster general, with the rank of colonel, and such necessary clerks, employes, and laborers as may be required, from time to time, to carry on the operations of his department, all of whom shall be under the direction and control of the adjutant general. [Id. sec. 30.]

Art. 5797. **Assistant adjutant general to be appointed by the governor.**—The assistant adjutant general shall be appointed by the governor on the recommendation of the adjutant general, and shall remain in office during the pleasure of the governor, and until his successor is appointed and qualifies. He shall receive an annual salary of twelve hundred dollars, and shall, during his term of office, be entitled to all rights, privileges and immunities granted officers of like rank in the Texas national guard. He shall, before entering upon the duties of his office, take and subscribe to the oath of office prescribed for officers of the Texas national guard, which oath shall be deposited in the office of the adjutant general. He shall aid the adjutant general by the performance of such duties as may be assigned him, and shall, in case of absence or inability of the adjutant general to act, perform all such portions of the duties of the adjutant general as the latter may expressly delegate to him. [Id. sec. 31.]

Art. 5798. **Authorized to administer oaths to officers of militia, etc.**—The assistant adjutant general is hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to officers of the active militia, and to employes of the adjutant general's office required to be taken on their appointment or promotion. [Id. sec. 32.]

Art. 5799. **To issue certificates to organizations, etc.**—On the muster-in to the active militia of this state of any troop, battery, company, signal corps, or band, the adjutant general shall issue to such organization a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the militia service of this state, and that

such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the adjutant general may prescribe. Such certificate shall be evidence in all courts of this state that the organization therein named is duly incorporated; but, in suits by or against any troop, battery, company, signal corps, or band of the active militia of this state, it shall not be necessary for either party, where the incorporation is alleged, to prove such incorporation, unless that fact is denied under oath by the opposite party. [Id. sec. 55.]

Art. 5800. **To purchase certain military stores, etc.**—The adjutant general may, after the appropriations are made for that purpose, purchase and keep ready for use, or issue to the military forces of this state, as the best interests of the service may require, such amount and kind of quartermaster's, ordnance, subsistence, medical, signal, engineer's, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies, both the property of this state and of the United States, are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this state under the provisions of this chapter shall, if correct, be certified and approved by the adjutant general and paid out of the state treasury as other claims are paid. Any military stores belonging to this state which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the governor or adjutant general may prescribe by regulations or order; and the adjutant general is hereby authorized to sell or destroy, as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this state, the sums realized from the sale thereof to be turned into the state treasury, to be credited to any fund appropriated for the use of the active militia of this state, as shall be determined at the time by the governor or adjutant general; or he may, in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the active militia of this state. [Id. sec. 101.]

ASSISTANT QUARTERMASTER GENERAL.

Art. 5801. **Assistant quartermaster general.**—The assistant quartermaster general shall be appointed by the governor on recommendation of the adjutant general, and shall remain in office during the pleasure of the governor, and until his successor is appointed and qualified. He shall receive an annual salary of fifteen hundred dollars, and shall, during his term of office, be entitled to all rights, privileges and immunities granted officers of like rank in the Texas national guard. He shall, before entering upon the duties of his office, enter into a bond, with two or more good and sufficient sureties, to be approved by the governor, which bond shall be in the sum of ten thousand dollars, payable to the governor of this state and his successors in office, and conditioned faithfully to discharge the duties of his office and disburse and account for all moneys, and to faithfully keep, issue and account for all military stores, supplies and other property of this state, or of the United States, coming into his possession or entrusted to his care for the use of the military forces of this state. He shall take and subscribe the oath of office prescribed for officers of the Texas national guard, which oath and bond shall be deposited in the office of the adjutant general. He shall, under the immediate direction of the adjutant general, perform, as near as may be, the duties pertaining to the chiefs of the quartermaster, subsistence, and ordnance departments under the regulation and customs of the United States army. He shall, upon assuming the duties of his office, receipt to the adjutant general for all military property of whatever kind belonging to this state, or to the United States, which may be on hand and intended for the use of or issue

to the military forces of this state, and he shall also receipt to the adjutant general for such other military property as may, from time to time, be received from the United States, or from other sources. He shall be responsible for all quartermaster's, subsistence, ordnance, medical, signal, and all other military stores and supplies belonging to this state, or which may be issued to this state by the United States, except such of the above mentioned stores and supplies as may be issued to officers and organizations of the military forces of this state in accordance with the regulations in force. He shall issue and receive such quartermaster's, subsistence, ordnance, medical, signal, and all other military stores and supplies as the governor, or the adjutant general, may direct. He shall attend to the care, preservation, safe keeping, and repairing of the arms, ordnance, accoutrements, equipments and all other military property belonging to this state, or issued to this state by the United States, for the purpose of arming and equipping the military forces of this state. He shall prepare such returns of all quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies that have been issued this state by the United States at the times and in the manner required by the secretary of war, and shall render semi-annually to the adjutant general returns of all military stores and supplies on hand or issued, in such manner as required by the adjutant general. He shall render to the adjutant general annually, or oftener if required, a statement of all moneys received or disbursed by him since last report. He shall perform the duties of quartermaster, commissary, and paymaster of the ranger force, and such other duties as may be required of him by the governor or the adjutant general. [Id. sec. 33.]

COMMISSIONED OFFICERS.

Art. 5802. **Officers to be commissioned by governor.**—All officers in the military service of this state shall be appointed and commissioned by the governor, at his discretion; and no one shall be recognized as an officer, unless he shall have been duly commissioned, and shall have taken the oath of office. [Id. sec. 34.]

Art. 5803. **Commissions.**—All commissions in the military service of this state shall be in the name and by the authority of the state of Texas, sealed with the state seal, signed by the governor, and attested by the secretary of state, and recorded by the adjutant general in a record book kept in his office for that purpose; provided, no fee for issuing such commissions shall be charged, or collected. [Id. sec. 35.]

Art. 5804. **Qualifications of commissioned officers.**—Commissioned officers must be citizens of the United States and residents of this state of the age of eighteen years or upward. No person who has been dishonorably discharged from the military service of this state, or expelled from any military organization, shall be commissioned, unless he produces the written consent to such appointment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. No person shall be commissioned, unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned. A general officer, at the time of appointment, must be an officer above the grade of captain in the military service of this state, and must have been, for six successive years immediately preceding his appointment, a commissioned officer in such service, or he must have had previous service as a commissioned officer in the military service of this state, or of the United States, or both, for nine years. A colonel of a regiment, at the time of his appointment, must be an officer in the active service of the military forces of this state, and for five successive years immediately preceding his appointment

must have been an officer in such active service, or must have had previous service of at least eight years in the active military forces of this state, or of the United States, or both. A lieutenant colonel, or a major of the line, at the time of his appointment, must be an officer in active service of the military forces of this state, and for four successive years immediately preceding his appointment must have been an officer in such active service, or must have had previous service of at least seven years in the active military forces of this state, or of the United States, or both. Staff officers, on promotion to colonel, must have had two years previous service as an officer in the active military forces of this state, or of the United States, or both; on promotion to lieutenant colonel or major, one year previous service as above. A judge advocate must be a counsellor at law of the supreme court of this state of at least ten years standing, if of the grade of colonel, or lieutenant colonel; of at least seven years, if of the grade of major, and of at least four years standing, if of the grade of captain. Surgeons and assistant surgeons must be graduates of a reputable school of medicine, and of at least ten years practice, if of the grade of lieutenant colonel; of at least seven years practice, if of the grade of major; of at least five years, if of the grade of captain; and of at least two years, if of the grade of lieutenant. An engineer officer of the military forces of this state must have been educated as a military or civil engineer. A signal officer must have a knowledge of signaling, telegraphing, topography, and map making. A veterinary surgeon must be a graduate of a reputable incorporated school of veterinary science. A chaplain must be a regularly ordained minister of some religious denomination. [Id. sec. 36.]

Art. 5805. **Officers to pass examination.**—Before receiving a commission consequent upon an original appointment, or before being commissioned to a higher grade as a result of promotion, every officer must have passed a satisfactory examination before a board as to his knowledge of military affairs and general knowledge and fitness for the service. Anyone failing to pass such examination shall not be eligible for an office in the militia of this state, or for promotion, for the period of one year from the date of such failure. Judge advocates, medical officers, and veterinary surgeons shall be examined as to their general and professional knowledge and fitness for the service only. The following are exempt from examination: General officers, chaplains and enlisted men placed on the retired list as brevet second lieutenants. [Id. sec. 37.]

Art. 5806. **Boards of examiners to be appointed by governor.**—Boards of examination under the preceding article shall be appointed by the governor. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court martial. When returns of appointments are received by a board, the persons appointed shall by it be ordered before it for examination, and the result of the examination, with all papers in the case, shall be forwarded to the adjutant general. [Id. sec. 38.]

Art. 5807. **Officers to take oath within ten days after appointment.**—Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the constitutional oath of office. Such oath shall be taken and subscribed before an officer authorized to administer an oath, or some general or field officer, or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself, and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath

within the time mentioned, such commission shall be canceled by the governor, and a new appointment shall be made; such oath of office shall be filed in the office of the adjutant general. [Id. sec. 39.]

Art. 5808. **Governor may confer brevet commissions.**—The governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon officers of the military service of this state for gallant conduct, or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the military service of this state, who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in military service of the United States. [Id. sec. 40.]

Art. 5809. **Supernumerary list.**—Officers who shall be rendered surplus by reduction or disbandment of organizations, or in any manner provided by this law, now or hereafter, shall, at the discretion of the governor, be withdrawn from active service and placed upon the supernumerary list. The governor may detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion. [Id. sec. 41.]

Art. 5810. **Retirement.**—Any officer of the active militia who has reached the age of sixty-four years may be placed upon the retired list by the governor. Any officer who shall have served as an officer in the same grade in the military service of this state for the continuous period of eight years, or as an officer in the military service of this state continuously for ten years, or as an officer in the military service of this state for twelve years, or as an officer and enlisted man in the military service of this state for eighteen years, may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the governor. Any officer who has become, or who shall hereafter become, disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and placed on the retired list by the governor. Any officer who has become, or shall hereafter become, unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the governor, and, in either case, shall be subject to the provisions of this article. Before making such order, the governor shall, at his discretion, appoint a board of not less than five commissioned officers, one of whom shall be a surgeon, whose duty it shall be to determine the fact as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent, from any cause to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decisions of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and, whenever it finds an officer incapacitated for active service, shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding such officer shall be placed on the retired list, or discharged, as herein provided. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list, or discharged by the action of such board, if appointed by the governor, without having had a fair and full hearing before the board, if upon the

notice he shall demand it, and the governor in his discretion shall think proper to appoint such board. It shall not be necessary to refer to any case for the action of such board arising under this article, unless the officer designated be placed on the retired list or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the adjutant general a notice in writing that he demands a hearing and examination before such board, and the governor approve such demand. The governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the military service of this state, on the recommendation of the commanding officer of his organization and the commanding officer of the brigade or division. Vacancies created by the operations of this article shall be filled in the same manner as other vacancies. [Id. sec. 42.]

Art. 5811. Governor may order board to examine character, etc., of officers.—The governor may, whenever he may deem that the good of the service requires it, order any officer before a board of examination, to consist of not less than three nor more than five officers above the grade of captain, which is hereby invested with the powers of courts of inquiry and courts martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this article shall be a sufficient ground for a finding by such board that the officer ordered to appear be discharged. [Id. sec. 43.]

Art. 5812. Governor may require bond from officers.—When required to do so by the governor, any officer of the active militia of this state shall give good and sufficient bond in such sum as the adjutant general may direct, payable to the governor of this state and his successors in office, at Austin, Texas, conditioned faithfully to discharge the duties of his office, and faithfully to expend all public money of this state and account for the same, and to account for and safely keep all public property of this state, or of the United States issued and intended for use of the military forces of this state, which he may receive from time to time, and to promptly turn over the same to whomsoever the governor may direct. Such bond shall be signed by at least two good and sufficient sureties, or executed and guaranteed by any corporation having power to guarantee the fidelity of persons holding positions of public or private trust, which such corporations are hereby authorized to execute, which may be authorized to carry on business in this state; such bond shall be in such sum as may be prescribed by the adjutant general, and shall be approved by him and filed in his office; and such bond shall not extend to the reasonable wear and tear of arms, equipments, and other military supplies, incident to the military service; provided, that the commanding officer of every troop, battery, company, or signal corps and the chief musician of every band mustered into the military service of this state shall file the bond provided by this article in the office of the adjutant general, before the commission of such officer shall be issued, or any arms, uniforms, equipments, or other military property shall be issued for the use of his organization; and, provided, further, that when required to do so by the governor any non-commissioned officer or enlisted man of the military forces of this state shall make and file the bond as provided by this article. Whenever such bond is sued upon, the principal and sureties therein shall pay a reasonable attorneys' fee, not to exceed ten per

cent, and said fee shall not be less than ten dollars, and they shall also pay all court costs in connection with such suit. [Id. sec. 52.]

Art. 5813. **Records admissible as evidence.**—Copies of all bonds and other papers filed in the office of the adjutant general, in accordance with the provisions of this chapter or any other law of this state, certified under the hand and seal of office of the adjutant general, shall be admitted in evidence in all courts of this state, in the same manner and with like effect as the original would be if duly proven. [Id. sec. 53.]

Art. 5814. **Commanding officers may make certain deductions.**—The commanding officer of any troop, battery, company, signal corps, or band is hereby authorized to deduct from any pay for military service due any officer or enlisted man of his organization such amount as such officer or enlisted man may owe his organization for dues and fines, as provided by the by-laws of such organization. [Id. sec. 56.]

Art. 5815. **Company commanders custodians of company funds.**—The commanding officer of each company shall be the custodian of the company fund, and it shall be his duty to receive, safely keep, and properly disburse, as may be required by the governor, all money that may be entrusted to his care, and to render, on June 30 and December 31 of each year, to adjutant general, an itemized statement of all money by him received and disbursed for the preceding six months. [Id. sec. 60.]

Art. 5816. **In case of absence or disability duty shall descend to next ranking officer.**—The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. [Id. sec. 63.]

Art. 5817. **Officer can excuse from duty, when.**—The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. [Id. sec. 65.]

Art. 5818. **Commissioned officers to furnish arms, etc.**—Every commissioned officer shall provide himself with the arms, uniforms, and equipments prescribed and approved by the governor. [Id. sec. 66.]

Art. 5819. **Certain applicants for commissions exempt from examination.**—Any person who graduates from any college or school of this state, wherein there is a prescribed course of military instruction under the supervision of an officer of the United States army, or an officer of the active militia of this state, shall, if he applies for appointment as a commissioned officer in the active militia of this state, in the grade of second lieutenant, within two years after graduation, be exempt from examination in all military subjects, except the militia law of this state, and examination as to personal qualifications and physical condition; and in no case shall such graduate be drafted to serve in any capacity other than that of a commissioned officer; provided, that, when an officer of the active militia of this state is military instructor, the adjutant general shall prescribe the course of military instruction to be given, and when such colleges or schools do not follow the course of instructions so prescribed, the graduates thereof shall not be entitled to the exemptions and privileges specified in this article. [Id. sec. 102.]

NON-COMMISSIONED OFFICERS AND ENLISTED MEN.

Art. 5820. **Who may voluntarily enlist in militia.**—Any male citizen of the United States, or any male who has declared his intention to become such citizen, who is a resident of this state, if more than eighteen or less than forty-five years of age, able-bodied, free of disease, and of good character and temperate habits, may voluntarily enlist in the active militia of this state; provided, persons may enlist who are under eighteen and over forty-five years of age on the written authority of the adjutant general. [Id. sec. 44.]

Art. 5821. **Enlistment for a term of three years.**—All enlistments in the active militia of this state shall be for the term of three years; and no soldier shall be again enlisted in the active militia of this state whose service during his last preceding term of enlistment has not been honest and faithful. [Id. sec. 45.]

Art. 5822. **Persons enlisting shall take oath.**—Every person who enlists or re-enlists in the active militia of this state shall sign and make oath to an enlistment paper, which shall be filed in the office of the adjutant general. Such oath shall be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery, or company who are hereby authorized to administer such oaths; and such oaths may be taken before any officer authorized by the laws of this state to administer oaths. A person making a false oath to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of false swearing and punished accordingly. [Id. sec. 46.]

Art. 5823. **Disqualifications for enlistment, how removed.**—No minor shall be enlisted without the written consent of his parents or guardian. A man who has been expelled, or dishonorably discharged, from the military service of this state, or of the United States, shall not be eligible for enlistment or re-enlistment, unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled, or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. [Id. sec. 47.]

Art. 5824. **Non-commissioned officers, how appointed.**—Commanding officers of regiments and of battalions and squadrons not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments, battalions, or squadrons, and they shall, in their discretion, warrant the non-commissioned officers of the troops, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officer of the troops, batteries and companies, respectively. In troops, batteries and companies not a part of a regiment, battalion or squadron, and in signal and hospital corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade or division, in his discretion, to which such organization may be attached, from the members of such organization upon the written nomination of the commanding officer of the troop, battery, company, signal, or hospital corps. To be eligible for appointment as sergeant, first class, of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks for good and sufficient reasons the non-commissioned officers named in this article. [Id. sec. 48.]

Art. 5825. **Discharged and re-enlisted men entitled to credit.**—Men who have been discharged by reason of disbandment may be re-enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disabilities shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. [Id. sec. 49.]

Art. 5826. **Governor may appoint second lieutenants by brevet.**—The governor may appoint and commission enlisted men, who have served well and faithfully in the active militia of this state for a period of not less than twenty-five years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list. [Id. sec. 50.]

Art. 5827. **Physical examination.**—No applicant for appointment or enlistment in the active militia of this state will be commissioned or enlisted without first passing a satisfactory physical examination. [Id. sec. 57.]

Art. 5828. **Assignment of pay invalid.**—No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the governor. [Id. sec. 58.]

Art. 5829. **Veterans of Spanish-American war entitled to credit for time served in service of United States.**—For all purposes under this title, officers and enlisted men of the active militia of this state who entered the United States service in the Spanish-American war shall, on re-entering the active militia of this state, be entitled to credit for the time served in the forces of the United States in that war, as if this service had been rendered in the active militia of this state. [Id. sec. 61.]

Art. 5830. **No fee allowed for administering oaths, etc., to soldiers.**—No officer, civil or military, shall be entitled to charge or receive any fee or compensation for administering or certifying any oath administered or certified under the provisions of this title. [Id. sec. 62.]

SERVICE AND DUTIES.

Art. 5831. **Governor may call out militia, when.**—When an invasion of, or an insurrection in, this state is made or threatened, or when the governor may deem it necessary for the enforcement of the laws of this state, he shall call forth the active militia, or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient he shall order out such part of the reserve militia as he may deem necessary. [Id. sec. 75.]

Art. 5832. **Same.**—When there is in any county, city, or town in this state tumult, riot, or body of men acting together by force with intent to commit a felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this state, or when such tumult, riot, mob, or other unlawful act or violence is threatened and that fact is made to appear to the governor, he may issue his order to any commander of a division, brigade, regiment, squadron, battalion, troop, battery or company of the active militia of this state to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws; provided, whenever the necessity for military aid in preventing or suppressing such violence and in executing the laws is immediate and urgent, and it is impracticable to furnish such information to the governor in time and secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city, or town may call for aid upon the commanding officer of the active militia stationed therein, or adjacent thereto; such call shall be in writing, and the civil officer making the call shall as soon as possible notify the governor of his action. [Id. sec. 76.]

Art. 5833. **Duty of officer on receipt of order.**—The officer to whom the order of the governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the governor of his action. [Id. sec. 77.]

Art. 5834. **Commanding officer's duty in case of riot.**—When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing if practicable, otherwise verbal instructions given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult, or the preservation of the public peace, but such commanding officer shall exercise his discretion as

to the proper method of practically accomplishing the instructions received; the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer. [Id. sec. 78.]

Art. 5835. **Governor may order active militia to assist civil authorities, etc.**—The governor may order the active militia, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this state, or discharging other duties in connection with the execution of the law as the public interest or safety at any time may require. [Id. sec. 79.]

Art. 5836. **Commanding officer may order closing of saloons, when.**—Whenever any part of the active militia of this state is on active duty pursuant to the order of the governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where intoxicating liquors, arms, ammunition, dynamite or other explosives are sold, and forbid the selling, bartering, lending, or giving away any of said articles so long as any of the troops remain on duty in such place or in the vicinity where such place may be located, whether any civil officer has forbidden the same or not. [Id. sec. 80.]

Art. 5837. **Organizations shall drill, etc.**—Officers and enlisted men of each troop, battery, and company of the active militia of this state shall assemble for and undergo drill and instruction at company, battalion, or regimental armories (troop, squadron, or battery armories for cavalry or field artillery) or rendezvous or for target practice, not less than twenty-four times during each calendar year preceding the annual allotment of funds under section 1661, Revised Statutes of the United States, as amended. During the same period, there shall be at least one inspection of each troop, battery, and company by an officer of the active militia of this state, or by an officer of the regular army of the United States, at such times as the governor may direct. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill, or instruction at such times and places as he may appoint. [Id. sec. 93.]

Art. 5838. **Shall participate in practice marches, etc.**—Each troop, battery, or company of the active militia of this state, not especially excused by the governor, will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the governor may prescribe, and under such instructors as he may appoint. [Id. sec. 94.]

COMPENSATION AND PRIVILEGES.

Art. 5839. **Pay of militia in active service.**—The military forces of this state, when called into actual service of this state in time of war, insurrection, invasion or imminent danger thereof, or the prevention of invasion, shall, during their time of service, be entitled to the same pay, rations, and allowances for clothing as is now or may hereafter be established by the laws for the army of the United States. [Id. sec. 81.]

Art. 5840. **Same.**—When the military forces of this state, or any part thereof, are called into active service under articles 5832, 5833, 5834 and 5835, officers shall, during their term of service, receive the same pay as is now or may hereafter be established by law for the army of the United States, and enlisted men shall be paid for such time per day as follows: Chief musician of cavalry, artillery, infantry and engineers, three dollars; first-class sergeants of signal corps and hospital corps, two dollars and seventy-five cents; battalion sergeants major of engineers, battalion quartermaster sergeants of engineers, sergeants major of artillery senior grade, first sergeants of engineers, company quartermaster sergeants of engineers, sergeants of engineers, sergeants of sig-

nal corps, regimental quartermaster sergeants, regimental commissary sergeants, and regimental sergeants major, two dollars and fifty cents; sergeants major of artillery, junior grade, first sergeants of infantry, cavalry and artillery, sergeants of hospital corps, drum majors, sergeants major of squadron and battalion, color sergeants, chief trumpeters of cavalry and artillery, principal musicians of cavalry, artillery, infantry and engineers, two dollars and twenty-five cents; corporals of engineers and signal corps, cooks of engineers and signal corps, sergeants and cooks of infantry; cavalry, artillery and bands, mechanics of coast artillery, stable sergeants of field artillery, privates of hospital corps, company quartermaster sergeants of cavalry, artillery and infantry, two dollars; first-class privates of engineers and signal corps, corporals of cavalry, artillery, infantry and bands, artificers of field artillery and infantry, farriers, blacksmiths, saddlers and wagoners of cavalry, one dollar and seventy-five cents; privates of cavalry, artillery, infantry, signal corps and bands, second class privates of engineers, musicians of artillery, infantry and engineers, trumpeters cavalry, one dollar and fifty cents. [Id. sec. 82.]

Art. 5841. **Members of militia exempt from certain taxes.**—All officers and enlisted men of the active militia of this state, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this state, and exemption from jury service or duty of every character and description. [Id. sec. 83.]

Art. 5842. **Same.**—In order to entitle any troop, battery, company, signal corps, or band of the active militia of this state to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereof by reason of illness or other necessary cause; such list shall be certified to by such commanding officer, and the persons whose names appear on such list shall not be assessed for any poll taxes whatever, other than the poll tax of one dollar prescribed by the constitution for the support of public schools for the current year; and it shall be the duty of assessors with whom such lists are filed to note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article. [Id. sec. 84.]

Art. 5843. **Same.**—In order to entitle any troop, battery, company, signal corps, or band of the active militia of this state to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in article 5841 of this chapter, the commanding officer of such organization shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to by him, one copy with the clerk of the district court of his county, and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. Clerks of the county courts shall furnish information of the person so exempt to the proper road overseers and to all others concerned. [Id. sec. 85.]

Art. 5844. **Same.**—In order to entitle any general, field or staff officer of the active militia of this state to the exemptions as set forth in article 5841 of this chapter, such officer shall, between the first days of January and April

of each year, file with the assessor of taxes for his county his certificate to the effect that he is an officer of the active militia of this state in good standing, and that he has faithfully discharged all the military duties required of him during the preceding year, and, on filing the certificate as herein required, such officer shall not be assessed for any poll tax whatever other than the poll tax of one dollar prescribed by the constitution for the support of public schools for the current year; and such officer shall file similar certificates between the first and thirty-first days of January of each year, with the district and county clerks of his county, and, on filing such certificates, shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty and from the payment of any road or street tax in such county for the current year. [Id. sec. 86.]

Art. 5845. **Same.**—In order to entitle any non-commissioned staff officer, member of the engineer or hospital corps, or other enlisted man of the active militia of this state, not belonging to the regular organization, to the exemptions as set forth in article 5841 of this chapter, such non-commissioned officer or soldier shall prepare and file affidavits similar to the certificate provided in the preceding article for officers, with the assessor, district and county clerks of his county; such affidavits shall be filed during the same period and in the same manner as set forth above for officers, and, on filing such affidavits, such non-commissioned officer or soldier shall be entitled to the same exemptions in the same manner as provided for such officers. [Id. sec. 87.]

Art. 5846. **State to provide for wounded or disabled, when.**—Every member of the military forces of this state who shall be wounded or disabled while in the service of this state, in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities shall be taken care of and provided for at the expense of this state. [Id. sec. 88.]

Art. 5847. **State to pay for transportation, etc.**—The state shall make suitable provision for the pay, transportation, subsistence and quarters of all troops of this state who may attend at any annual encampment, or when called into active service of this state. [Id. sec. 95.]

Art. 5848. **Members of militia exempt from arrest, when.**—No persons belonging to the active militia of this state shall be arrested on any civil process while going on duty to or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony, or breach of the peace. [Id. sec. 70.]

ARMS, EQUIPMENT, ETC.

Art. 5849. **Enlisted men to return property.**—An enlisted man who has not returned all the public property for which he is responsible shall, under no circumstances, receive a full and honorable discharge. [Id. sec. 51.]

Art. 5850. **Officers and soldiers liable for damage to equipment, etc.**—The cost of arms, equipment and all other military supplies and stores, and the cost of repairs or damage done to arms, equipment and all other military supplies and stores, shall be deducted from the pay of any officer or soldier in whose care or use the same were when such loss, destruction or damage occurred, if said loss, destruction or damage was occasioned by the carelessness, neglect or abuse of said officer or soldier. [Id. sec. 59.]

Art. 5851. **Government property not for private use.**—No officer or enlisted man of the active militia of this state having property in charge shall loan for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the governor. All property issued to a brigade, regimental, battalion, or company commander, or to any band, corps, or auxiliary squad or to any military or

ganization whatever, when not in legitimate use, shall be carefully stored and protected from waste, theft, loss or injury. [Id. sec. 64.]

Art. 5852. **Arms, equipment, etc., to be provided by state.**—All organizations shall be provided by this state with such arms, equipments, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this chapter; and each organization shall keep such property in proper repair and in good condition. [Id. sec. 68.]

Art. 5853. **Sheriff may seize arms, etc., when.**—Whenever it shall come to the knowledge of the governor, on the affidavit of a credible person, that persons having arms, equipments, or other military property issued by this state for the use of the military forces of this state, without authority of law, and that such persons fail or refuse to deliver up such property, it shall be his duty forthwith to issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments or other military property, and the same keep subject to the further order of the governor. [Id. sec. 89.]

Art. 5854. **Sheriff in executing such warrant may call on militia.**—Any sheriff receiving a warrant such as is specified in the preceding article shall proceed without delay to execute the same in the manner therein directed, and in executing such warrant he may summon to his aid the power of the county and any command of the active militia of this state that may be convenient. [Id. sec. 90.]

Art. 5855. **Sheriff to collect arms, etc., when.**—The sheriffs of the several counties of this state shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property, when collected and turned over to them, safely keep subject to the order of the governor, to whom a report of such collection shall be made; and the official bond of sheriffs shall extend to and include the faithful performance of their duties under this and the preceding articles. [Id. sec. 91.]

Art. 5856. **Arms, etc., exempt from forced sale.**—Arms, equipments, clothing, or other military supplies issued by this state to organizations or members of the active militia for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or in any other legal proceedings. [Id. sec. 92.]

Art. 5857. **Governor to draw arms, etc., from U. S. government.**—The governor in his official capacity is authorized to draw from the United States government all arms, equipments, munitions, or other military stores to which this state may, from time to time, be entitled, for the use of the militia, and may execute such bonds in the name of the state of Texas as may be necessary or requisite to secure their issuance. [Id. sec. 96.]

Art. 5858. **Arms, etc., to be stored, where.**—The governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this state, to be stored at such points as he may deem most conducive to the interests of this state and the convenience of the people. [Id. sec. 97.]

Art. 5859. **Uniform, same as that prescribed for United States army.**—The uniform for officers and enlisted men of the active militia of this state shall be the same as that prescribed for the United States army, with such modifications as the governor may deem necessary from time to time. All uniforms and other military property issued by this state shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the adjutant general may prescribe. [Id. sec. 100.]

ARTICLES OF WAR.

Art. 5860. **Rules and articles for the government of the military forces.**—The military forces of this state shall be governed by the following rules and articles:

The word, "officer," as used therein, shall be understood to designate commissioned officers; the word, "soldier," shall be understood to include non-commissioned officers, musicians, artificers, privates and other enlisted men; the word, "company," shall be understood to include troops, batteries, companies, signal corps, hospital corps, bands and detachments, and the convictions mentioned therein shall be understood to be convictions by court martial.

Article 1. Enlistment in the active militia of this state shall be voluntary, and every person who enlists therein shall take and subscribe an oath (or affirmation) in the following form:

"I, do solemnly swear (or affirm) that I will bear true faith and allegiance to the state of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the military forces of the state of Texas."

Art. 2. Every officer who knowingly enlists or musters into the military service of this state any minor over the age of sixteen years without the written consent of his parents or guardian, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military service of this state or of the United States, or any person who has been convicted of any infamous crime, shall, upon conviction, be dismissed from the service or suffer such other punishment as a court martial may direct.

Art. 3. No enlisted man, duly sworn, shall be discharged from service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the governor, the adjutant general, or by order of a court martial.

Art. 4. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished as a court martial may direct.

Art. 5. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the state of Texas, or suffer such other punishment as a court martial may direct.

Art. 6. Every commanding officer shall, in the beginning of January and July of each year, and oftener if required by the governor, transmit to the adjutant general's department an exact return of the troops under his command, specifying the names of the officers absent from their posts, with the reasons for and the time of their absence. Such returns shall be made in the form and forwarded in the manner prescribed by the adjutant general; and any such officer, who through neglect or design omits to send such return, shall, on conviction thereof, be punished as a court martial may direct.

Art. 7. Every officer who knowingly makes a false return to the adjutant general's department, or to any of his superior officers authorized to call for such returns, of the state of the regiment or company under his command, or of any arms, ammunition, clothing or other stores thereunto belonging, shall be punished as a court martial may direct.

Art. 8. Every officer who signs a false certificate relating to the absence or pay of any officer or soldier shall be dismissed from the service, or suffer such other punishment as a court martial may direct.

Art. 9. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows, the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the state of Texas.

Art. 10. Any officer who wilfully or through neglect suffers to be lost, damaged, or spoiled any military stores or supplies belonging to this state, or to the United States, which have been received for use of the military forces of this state, shall make good the loss or damage and suffer such punishment as a court martial may direct.

Art. 11. Any soldier who sells or through neglect loses or spoils the arms, uniforms, equipments, accoutrements, or any other military stores or supplies issued to him for his use or in his charge, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

Art. 12. Any officer or soldier who shall strike his superior officer, or offers any violence to him, the said superior officer being engaged in the reasonable execution of his official duties, or if any officer or soldier disobeys any lawful command of his superior officer, he shall suffer punishment as a court martial may direct.

Art. 13. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition in any regiment, company quarters or guard, shall suffer such punishment as a court martial may direct.

Art. 14. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court martial may direct.

Art. 15. All officers, of what conditions soever, have power to part and quell all quarrels, frays and disorders, whether among persons belonging to their own or to any regiment or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement who take part in same, until their proper superior officer is acquainted therewith. And who-soever being so ordered refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court martial may direct.

Art. 16. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

Art. 17. Any soldier who absents himself from his company or guard, without leave from his commanding officer, shall be punished as a court martial may direct.

Art. 18. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court martial may direct.

Art. 19. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court martial may direct.

Art. 20. Any officer who is found drunk on his guard, party or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

Art. 21. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court martial may direct.

Art. 22. Any officer or soldier who quits his guard, without leave from his superior officer, except in case of urgent necessity, shall be punished as a court martial may direct.

Art. 23. Any officer who, by any means whatsoever, occasions false alarms in camp, command, or quarters, shall suffer such punishment as a court martial may direct.

Art. 24. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any place, post or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court martial may direct.

Art. 25. Any officer or soldier who, having been duly enlisted or drafted in the military service of this state, deserts the same, shall suffer such punishment as a court martial may direct.

Art. 26. Every soldier who deserts the military service of this state shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

Art. 27. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

Art. 28. No soldier shall enlist himself in any other regiment or company, without a regular discharge from the regiment or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly. And in case any officer shall knowingly receive and entertain such soldier, or shall not, after his being discovered to be a deserter, immediately give notice thereof to the command in which he last served, the said officer shall, by court martial, be dismissed.

Art. 29. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with intent to kill, wounding by shooting or stabbing with intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court martial when committed by persons in the military service of the state; and punishment in every such case shall not be less than the punishment provided for like offenses by the Penal Code of this state.

Art. 30. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of this state, which is punishable by the laws of this state, the commanding officer and the officers of the regiment or company to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil authority and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon application, any officer refuses or wilfully neglects, except in time of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending him, he shall be punished as a court martial may direct.

Art. 31. Any person in the military service of this state who makes, or causes to be made, any claim against this state or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents, or causes to be presented, to any person in the civil or military service thereof, for approval or payment, any claim against this state, or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud this state, or the United States, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this state, or the United States, or against any officer thereof makes or uses, or procures or advises the making or use of, any writing, or other papers, knowing the same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this state, or the United States, or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against this state, or the United States, or any officer thereof, forges or counterfeits or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of this state, or the United States, furnished or intended for the military service of this state, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of this state, or the United States, furnished or intended for the military service of this state, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, or with intent to defraud this state, or the United States; or

Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of this state, or the United States, furnished or intended for the military service of this state; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is a part of, or employed in, said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores or other property of this state, or the United States, such soldier or officer, or other person not having lawful right to sell or pledge the same, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid, while in the military service of this state, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial, in the same manner and to the same extent as if he had not received such discharge or been dismissed.

Art. 32. Any officer, who is convicted of conduct unbecoming an officer and a gentleman, shall be dismissed from the service.

Art. 33. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or a regimental, or a summary court martial, ac-

according to the nature and degree of the offense, and punished at the discretion of such court.

Art. 34. Whenever, by any of these articles of war for the government of the military forces of this state, the punishment or conviction of any military offense, is left to the discretion of the court martial, the punishment therefor shall not be in excess of a limit which the governor may prescribe.

Art. 35. The officers and soldiers of any troops, whether active or reserve militia of this state or otherwise, appointed, enlisted, mustered or drafted into the military forces of this state, shall at all times, and in all places be governed by these articles, and shall be tried by courts martial.

Art. 36. All retainers of the camp and all persons serving with the military forces of this state in the field, though not enlisted soldiers, shall be subject to these rules and articles in the same manner as enlisted men.

Art. 37. Officers charged with crime shall be arrested and confined in their quarters or tents, or other place, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service, and suffer such other punishment as a court martial may direct.

Art. 38. Soldiers charged with crime shall be confined until tried by court martial, or released by proper authority.

Art. 39. Any provost marshal, or any officer commanding a guard, who shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the military forces of this state, shall suffer such punishment as a court martial may direct; provided, the officer committing shall, at the same time, deliver a statement in writing, signed by himself, of the crime charged against the prisoner.

Art. 40. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the crime charged against him, and the name of the officer committing him; and, if he fails to make such report, he shall be punished as a court martial may direct.

Art. 41. Any officer who presumes, without proper authority, to release a prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court martial may direct.

Art. 42. No officer or soldier put in arrest shall be continued in confinement more than five days, or until such time as a court martial can be assembled.

Art. 43. When an officer is put in arrest for the purpose of trial, except at remote stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within five days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

Art. 44. The governor, or any general, or other officer, commanding a division or brigade, may appoint general courts martial whenever necessary. But when any such general or other officer is the accuser or prosecutor of any officer under his command, the court shall be appointed by the governor; and its proceedings and sentence shall be sent directly to the adjutant general, by whom they shall be laid before the governor for his approval or orders in the case.

Art. 45. Officers who may appoint a court martial shall be competent to appoint a judge advocate for the same.

Art. 46. General courts martial may consist of any number of officers, from five to thirteen, inclusive, but they shall not consist of less than thirteen when that number can be convened without injury to the service. A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive.

Art. 47. When the requisite number of officers to form a general court martial is not present in any command or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the governor, who shall thereupon order a court to be assembled at the nearest and most convenient place at or near which there may be such a requisite number of officers, and shall order the party accused, with the necessary witnesses, to be transported to the place where the said court shall be assembled.

Art. 48. Every officer commanding a camp or other place where the troops consist of different corps, and every officer commanding a regiment, separate squadron or battalion, shall be competent to appoint for such camp or other place, or such regiment, separate squadron or battalion, regimental courts martial, consisting of three officers, to try enlisted men for offenses not capital; but such courts martial shall be appointed and the officers designated by superior authority when by him deemed desirable. Such courts martial shall have power to award punishment not to exceed confinement at hard labor for thirty days, or forfeiture of thirty dollars pay, or a fine of thirty dollars, or any or all of such confinement, forfeiture of pay and fine, and, in case of a non-commissioned officer, reduction to the ranks in addition thereto.

Art. 49. Every commanding officer of each camp or other place, regiment or corps, detached battalion or company, and the commanding officer of each company at its home station, shall have power to appoint for such place, command or station summary courts martial to consist of one officer to be designated by him, to try enlisted men for offenses not capital; but such summary courts martial may be appointed and the officer designated by superior authority when by him deemed desirable; and, when but one commissioned officer is present with a command, he shall hear and finally determine such cases. Such summary courts shall have power to adjudge punishment not to exceed confinement at hard labor for thirty days, forfeiture of thirty dollars pay, or a fine of thirty dollars or any or all of such confinement, forfeiture of pay and fine, and, in case of non-commissioned officers, reduction to the ranks in addition thereto; provided such summary courts shall not adjudge confinement for more than ten days, forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine, unless the accused shall, before trial, consent in writing to trial by said court; but, in case of refusal to so consent, the trial may be had either by general, regimental or by said summary court, but in case of trial by said summary court, without consent of as aforesaid, the court shall not adjudge confinement for more than ten days, or forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine. The officer holding the summary court shall have power to administer oaths and to hear and determine cases cognizable by said court, and when satisfied of the guilt of the accused, adjudge the punishment to be inflicted, which said punishment shall not exceed the limit prescribed in this article.

Art. 50. There shall be a summary court record kept at the headquarters of the proper command in the field, each regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed, in which shall be entered a record

of all cases heard and determined and the action had thereon. And the commanding officer of each camp or other place, regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed shall, on the last day of every month and oftener if required, make a report to the adjutant general of the number of cases determined by summary courts, during the period, setting forth the offenses committed and the penalties awarded.

Art. 51. The judge advocate of any general or regimental court martial shall administer to each member of such court, before they proceed upon any trial, the following oath (or affirmation): "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to evidence, the matter now before you, between the state of Texas and the prisoner to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government of the military forces of this state, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the customs in like cases; and you do further swear (or affirm) that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

Art. 52. When the oath (or affirmation) has been administered to the members of a court martial, the president of the court shall administer to the judge advocate, or person officiating as such, an oath (or affirmation) in the following form: "You, A. B., do swear (or affirm) that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help me God."

Art. 53. A court martial may punish, at discretion, any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Art. 54. All members of a court martial are to behave with decency and calmness.

Art. 55. Members of a court martial may be challenged by a prisoner, but only for causes stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

Art. 56. When a prisoner, arraigned before a court martial, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

Art. 57. The judge advocate general, or some person deputed by him, or by the governor, or general, or officer commanding the division, brigade, camp or other place, regiment, separate squadron or battalion shall prosecute in the name of the state of Texas; but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself. And whenever a court martial shall sit in closed session the judge advocate shall withdraw, and, whenever his legal advice or his assistance in referring to recorded evidence is required, it shall be obtained in open court.

Art. 58. The judge advocate general and the officers of his department, the judge advocate of court martial and the trial officers of summary courts

are hereby authorized to administer oaths for the purpose of the administration of military justice and for other military purposes.

Art. 59. The depositions of witnesses for the accused residing beyond the limits of the state, or the county in which any military court may be ordered to sit, may be taken and read in evidence as provided by the laws of this state.

Art. 60. All persons who give evidence before a court martial shall be examined on oath (or affirmation) which shall be administered by the judge advocate in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth. So help you God."

Art. 61. A court martial shall, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just; provided, that if the prisoner be in close confinement the trial shall not be delayed for a longer period than sixty days.

Art. 62. Members of a court martial, in giving their votes, shall begin with the youngest in commission.

Art. 63. Officers shall be tried only by general courts martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

Art. 64. No officer shall be discharged or dismissed from the service, except by order of the governor, or by sentence of a general court martial.

Art. 65. When an officer is dismissed from the service for cowardice or fraud, the sentence shall direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the state and in the county in which the offender lives, or where he usually resides; and, after such publication, it shall be scandalous for an officer to associate with him.

Art. 66. When a court martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

Art. 67. No person shall be tried the second time for the same offense.

Art. 68. No person shall be liable to be tried or punished by a general court martial for any offense, except for desertion in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from this state, in which case the time of his absence shall be excluded in computing the period of the limitation; provided, that said limitation shall not begin until the end of the term for which said person was mustered into service.

Art. 69. No sentence of a court martial respecting a general officer, and no sentence of a court martial directing the dismissal of any officer, shall be carried into execution until it shall have been confirmed by the governor.

Art. 70. No sentence of a court martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

Art. 71. All sentences of a court martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the governor is not required by these articles.

Art. 72. Any officer who is authorized to confirm and carry into execution the sentence of a court martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of dismissal of an officer; and the governor shall have power to pardon or mitigate any punishment adjudged by any court martial.

Art. 73. Every judge advocate, or person acting as such, at any general or regimental court martial, shall, with such expedition as the opportunity of time and distance of place may admit, forward the original proceedings

and sentences of such court to the adjutant general, in whose office they shall be carefully preserved.

Art. 74. Every party tried by a general or regimental court martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

Art. 75. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier may be ordered by the governor, or by any commanding officer; but such courts of inquiry shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

Art. 76. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder to reduce the proceedings and evidence to writing.

Art. 77. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

Art. 78. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martial, and the party accused shall be permitted to examine and cross-examine them so as fully to investigate the circumstances in question.

Art. 79. A court of inquiry shall not give an opinion on the merits of the case inquired of, unless specially ordered to do so.

Art. 80. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

Art. 81. The proceedings of a court of inquiry may be admitted as evidence by a court martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can be obtained.

Art. 82. The foregoing articles shall be read once in every twelve months to every company in the military service of this state, and shall be duly observed and obeyed by all officers and soldiers in said service. [Id. sec. 103.]

COURTS MARTIAL.

Art. 5861. **Evidence in courts martial.**—The rules of evidence in all courts martial shall follow in general, so far as apposite, the common law rules of evidence as observed by the courts of this state in criminal cases; but a certain latitude in the introduction of evidence and the examination of witnesses by an avoidance of restrictive rules is permissible, when it is in the interest of the administration of military justice. [Id. sec. 104.]

Art. 5862. **Privileges of accused.**—In all trials before courts martial, the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. [Id. sec. 105.]

Art. 5863. **Counsel for defendant to be detailed, when.**—The officer ordering a general or regimental court martial will, at the request of any prisoner who is to be arraigned, detail as counsel for his defense a suitable officer, one not acting as a summary court; provided, such request is made within a rea-

sonable time before trial. If there be no such officer available, the fact will be reported to the adjutant general for his action. An officer so detailed should perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. [Id. sec. 106.]

Art. 5864. Judge advocate to appoint reporter.—The judge advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before, such court, and may set down the same, in the first instance in shorthand. The reporter shall, before entering upon his duty, be sworn or affirmed faithfully to perform the same. [Id. sec. 107.]

Art. 5865. Judge advocate may issue process, etc.—The president or judge advocate of every general or regimental court martial shall have power to issue like process to compel witnesses to appear and testify, which courts of criminal jurisdiction within this state may lawfully issue; and such process shall be issued in the same style and manner and executed by the same officers as when issued by such court. [Id. sec. 108.]

Art. 5866. Process generally.—The president of any court martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the state of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment. [Id. sec. 109.]

Art. 5867. Penalty for disobeying, etc.—Every person, who being duly subpoenaed to appear as a witness before a regimental or general court martial, who wilfully neglects or refuses to appear, or refuses to qualify as a witness or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, and prosecuted in the proper justice court, and punished by a fine not exceeding one hundred dollars; provided, such witness may plead as a defense that he was not tendered or paid one day's fee and mileage for the journey to and from the place of trial, as provided by this chapter, such amounts to be paid by the adjutant general's department out of any appropriation or funds available for that purpose; provided, that no witness shall be compelled to incriminate himself, or to answer any questions which may tend to incriminate or degrade him. [Id. sec. 110.]

Art. 5868. Witnesses entitled to transportation.—Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed two dollars per day for each day actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence. [Id. sec. 111.]

Art. 5869. Compensation of.—A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive one dollar and fifty cents per day for each day actually in attendance upon the court, and six cents a mile for going from his place of residence to the place of trial or hearing, and six cents a mile for returning. Civilian witnesses will be paid by the adjutant general's department. [Id. sec. 112.]

Art. 5870. **Same.**—The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel. [Id. sec. 113.]

Art. 5871. **Attachment may issue for witnesses.**—In all cases where a witness has been subpoenaed and fails to attend, attachment shall issue, and he shall be liable for the costs of such attachment, unless good cause be shown to the court why he failed to obey the subpoena, which cost may be recovered by civil suit in any court having jurisdiction of the amount involved. [Id. sec. 114.]

Art. 5872. **No fees allowed, except, etc.**—No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case. [Id. sec. 115.]

Art. 5873. **Governor may order arrest, etc.**—When charges against any person in the military service of this state come before the governor, or any officer authorized to order a court martial for the trial of such person, and the governor, or such officer, believes that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person so charged, resides, or wherein he is supposed to be, commanding such sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may finally be disposed of; and it shall be the duty of the sheriff or constable, on the order of the governor, or officer ordering the court, to bring the person so charged before the court martial for trial, or to turn over to whoever the order may direct; it shall be the duty of the governor, or the officer issuing the warrant of arrest, to indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant of arrest, conditioned for his appearance, from time to time, before such court martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court martial before which he may be ordered for trial. [Id. sec. 116.]

Art. 5874. **Suit on bonds, etc.**—Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court martial, or upon the failure of any person admitted to bail to appear as a witness in any case before a court martial, as conditioned in the bail bond of any such person, the court martial shall certify the fact of such failure to so appear to the officer ordering the court martial, or the officer commanding for the time being, as the case may be; and it shall be the duty of such officer to cause a judge advocate, district or county attorney, to file suit in any court having jurisdiction of the amount involved in Austin, Texas. [Id. sec. 117.]

Art. 5875. **Code of Criminal Procedure to govern in giving bail, etc.**—The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided by this chapter. [Id. sec. 118.]

Art. 5876. **Warrant of arrest to extend to every part of the state, etc.**—A warrant of arrest issued by the governor, or other officer authorized to order a general court martial, and all subpoenas and other process issued by general courts martial shall extend to every part of the state; but warrants

of arrest issued by an officer, other than those named above, and all subpoenas and other process issued by other military courts can not be executed in any other county than the one in which they were issued, except they be indorsed by the governor, or an officer authorized to order a general court martial, in which case they can be executed anywhere in the state. The indorsement may be, "Let this process be executed in any county of the state of Texas." The indorsement shall be dated and signed officially by the governor, or officer making it. [Id. sec. 119.]

Art. 5877. **Dedendant liable for costs.**—The judgment of every court martial shall direct that all costs incurred in any trial shall be paid by the defendant; and it shall be the duty of the officer ordering the court, or the officer commanding for the time being, as the case may be, to enforce the collection thereof in the manner prescribed by this law; and when the defendant is imprisoned for costs, as hereinafter provided by this law, the adjutant general shall pay said cost out of any funds which may be available. [Id. sec. 120.]

Art. 5878. **Same.**—Upon conviction of any person by a court martial, the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpoenas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing any process, subpoena, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this state. [Id. sec. 121.]

Art. 5879. **Procedure in cases of conviction of felony.**—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved exceeds two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county until a duly accredited agent of the state penitentiary shall take charge of such person for confinement in the state penitentiary; and it shall be the duty of such reviewing authority, or the commanding officer for the time being, as the case may be, to certify a copy of the proceedings, as approved, of the court martial in the case of such person to be confined, to the superintendent of the state penitentiary, which shall be sufficient authority for, and it shall be the duty of, such superintendent to send for and confine such person in the state penitentiary for the period named in the proceedings of the court martial as approved, or until he may be directed to release him by proper authority; and it shall be the duty of the state penitentiary board to make such provisions as may be necessary for receiving from the sheriff as aforesaid and confining such person in such manner as persons are received and confined in the state penitentiary on sentence of district courts in this state. [Id. sec. 122.]

Art. 5880. **Procedure in cases of misdemeanor with jail sentence.**—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same, in whole or in part, and such sentence, as approved, does not exceed two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by

proper authority; and such confinement shall be carried out as prescribed for confinement in the county jail by the Code of Criminal Procedure of this state. [Id. sec. 123.]

Art. 5881. Conviction in cases of fine and costs.—When the sentence of a court martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten days after the confirmation thereof, the governor, or officer ordering the court, or the officer commanding for the time being, as the case may be, shall issue a warrant of commitment directed to the sheriff of the county in which the court martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and it shall be the duty of the sheriff to take the body of the person convicted and confine him in the county jail for one day for any fine not exceeding one dollar, and one additional day for every dollar above that sum, and one additional day for each dollar of cost. [Id. sec. 124.]

Art. 5882. Fines to be paid to whom in cases of general court martial.—All fines and forfeitures, imposed by general or regimental courts martial, shall be paid to the officer ordering such courts, or to the officer commanding for the time being, and by said officer, within five days from the receipt thereof, paid to the adjutant general, who shall disburse the same as he may see fit for military purposes. [Id. sec. 125.]

Art. 5883. Fines to be paid in cases of summary courts.—All fines and forfeitures imposed by summary courts martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five days from the receipt thereof, placed to the credit of the company fund of the company of which the person fined was a member when the fine was imposed. [Id. sec. 126.]

Art. 5884. Sheriff to execute lawful process from courts martial.—When any lawful process, issued by the proper officer of any court martial, comes to the hand of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this chapter imposed or authorized to be performed by any sheriff or constable. [Id. sec. 127.]

Art. 5885. Jurisdiction presumed.—The jurisdiction of the courts and boards established by this chapter shall be presumed, and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. [Id. sec. 131.]

Art. 5886. Acts by or under military authority exempt from punishment.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this state, or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. [Id. sec. 132.]

Art. 5887. Change of venue in certain cases.—Any officer or member of the military forces of this state, who is indicted or sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of the person so indicted or sued, to remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant can not have a fair and impartial trial before such court. [Id. sec. 133.]

GENERALLY.

Art. 5888. Commissioners' court and city council may make appropriations for militia.—The commissioners' court of each [county,] and the council of any city or town in this state, are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the troops, batteries, companies, signal corps, hospital corps and bands of the active militia of this state located in their respective counties, cities or towns, not to exceed the sum of one hundred dollars per month for such expenses of any one organization. [Id. sec. 69.]

Art. 5889. Militia entitled to right of way on streets.—The commanding officer of any portion of the active militia of this state, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield to the right of way to such militia; provided, that carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby. [Id. sec. 71.]

Art. 5890. Unlawful disposition of property; illegal wearing of uniform, etc.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this state, or in any manner pawn or pledge, any arms, uniforms, equipments, or other military property, issued under the provisions of this chapter, or of the military regulations of this state, and any person who shall wear any uniform, or part thereof, or device, strap, knot or insignia of any design or character used as a designation of grade, rank, or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of this state, or similar thereto, except members of the army of the United States, or the active militia of this state, or any other state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the Penal Code, and in addition thereto shall forfeit to this state one hundred dollars for each offense, to be sued for in the name of the state of Texas by a judge advocate, district or county attorney. All money recovered by any action or proceeding under this article shall be paid to the adjutant general, who shall apply the same to the use of the active militia of this state. [Id. sec. 72.]

Art. 5891. Arrest of trespassers; may prohibit sale of liquor, etc.—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer, the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom, as he may prescribe. And he may in his discretion abate as common nuisances all such sales. [Id. sec. 73.]

Art. 5892. Insurrection may be declared, when.—Whenever any portion of the military forces of this state is employed in aid of the civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may, by proclamation, declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection. [Id. sec. 98.]

Art. 5893. Troops to enter state only by permission.—No armed military force from another state, territory or district shall be permitted to enter this state without the permission of the governor, unless such force is part of the United States army. [Id. sec. 99.]

TITLE 92.

MILL PRODUCTS.

Article.	Article.
Packages, how marked; standard weights. 5894	How samples secured; analysis and publication 5900
Unground or unbroken seed or grain not included in definition. 5895	Term "importer" defined. 5901
Concentrated feed stuffs, definition. 5896	What feedstuffs deemed adulterated. 5902
Sample to be deposited with director of agricultural station. 5897	Duties and powers of director of experiment station. 5903
Tax tags; disposition of funds collected. 5898	Disposition of funds for concentrated commercial feed stuffs. 5903a
Manufacturers and importers to furnish list of, and marks. 5899	Same 5903b

Article 5894. **Packages, how marked; standard weights.**—Every lot or parcel of concentrated feeding stuffs, as defined in article 5896, used for feeding farm live stock, sold, offered, or exposed for sale in the state of Texas for use within this state, shall have printed on a tag described in article 5898, a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed, where the contents are of a mixed nature, the name, brand, or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 5902, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the association of official agricultural chemists of the United States. Mill products hereinafter mentioned shall have the following standard weights, viz.: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack; rice bran, one hundred and forty-three pounds per sack; rice polish, two hundred pounds per sack; and other feeds made from cereals of any kind, whether pure, mixed, or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion, and those weights shall be net and exclusive of the barrel or sack in which said product is packed. [Act 1905, p. 207; amended Act 1907, p. 243, sec. 1.]

Art. 5895. **Unground or unbroken grain or seed not included in definition.**—The term, "concentrated commercial feeding stuffs," as herein used, shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat, or broom corn, or any other whole or unground grains or seeds. [Act 1905, p. 207, sec. 2.]

Art. 5896. **Concentrated feed stuffs, definition.**—The term, "concentrated feed stuffs," as herein used, shall include wheat bran, wheat shorts, linseed meals, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meal, rice bean, rice polish, rice hulls, oat feeds, corn and oat chops, corn chops, ground beef, or mixed fish feeds, and all other materials of similar nature not included herein. [Id. sec. 3.]

Art. 5897. **Sample to be deposited.**—Before any concentrated feeding stuff, as defined in article 5896 of this chapter, is so offered or exposed for sale, the importer, manufacturer and party who causes it to be sold, or offered for sale, within the state of Texas for use within this state, shall, for each and every feed stuff bearing a distinguishing name and trade mark, file with the director of the Texas agricultural and experiment station a certified copy of

the statement named in article 5894, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold, or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuff, and who do not adulterate same. [Act 1905, p. 207; amended 1907, p. 243, sec. 4.]

Art. 5898. Tax tags; disposition of funds collected.—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff as defined in article 5896 of this chapter, shall, before the article is offered for sale, pay to the director of the Texas agricultural experiment station an inspection tax of ten cents per ton for each ton of such concentrated feeding stuff sold, or offered for sale, in the state of Texas for use within this state, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such concentrated feeding stuffs, a tag to be furnished by said director, stating that all charges specified in said article have been paid. The director of said Texas agricultural experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a concentrated feeding stuff shall have filed a statement named in article 5894 of this chapter, and have paid the inspection tax, no agent or seller of said manufacturer, inspector or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the state treasury. So much of the inspection tax and penalties collected under this chapter shall be paid by the state treasurer to the treasurer of the Texas agricultural and mechanical college as the director of the Texas agricultural experiment station may show by his bills has been expended in performing the duties required by this chapter, but in no case to exceed the amount of the inspection tax and penalties received by the state treasurer under this chapter. [Id. sec. 5.]

Art. 5899. Manufacturers and importers to furnish list of, and marks.—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same, shall, when requested, furnish the director of the Texas experiment station with a complete list of names or trade marks of such feeding stuffs. [Acts 1905, p. 207, sec. 8.]

Art. 5900. How samples secured; analysis; publication.—The director of the Texas agricultural experiment station shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff sold or offered for sale under the provisions of this chapter. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this state; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample is drawn, and the date and place of taking such sample, and said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of the said feed stuffs, the director or his

deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director and the other shall be left with the party whose stock was sampled, and the sample or samples retained by the director shall be for comparison with the certified statements made in articles 5894 and 5897 of this chapter. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise, shall be published in reports or bulletins by the Texas agricultural and mechanical college from time to time. [Acts 1905, p. 207, sec. 9.]

Art. 5901. **Term "importer" defined.**—The term, "importer," for all the purposes of this chapter shall be taken to mean all such persons as shall bring into or offer for sale within this state concentrated commercial feeding stuffs manufactured without this state. [Acts 1905, p. 207, sec. 10.]

Art. 5902. **What feed stuffs deemed adulterated.**—For the purpose of this chapter, a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith; provided, that no wholesome mixture of feeding stuffs shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the purchaser at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration, all suspicious samples of feeding stuffs, and such other samples as may be desirable. [Acts 1905, p. 207. Amended Acts 1907, p. 243, sec. 11.]

Art. 5903. **Duties and powers of director of experiment station.**—The director of the experiment station is empowered to adopt standards or definitions for concentrated feeding stuffs, and such regulations as may be necessary for the enforcement of the law. The said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to the material of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any of said materials be registered and it is afterwards discovered that they are in violation of the above provisions, the said director shall have the power to cancel the registration ten days after notice. The director of the Texas experiment station is hereby empowered to adopt such regulations as may be necessary for the enforcement of all the provisions of this chapter. [Acts 1907, p. 243, sec. 11a.]

Art. 5903a. **Disposition of funds for concentrated commercial feed stuffs.**—That all money or moneys heretofore or hereafter collected by the officers and employes of the agricultural and mechanical college, under the provisions of the pure feed acts, passed by the twenty-ninth legislature, being chapters 108 and 118 of said acts, and amended by chapter 131, Acts of the thirtieth legislature, regulating the sale of concentrated commercial feed stuffs and so forth, and paid into the state treasury, and not heretofore expended for and on behalf of the agricultural and mechanical college, be and the same are hereby transferred and appropriated to the use and benefit of the agricultural and mechanical college of Texas; and the treasurer of this state shall keep an account on his books, to be designated and known as "Pure Feed Fund of the Agricultural and Mechanical College," and to which said fund he shall at once transfer from the general fund all funds heretofore collected and paid into the general fund by said pure feed department of the agricultural and mechanical college under said acts (and not expended for the use of the agricultural and mechanical college), and shall place all funds hereafter collected under said acts to said fund.

Art. 5903b. **Same.**—Said fund so appropriated and collected shall be used by the board of directors of the agricultural and mechanical college for mak-

ing all necessary repairs at the agricultural and mechanical college, erection of buildings and other improvements, and for such other purposes as may be deemed advisable by the board of directors; and said funds shall be paid out by the state treasurer on warrants issued by the president and secretary of the board of directors. The said board of directors shall, on the thirty-first day of August of each year, file a sworn report with the governor, giving an itemized statement of all receipts and disbursements of said fund for the year ending on said date.

TITLE 93.

MINES AND MINING.

Chapter.

1. Mining Districts, Claims and Locations.

Chapter.

2. State Mining Board and Coal Mining Regulations.

CHAPTER ONE.

MINING DISTRICTS, CLAIMS AND LOCATIONS.

Article.	Article.
Reserved lands open to exploration, etc. 5904	Location of land disposed of since April 14, 1883 5914
Mining districts created 5905	Forfeiture of claims 5915
Mining claims limited 5906	Applicant to make oath 5916
Locator to post claim 5907	Placer claims subject to location 5917
Application for survey of claim; requisites of 5908	Application may embrace non-adjacent non-mineral lands 5918
Claimant must do what pending patent 5909	Purposes for which timber may be felled 5919
Rights accruing to claimant 5910	vested right not affected 5920
Conditions precedent to issue of patent 5911	Proceeds appropriated 5921
Right of purchase 5912	Surveyors to administer oaths 5922
Contest of patent 5913	

Article 5904. [3498a] **Reserved lands opened to exploration and purchase, etc.**—All public school, university, asylum and public lands specially included under the operation of this title, all the lands now owned by the state situated within the reservation known as the "Pacific Reservation," which were taken off the market and reserved from sale by an act approved January 22, 1883, containing valuable mineral deposits, are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, by citizens of the United States and those who have declared their intention of becoming such. [Act 1895, p. 197.]

Art. 5905. [3498c] **Mining district created.**—It shall be the duty of the commissioner of the general land office in all lands designated as mineral lands to unite a suitable number of mineral locations into mining districts, in each of which shall be a surveyor, who must either be the surveyor of the district or county or a regular appointed deputy and an officer qualified to administer oaths. [Id.]

Art. 5906. [3498d] **Mining claims limited, etc.**—A mining claim upon veins or lodes of quartz or other rocks in place bearing silver, gold, cinnabar, lead, tin, copper and other valuable metals, excluding deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marls, natural cement, clay, onyx, mica, precious stones, or any other non-metallic mineral, and stone valuable for ornamental or building purposes, or other valuable building material, may equal but shall not exceed one thousand five hundred feet along the mine or vein or lode. No such claim shall exceed twenty-one acres in total area. The end lines of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square, unless such form is prevented by adjoining rights or boundaries of the section in which the claim lies. The locator under this title shall be entitled to the use of all the superficial area between the inclosing lines of the claim, and to all minerals thereon and between the side and end lines, extending downwards vertically, until the rights secured by posting are forfeited as provided; and in all conflicts priority of location shall decide. [Id.]

Art. 5907. [3498e] **Locator to post claim.**—The locators of any mining claim shall post up at the center of one of the end lines of the same a written notice,

stating the name of the location and of the claim and date of posting, and describe the claim by giving the number of feet in length and width and the direction the claim lies in length from the notice, together with the section, if known, and the county, and shall place stone monuments at the four corners and otherwise describe the corners so that they can be readily found. The notice shall be placed in a conspicuous place so it can be readily seen. [Id.]

Art. 5908. [3498f] **Application for survey of claim, requisites of.**—The locator shall, within three months after the date of posting the required notice, file with the county surveyor of the county in which the land, or a part thereof, is situated an application in writing for the survey of the claim, giving the name of the claim and such designation of its boundaries and location as to enable the surveyor to identify the land. The application shall be accompanied by a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the applicant has found valuable minerals, stating the kind, on the claim, also the date of the first posting of the notice on the claim by the applicant and that the notice has not been post-dated nor changed in its date. Upon receiving the application and affidavit and fee, the surveyor shall record the application and affidavit and shall forthwith proceed to survey the claim. After the field-notes are recorded and a plat of the survey is made by the surveyor, he shall deliver the application and affidavit, together with the field-notes and plat, to the applicant or his agent, who shall forward same to the commissioner of the general land office with one dollar as a filing fee. When the applicant forwards the papers aforesaid to the commissioner, he shall at the same time forward to the state treasurer one-fifth of the aggregate price of the land as the first payment thereon. The applicant shall also file in the land office with his other papers his obligation to the state for the remaining unpaid purchase money, binding himself to pay to the state of Texas at the state treasury in Austin, Texas, one-fifth of the unpaid purchase price, together with four per cent interest annually after the date of the filing of said papers in the land office, and until the entire purchase price and interest are fully paid. The papers aforesaid shall be filed in the land office within sixty days from the date the application was filed with the county surveyor, and not thereafter. The fee of twenty dollars shall cover all charges by the surveyor in connection with any one claim. A claim filed on under this title for gold, silver, cinnabar, lead, tin or copper, zinc, tungsten, molybdenum and uranium, may be paid out in full at any time within five years from the date the papers were filed in the land office. All mineral lands shall be sold at such price as may be fixed by the land commissioner, but in no event shall the same be sold at a price less than twenty-five dollars per acre, nor until he has ascertained approximately their value; provided, that no person, firm, or corporation, or association of persons shall be permitted to locate or file on more than five claims of twenty-one acres within a radius of five miles. This article shall apply only to the claims filed on land containing the minerals herein named. [Id. Amended Act 1905, p. 148.]

Art. 5909. [3498g] **Claimant must do what pending patent.**—Upon the failure of any one of the several owners to contribute his proportion of the expenditure required in this title within the necessary time, the co-owner or co-owners who have paid the fees, or interest or principal, may, at the expiration of the time in which the payment was to be made and was so made by him, give notice in writing to such defaulting co-owner, or give such notice by publication in a newspaper published in the county where the claim is, if any, if none in such county, then in the newspaper published nearest the mining claim, for at least once a week for ninety days. If, after such personal notice in writing, or by publication, such delinquent shall fail or refuse to contribute his proportion of the expenditure required, his interest in the claim shall cease beyond the amount which he may have previously expended thereon,

and become the property of his co-owners who may have made the required expenditures. An affidavit by the co-owners of the facts accompanied with the notice given shall, when recorded in the proper county surveyor's office, be sufficient evidence of such delinquency and forfeiture in all interest in such claim. If patent should be applied for on such claim, it shall be issued to the owners, if the proper evidence of forfeiture of such interest be filed in the land office. This article shall apply only to the claims filed on land containing the minerals named in the preceding article. [Id. Amended Act 1905, p. 148.]

Art. 5910. [3498h] **Rights accruing to the claimant.**—When a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within two thousand feet of the face of such claim on the line thereof, not previously known to exist, discovered in such tunnel to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work in the tunnel for six months shall be considered as an abandonment of the right of all undiscovered veins on the line of said tunnel. [Acts 1895, p. 197.]

Art. 5911. [3498i] **Conditions precedent to issue of patent.**—Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the commissioner of the general land office, accompanied by the receipt of the state treasurer showing that twenty-five dollars per acre has been paid by the applicant for patent to the state treasurer. Whereupon such patent shall issue, unless protest is filed as hereinafter provided for in article 5913. [Id.]

Art. 5912. [3498j] **Right of purchase.**—Within twelve months after the filing of the affidavit hereinafter provided for, any person or association of persons, qualified as required by article 5904, shall have the right to purchase and obtain patent by compliance with this title or any of the lands of the state which are specified or included in article 5904, containing valuable deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marl, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral and stones valuable for ornamental or building purposes, or other valuable building material, in legal subdivisions, in quantity not exceeding one section; provided, that where any such parties shall have heretofore expended, or shall hereafter expend, five thousand dollars in developing the aforesaid mineral resources of any of said lands, such party shall have the right to buy one additional section and no more, and to include in the purchase any section, or part thereof, on which the work may have been done. The land so purchased may be in different sections, and all embraced in one or more obligations, not to exceed the quantity stated. The purchaser shall pay not less than fifteen dollars per acre where the land shall be situated ten miles or less of any railroad in operation, and not less than ten dollars per acre where the land is over ten miles from such railroad, one-tenth of the purchase money to be paid in cash to the state treasurer on or before the expiration of the twelve months aforesaid; and the purchasers shall file the treasurer's receipt with the commissioner of the general land office, together with an obligation to pay the state of Texas the remainder in nine equal annual installments, with interest at four per cent per annum from date, subject to forfeiture as in other cases; and all said lands are reserved from sale or other disposition than under this title; and where application is made to buy any of the lands herein named, except under this title, the purchaser shall swear that there are none of the minerals named

in this title on said lands, so far as he knows, or has reason to believe, or does believe; provided, further, this article shall not authorize the sale of lands containing valuable deposits of gold, silver, lead, cinnabar, copper, or other valuable metal; provided, further, that any person desiring to acquire any lands under the provisions of this article shall have the right to prospect said land for a period of twelve months before making any payment thereon, upon condition that said prospector shall file with the proper surveyor his affidavit in writing, setting forth that he has gone upon the land in good faith with the intention of purchasing the same under the provisions of this article, and in said affidavit give a reasonable description of said land. After the filing of said affidavit, the said surveyor shall immediately forward same to the commissioner of the general land office, who shall take said section off the market until the expiration of said twelve months after the filing of said affidavit with the surveyor. [Id.]

Art. 5913. [3498k] **Contest of patent.**—Any person desiring to contest the issuance of patent may do so by filing with the commissioner of the general land office a protest setting forth the grounds of objection—generally, and that protestant has an interest in the subject matter; which protest shall also state that the same is presented in good faith and not to injure or delay the applicants, or any of them, and the same shall be verified by affidavit. Whereupon it shall be the duty of the commissioner to withhold patent until the controversy is ended; provided, that, if the protestant shall not, within thirty days after filing his protest, institute suit in the court having jurisdiction thereof in the county where the claims are located, his protest shall constitute no further barrier to the issuance of patent. A certified copy of the petition, or a certificate of the clerk of the court where suit is pending, shall be sufficient evidence to the commissioner of the pendency of the suit, and of the date of filing said suit. When the land in controversy lies partly in two counties, suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket. [Id.]

Art. 5914. [3492] **Location on land disposed of since April 14, 1883.**—When a location has been made and land disposed of by the state since the passage of the Act of 1883, for disposition of minerals on the land embraced in article 5904 of this title, if such location was made subsequent to the disposition by the state of such lands, and the locator or his assignees have not abandoned said claim, but are working it in good faith, the locator and his assignees shall nevertheless be entitled to the mineral and to the use of the superficial area as in other cases; and, if the case is such that the fee in the land can not pass by patent, a patent may issue to all the minerals in the claims, and shall be a license from the state to enter upon and work said claim and extract the mineral therefrom. In cases provided for in this article when the fee does not pass, the price shall be twenty dollars per acre, and the locator, or his assignee, shall in addition pay to the owner of the land in fee the fair value of the land so taken up by his claim, and roads and fences necessary to give him ingress and egress thereto, and be liable for any damages which may result to owner of the land in fee. All other provisions of this title shall apply to said location. [Id. sec. 12.]

Art. 5915. [3498l] **Forfeiture of claims.**—If the application and affidavit provided for in article 5908 are not filed with the proper county surveyor within ninety days from the date of the first posting, and if the application, affidavit, field-notes, filing fee and obligation are not filed in the land office, or the first payment is not paid to the state treasurer, within the sixty days as required in article 5908, the file and claim thereunder shall be void. If any part of an annual interest, or any part of an annual payment of principal, remains unpaid for thirty days after it becomes due on any claim, such claims

shall be subject to forfeiture by the commissioner of the general land office by an indorsement on the obligation, "Forfeited," signed officially by him, and thereupon all payments shall also be forfeited to the fund to which the land originally belonged. All forfeited claims may be reinstated upon written request of one or more owners filed in the land office and payment of all interest and principal due; provided, no rights of another has not intervened at date of filing such request in the land office. One interested in a claim at the time it was forfeited shall not be eligible to re-locate or re-file upon the same land for himself or on behalf of any other person, and any such location or attempt to locate by such person shall be wholly void. Whenever any land theretofore covered by a forfeited claim shall be re-located, the locator or locators and each of them shall make an affidavit that the location is made without any contract or agreement or understanding of any kind; that none of the parties theretofore owning an interest in the forfeited claim before the re-location have or is to have any interest in the same under the new location. In all other cases where an affidavit is required by this title, it may be made by one or more of the parties cognizant of the facts. This article shall apply only to claims filed on land containing the minerals named in article 5908. [Id. Amended Act 1905, p. 148.]

Art. 5916 [3498n] Applicant to make oath.—Whenever any application shall be made to buy or obtain title to any of the lands embraced in article 5914 [5904], except where the application is made under this title, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the minerals embraced in this title thereon; and, when the commissioner has any doubt in relation to the matter, he shall forbear action until he is satisfied. Any such sale or disposition of said lands shall be understood to be, with the reservation of the minerals thereon, to be subject to location as herein provided. [Acts 1895, p. 197.]

Art. 5917. [3498o] Placer claims subject to location.—Claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions; and no such location shall include more than forty acres for each individual claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided. [Id.]

Art. 5918. [3498p] Application may embrace non-adjacent non-mineral land.—Where non-mineral land not contiguous to the vein or lode is issued by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for a mill site, as provided in this section. [Id.]

Art. 5919. [3498q] Purposes for which timber may be felled.—Any owner or worker of mining claim under this title is authorized to fell and remove for building and mining purposes any timber or any tree growing or being upon unoccupied lands as described in article 5914 [5904], said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes. [Id.]

Art. 5920. [3498r] **Vested rights not affected.**—Nothing in this title shall ever be so construed as to either destroy, invalidate or impair any valid claim, right or interest existing in, to or concerning any lands whatever at the passage of this title, of any pre-emptor, purchaser, claimant, actual settler, locator or other person whatsoever. [Id.]

Art. 5921. [3498s] **Proceeds appropriated.**—The net proceeds of all sales of mining lands under the provisions of this title shall inure to the benefit of the state and the respective funds for which the lands mentioned in article 5914 [5904] are set apart under the constitution and the laws of the state; and it shall be the duty of the comptroller, state treasurer and commissioner of the general land office to see to it and have said proceeds so paid rightly placed to the credit of the particular and proper fund.

Art. 5922. [3498t] **Surveyors to administer oaths.**—For the purpose of effectually carrying out the provisions of this title, all county or district surveyors are hereby especially authorized and empowered to administer oaths, take affidavits and make certificates thereof.

CHAPTER TWO.

STATE MINING BOARD AND COAL MINING REGULATIONS.

Article.	Mining Regulations. (See Penal Code.)	Article.
State mining board, duties of.....5923 Appointment, qualifications, and terms of office of members of board.....5924 Duty of board to select mining inspector; place of meeting.....5925 Qualifications of mining inspector; term of office.....5926 State mining inspector under supervision of mining board; how removed from office.....5927 Semi-annual meeting of board to receive reports of inspector.....5928 Compensation of members of board.....5929 Inspector to enforce law; salary and ex- penses.....5930 Discrimination prohibited.....5931 Bond of inspector; liability for discrim- ination.....5932	Mine shafts, how constructed and equipped.....5933 Mine must be supplied with suitable props.....5934 Abandoned workings to be cut off.....5935 Ventilation.....5936 Same.....5937 Dangerous gases and fires; inspector must be notified.....5938 Cages, how operated.....5939 Powder.....5940 Inspector may require use of safety lamp.....5941 Rules to be observed by minors.....5942 Rules to be posted.....5943 Coal scales.....5944 Employes may employ check weighman.....5945 Kind of oil to be used.....5946	

Article 5923. **State mining board; duties of.**—For the purpose of securing efficiency in the mine inspection service, a board of examiners, to be known as the state mining board, whose duty it shall be to make formal inquiry into and pass upon the practical and technical qualifications and personal fitness of persons seeking appointments as state inspector of mines, shall be appointed by the governor. [Act 1907, p. 331, sec. 14.]

Art. 5924. **Appointment, qualifications and terms of office of members of board.**—Said board shall be composed of seven members, three of whom shall be practical miners, three shall be mine operators; and it shall be the first duty of the six members thus appointed to nominate to the governor the seventh member of said board; provided, that if the six members aforesaid shall fail for a period of ten days after their appointment to so nominate the seventh member, the same shall be appointed by the governor. Said board shall hold office for a period of two years and until their successors have been appointed and qualified. [Id. sec. 15.]

Art. 5925. **Board to select mining inspector; place of meeting.**—The board shall meet in the capitol building, at Austin biennially, for the purpose of hearing applications for the office of state mining inspector. It shall be the duty of the board to thoroughly examine all applicants who may come before it, and to select from among such applicants the person who in its opinion is best qualified to perform the duties of state mining inspector; and, upon the nomination of said board, the governor shall appoint the person so recommended. [Id. sec. 16.]

Art. 5926. **Qualifications of mining inspector; term of office.**—The state mine inspector shall be a citizen of the United States, and shall have resided in the state of Texas for one year, of temperate habits, of good repute, a man of personal integrity, shall have attained the age of thirty years, and shall have had at least five years experience working in and around coal mines, and shall not have any pecuniary interest whatever in any mine in this state. He shall hold office for a period of two years, unless sooner removed as provided herein. [Id. sec. 17.]

Art. 5927. **State mine inspector under supervision of board; how removed from office.**—It shall be the duty of the state mining board to exercise supervision over the acts of the state mine inspector, and, in the event of his incompetency or the neglect of his duty being proved to the board, said board shall recommend to the governor that he be removed from office, and his successor shall be chosen as herein provided. [Id. sec. 18.]

Art. 5928. **Semi-annual meetings of board; reports of inspector.**—The state mining board shall meet twice each year, and at such time and place as the majority may select, for the purpose of receiving reports from the inspector and instructing him in the performance of his duty. [Id. sec. 19.]

Art. 5929. **Compensation of members of board.**—The members of the state mining board shall receive as compensation for their services the sum of five dollars per day for a period not exceeding thirty days in any one year, and traveling expenses in going to and returning from board meetings. [Id. sec. 20.]

Art. 5930. **Inspector to enforce law; salary and expenses.**—It shall be the duty of the state mining inspector to enforce the provisions of this chapter under the instructions of the state mining board, and to make a report to said board at its semi-annual meetings, and oftener if required. He shall receive for his services the sum of two thousand dollars per year, and actual traveling expenses incurred in the discharge of his duty; provided, that his traveling expenses shall not in any one year exceed the sum of one thousand dollars. Said mining inspector shall file an itemized statement, showing the actual amounts expended, and the number of times he inspected each mine or mines. [Id. sec. 21. Amended act 1909, p. 163.]

Art. 5931. **Discrimination prohibited.**—It shall be the duty of the state mining inspector to enforce the provisions of this chapter under the instruction of the state mining board, and to make report to said board at its semi-annual meetings and oftener if required; provided, that neither the instructions of said board nor the acts of said inspector shall ever discriminate in favor of or against any mine or mines, nor against any owner, operator or employe, of any mine or mines; but said acts, either of the board, or of the inspector, shall be impartial, fair and just to all persons or corporations subject to the provisions of this chapter. [Id.]

Art. 5932. **Bond of inspector; liability for discrimination.**—Before receiving his appointment by the governor, the inspector of mines shall be required to enter into and deliver to the governor a good and sufficient bond in the sum of ten thousand dollars, with at least three good, lawful and sufficient sureties for the faithful and impartial performance of his duty; and the

sureties herein required shall make affidavit before some officer authorized to administer oaths that they, in their own right, over and above all exemption, are worth the full amount of the bond they sign as sureties, said bond to be approved by the governor, provided he is satisfied as to its sufficiency, and said bond shall be conditioned that there shall be no discrimination in favor of or against any mine or mines, nor against any owner, operator or employe of any mine or mines; provided, further, if the fact may be shown that said inspector has discriminated against and to the injury of any mine or mines, or against and to the injury of any owner, operator or employe, then the said owner, operator or employe may sue upon the bond herein provided for, and shall be entitled to recover such liquidated damages as may be proven and shown in such suit.

MINING REGULATIONS.

Art. 5933. **Mine shafts, how constructed and equipped.**—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this chapter. At the bottom of every shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and that there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. [Act 1907, p. 331, sec. 1.]

Art. 5934. **Mine must be suitably propped.**—Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. [Id.]

Art. 5935. **Abandoned workings to be cut off.**—All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines. [Id.]

Art. 5936. **Ventilation.**—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his or their refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. [Id. sec. 2.]

Art. 5937. **Same.**—It shall be the duty of the mine foreman to see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. Id. sec. 6.]

Art. 5938. **Dangerous gases and fires; inspector notified.**—Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the concurrence of any serious fire within the mine or on the surface. [Id. sec. 3.]

Art. 5939. **Cages, how operated.**—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No persons shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials, unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Id. sec. 4.]

Art. 5940. **Powder.**—No miner or other person shall carry powder into the mine, except in the original keg, or in a regulation powder can securely fastened, and the can in otherwise air tight condition. [Id. sec. 5.]

Art. 5941. **Inspector may require use of safety lamp.**—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Id. sec. 7.]

Art. 5942. **Rules to be observed by miners.**—It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe, or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in mines, or the security of the mine machinery thereof, is endangered. [Id. sec. 8.]

Art. 5943. **Rules to be posted.**—It shall be the duty of every operator to post on the engine house and at the pit top of his mine, in such manner that the employes of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. And the posting of such notice, as provided, shall charge all employes of such mine with legal notice of the contents thereof. [Id. sec. 9.]

Art. 5944. **Coal scales.**—The owner or operator of every mine shall provide adequate and accurate scales for weighing coal; and it shall be the duty of the mine inspector to examine such scales; and, if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. [Id. sec. 10.]

Art. 5945. **Employes may employ check weighman.**—The employes in any mine in this state shall have the right to employ a check weighman at their own option and their own expense. [Id. sec. 11.]

Art. 5946. **Kind of oil to be used.**—No miner, or other person employed in a mine, shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Id. sec. 12.]

TITLE 94.**MINORS.****REMOVAL OF DISABILITIES OF.**

[For Suit by Next Friend, etc., see Articles 2167-2171.]

	Article.		Article.
When may have disabilities removed.....	5947	|	Shall be deemed of full age, when.....
Proceeding for removal.....	5948	|	Notice of proceeding, on whom served...5950

Article 5947. [3499] **When may have disabilities removed.**—Any minor in this state over the age of nineteen years, who may desire to have his disabilities as a minor removed, shall, by a bill or petition, present to the district court of the county where he may reside the cause or causes existing which make it advisable or advantageous to said minor to have his disabilities removed, which bill or petition shall be sworn to by some person cognizant of the facts set out in said bill or petition. [Acts of 1881, p. 16, sec. 1.]

Art. 5948. [3500] **Proceedings for removal.**—Said petition or bill shall be docketed on the trial docket of the court, and may be heard by the court, either in regular order or at any time during term time; and, if it shall appear to the court that the ground or causes set out are sufficient, and that it is advisable, or will be advantageous to such minor, in person or property, to have his disabilities as a minor removed, the court shall enter up a decree removing the disabilities of said minor, and cause it to be entered of record among the decrees and judgments of court. [Id. sec. 2.]

Art. 5949. [3501] **Shall be deemed of full age.**—After the removal of such disabilities of minority, the said minor shall be deemed and held, for all legal purposes, of full age, and shall be held responsible, and shall have all the privileges and advantages as if he were of full age, saving only that he shall not vote until he arrives at the full age of twenty-one years. [Id. sec. 3.]

Art. 5950. [3502] **Notice, on whom served.**—In all proceedings under this title, a copy of the petition shall be served upon the father of the minor, if living within the state, and, if he be dead, that fact shall be mentioned in the petition. If the father of the minor be not living, then a copy of the petition shall be served upon the county judge of the county in which the proceeding is instituted; and in all such cases the court hearing the application shall appoint a special guardian, whose duty it shall be, in connection with the county judge, to represent the true interests of the minor, as they shall understand it, in aiding or resisting the application of the minor. An allowance shall be made by the district judge presiding to the special guardian, which shall be paid out of the estate of the minor. [Id. sec. 4.]

TITLE 95.

NAME—CHANGE OF.

	Article.		Article.
Application for change of name to dis-	5951	Not to injure third parties.....	5953
trict court	5952	In divorce suits, name may be changed..	5954
Minors apply by guardian.....	5952		

Article 5951. [377] [336] **Application for change of name to district court.**—When any person shall desire to change either his Christian or surname, or both, and to adopt another name instead thereof, he shall file his application in the district court of the county of his residence, setting forth the causes which induce him to desire a change of name and to adopt another; whereupon the judge of the said court, if in his opinion it should be for the interest or benefit of the applicant to change his name and to adopt another, shall by a judgment of said court order that the adopted name of the party shall be substituted for the original name. [Act Feb. 5, 1856. P. D. 32.]

Art. 5952. [378] [337] **Minors by guardian.**—Whenever it shall be to the interest of any minor under the age of twenty-one years to change his name and to adopt another name instead of the original name, the guardian or next friend of said minor shall file his application in the district court of the county of the said minor's residence, setting forth the causes which induced the minor to desire to change the original name, accompanied with the full name which the minor wishes to adopt; whereupon the judge of said court, if the facts contained in the application shall satisfy him that it will be for the benefit and interest of the minor to change his name and to adopt another, shall grant authority to change his original name and to adopt another instead thereof. [Id. P. D. 33.]

Art. 5953. [379] [338] **Not to injure third persons.**—Whenever any person shall change his original name and adopt another instead thereof, it shall not operate so as to release the person from any responsibility which he may have incurred by the original name, nor shall it operate by said change of name to defeat or destroy any rights or property or action which the person had or held in his original name. [Id. P. D. 34.]

Art. 5954. [380] [339] **In divorce suits name may be changed.**—In suits for divorce, the court may, in its discretion, on the final disposition of the case, enter a decree changing the name of either party to said suit, if such change of name is specially prayed for in the pleadings of such party.

TITLE 96.

NAVIGATION DISTRICT.

Article.	Article.
Districts may include what.....	Bonds to be sold, how; limitations on sale.....
5955	5979
Application to commissioners' court to contain what; notice given.....	Chairman of navigation board to give bond.....
5956	5980
Navigation board in cities and towns with special charters.....	Expense and costs of proceedings to establish districts, how provided.....
5957	5981
Notice of hearing before navigation board.....	Taxes for interest and sinking fund.....
5958	5982
Proceedings to be recorded by county clerk.....	Available sinking fund, how invested.....
5959	5983
Duties imposed without compensation.....	Tax proceedings; tax assessors compensation under this chapter.....
5960	5984
Objections and contest on hearing of application.....	Compensation of tax collector; additional bond to be given.....
5961	5985
Finding of board at hearing.....	Delinquents; tax sales.....
5962	5986
Election; form of ballot.....	County treasurer; duties under this chapter.....
5963	5987
Election notice to contain, what.....	Treasurer to give bond; compensation of.....
5964	5988
Election to conform to general election law.....	Condemnation proceedings.....
5965	5989
Electors and form of oath before voting.....	May acquire property for navigation purposes.....
5966	5990
Commissioners' court to canvass returns and declare result of election; form of order.....	Commissioners may enter land to make surveys, etc.....
5967	5991
Navigation commissioners, how appointed; qualification, compensation, term of office.....	Work, how done; contracts, how let when U. S. government fails to act.....
5968	5992
Oath of commissioners.....	Bids for work, how awarded.....
5969	5993
Bond of commissioners.....	Contracts for work to be in writing and filed.....
5970	5994
Organization of commission; quorum.....	Contractor's bond.....
5971	5995
Engineers appointed; duties, compensation; U. S. government aid and cooperation; proceedings in case of.....	Work to be done under supervision of engineer; his report.....
5972	5996
Commissioners' court to issue bonds, when and how.....	Commissioners to inspect work; payment, how made.....
5973	5997
Bonds, when to issue; limitations as to assessments on valuation.....	Commissioners' report of work to contain, what.....
5974	5998
Form, denomination and term of bonds.....	Commissioners to employ assistant engineers and legal counsel; compensation of.....
5975	5999
Attorney general to certify to validity of bonds.....	Unlawful for officers to be interested in contracts.....
5976	6000
Effect of certificate of attorney general on bonds.....	Commission may sue and be sued.....
5977	6001
Record books for bonds to be kept; duties and fees of clerk.....	
5978	

Article 5955. **Districts may include, what.**—One or more districts may be established in the several counties of this state, to be known as navigation districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns and municipal corporations, or any parts thereof. Such navigation districts, when so established, may make improvement of rivers, bays, creeks, streams and canals running or flowing through such districts, or any part thereof, and may construct and maintain canals and waterways to permit of navigation or in aid thereof, may issue bonds in payment thereof as hereinafter provided. [Act 1909, p. 32, sec. 1.]

Art. 5956. **Application to commissioners' court to contain what; notice given.**—Upon the presentation to the county commissioners' court of any county of this state of a petition, accompanied by the deposit provided for in article 5981 of this chapter, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such resident property taxpayers of any proposed navigation district, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accom-

pany said petition of their said qualification; and the said commissioners' court shall, at the same session when said petition is presented, set same down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk of said court to give notice of the date and place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door of said county, and four of which shall be within the limits of said proposed navigation district, which said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such services one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Id. sec. 2.]

Art. 5957. Navigation boards in cities and towns with special charters.—In the event the boundaries of the proposed district shall include a city or cities, or a part or parts thereof, acting under special charter granted by the legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of the said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control. [Id.]

Art. 5958. Notice of hearing before navigation board.—In the event the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided. [Id.]

Art. 5959. Proceedings to be recorded by county clerk.—The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive. [Id.]

Art. 5960. Duties imposed without compensation.—The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein. [Id.]

Art. 5961. Objections and contest on hearing.—Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establish-

ment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided. [Id. sec. 3.]

Art. 5962. **Finding of board at hearing.**—If, at the hearing of said petition, it shall appear to the commissioners' court, or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and a hearing thereof shall be given and had as provided for in article 5956 of this chapter. If the court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition. [Id. sec. 4.]

Art. 5963. **Election; form of ballot.**—After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of a navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of said county shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters resident in said district whether or not such navigation district shall be created, and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run, and the rate of interest said bonds shall bear as said matters have been determined by the commissioners' court, or navigation board, as the case may be, under the provisions of article 5962 of this chapter. Said election to be held within such proposed navigation district at the

earliest legal time; at which election there shall be submitted the following propositions and none other: "For the navigation district, and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." Provided, that said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for state and county taxation. [Id.]

Art. 5964. **Election notice.**—Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the county court by posting notices thereof in four public places in such proposed navigation district, and one at the court house door of the county in which such district is situated, for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in article 5963 of this chapter, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election. [Id. sec. 6.]

Art. 5965. **Election to conform to general election law.**—The manner of conducting said election shall be governed by the election laws of the state of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." [Id. sec. 7.]

Art. 5966. **Electors; form of oath before voting.**—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of county, and that I am a resident property taxpayer of the proposed navigation district voted on at this election, and I have not voted before at this election." [Id. sec. 8.]

Art. 5967. **Commissioners' court to canvass returns; declare result.**—Immediately after the election, the presiding judge at each polling place shall make return of the result in the same manner as provided for in elections for state and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the commissioners' court at its next regular session, or special session called for the purpose of canvassing the vote, and the county commissioners shall, at such session, canvass the vote; and, if it be found that a two-thirds majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said navigation district, and shall enter same in the minutes of the court as follows:

"Commissioners' court of county, Texas term, A. D., in the matter of petition of and others, praying for the establishment of a navigation district, and issuance of bonds and levy of

taxes in said petition fully described and designated by the name of Navigation District. Be it known that an election called for that purpose in said district, held on the . . . day of, A. D. . . ., a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and the levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of Navigation District, and that the bonds of said district in the amount of dollars be issued, and a tax of cents on the hundred dollars of valuation, or so much thereof as may be necessary, be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes, same shall be increased until same is sufficient. The metes and bounds of said district, being as follows, to wit: [Giving the metes and bounds]. [Id. sec. 9.]

Art. 5968. Navigation commissioners, how appointed; qualifications; compensation, term of office.—After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy occur through the death or resignation or otherwise of any commissioner, the same shall be filled by the commissioners' court, or the navigation board, as the case may be. [Id. sec. 10.]

Art. 5969. Oath of commissioners.—Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the county clerk and preserved as a part of the records of said navigation district. [Id. sec. 11.]

Art. 5970. Bond of commissioners.—Before entering upon their duties, each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars, payable to the county judge for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties. [Id. sec. 12.]

Art. 5971. Organization; quorum.—Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. [Id. sec. 13.]

Art. 5972. Engineers appointed; duties; compensation; U. S. government aid; proceedings in case of.—Said commissioners shall have authority to employ a competent engineer, whose term of office shall be at the will of said commissioners, and who shall receive such compensation as may be determined by said commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or

estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed be of such nature as requires the permission or consent of the government of the United States, or any department or officer of the government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the government of the United States, or any proper officer or department thereof; and, in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the government of the United States, or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to co-operate and act with the government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof. [Id. sec. 14.]

Art. 5973. **Commissioners' court to issue bonds, when and how.**—When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court of the county in which such district is situated the amount of bonds necessary to be issued; and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided, that the amount of bonds shall not exceed the amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to the commissioners' court of the county in which such district is situated the necessity for an additional bond issue, stating the amount required and the purpose of the same, the rate of interest of said bonds and the time for which they are to run; whereupon the commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case the commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time, and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following propositions and none other: "For the issuance of bonds, and levy of tax in payment thereof;" "Against the issuance of bonds, and levy of tax in payment thereof." Notices of such election shall be given

as provided in article 5964 of this chapter; and the election shall be held and conducted in the manner provided in articles 5965 and 5966 of this chapter. Only those who are qualified property taxpaying voters, as provided in this chapter, shall vote at such election, and the returns of such election shall be canvassed as provided in article 5964 [5967] of this chapter. [Id. sec. 15.]

Art. 5974. Bonds, when issued; assessments, limitation of.—If, upon a canvass of the vote, the commissioners' court shall determine that a two-thirds majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and levy of tax; provided, however, that the outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for state and county taxation. [Id. sec. 15a.]

Art. 5975. Bonds, form of; denominations, term.—All bonds issued under the provisions of this chapter shall be issued in the name of the navigation district, signed by the county judge and attested by the clerk of the county court, with the seal of the commissioners' court affixed thereto, and such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at a rate not to exceed five per cent per annum. Such bonds and interest shall by their terms be made payable at the county treasurer's office of the county in which such navigation district is located, or elsewhere, as may be fixed by said navigation and canal commissioners; and no bonds shall be made payable more than forty years after date. [Id. sec. 16.]

Art. 5976. Attorney general to certify to validity of.—Any navigation district in the state of Texas desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, forward to the attorney general a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the attorney general may require; whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify. [Id. sec. 17.]

Art. 5977. Certificate of attorney general; effect of.—When said bonds have been examined by the attorney general, and his certificate issued to that effect, they shall be registered by the state comptroller, in a book to be kept for that purpose; and the certificate of the attorney general to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the attorney general, and after having been registered in the comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided.

that the only defense that can be offered against the validity of said bonds or coupons shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds or coupons as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. [Id. sec. 18.]

Art. 5978. **Record of bonds to be kept; duties and fees of clerk.**—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest, and date of issue, when due, where payable, and amount received for the same, and the annual rate per cent assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment. And said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bond holders or otherwise; and, upon the payment of any bond, an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the navigation district the same fees as provided by law for other like records. [Id. sec. 19.]

Art. 5979. **Bonds sold, how; limitations on sale.**—When such bonds have been registered, as provided for in the preceding article of this chapter, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district. [Id. sec. 20.]

Art. 5980. **Chairman to give bond.**—Before the said chairman of the navigation and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. [Id. sec. 21.]

Art. 5981. **Cost of proceedings to establish district; how provided.**—All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this chapter, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon same, then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county commissioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners' court, as hereinbefore provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to

the said proposed district up to and including the said election, and shall return the balance, if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney. [Id. sec. 22.]

Art. 5982. Taxes for interest and sinking fund.—Whenever any such navigation district bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property within said navigation district, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity. [Id. sec. 23.]

Art. 5983. Available sinking fund, how invested.—If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the attorney general of the state. [Id.]

Art. 5984. Tax proceedings; compensation of assessor.—The county commissioners' court shall provide all necessary additional books for the use of the assessor and collector of taxes and the county clerk for such navigation district, and charge the cost of same to the said navigation district. It shall be the duty of the county tax assessor, when ordered to do so by the commissioners' court, to assess all property within such navigation district and list the same for taxation in the books or rolls furnished him by said commissioners' court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval; and, if the said commissioners' court shall find said books or rolls correct, they shall approve the same, and, in all matters pertaining to the assessment of property for taxation in said district, the tax assessor and board of equalization of the county in which said district is located shall be authorized to act, and shall be governed by the laws of Texas for assessing and equalizing property for state and county taxes, except as herein provided. All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this state for the payment of state and county taxes; and all the penalties provided by the laws of this state for the non-payment of state and county taxes shall apply to all taxes authorized to be levied by this chapter. The tax assessor shall receive for said services such compensation as the said navigation and canal commissioners shall deem proper; provided, that said county assessor shall in no event be allowed more than he is now allowed by law for the like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all the property in such navigation districts, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. [Id. sec. 24.]

Art. 5985. Compensation of tax collector; additional bond required.—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the navigation district, and he shall be allowed no more compensation for the collection of said taxes than he is now allowed for the collection of other taxes, same to be fixed by the navigation and canal commissioners. The county commissioners' court shall require the tax collector of the county to give an additional bond or security in such a sum as they may deem proper and safe to secure the collection of said taxes; and, in all matters pertaining to the collection of taxes levied under the provisions of this chapter, the tax collector shall be authorized to act and shall be governed by the laws of Texas for the collection of state and county taxes,

except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. Should any collector of taxes fail or refuse to give such additional bond or security, as herein provided, when requested by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Id. sec. 25.]

Art. 5986. **Delinquents; tax sales.**—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as is now provided for the sale of property for the collection of state and county taxes; and, at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district. [Id. sec. 26.]

Art. 5987. **County treasurer; duties.**—It shall be the duty of the county treasurer to open an account with the navigation district, and to keep an accurate account of all moneys received by him belonging to such district and of all amounts paid out by him. He shall pay out no money, except upon a voucher signed by the chairman or any two of the said navigation and canal commissioners, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners, or the county commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [Id. sec. 27.]

Art. 5988. **Treasurer to give bond; compensation.**—The county treasurer shall execute a good and sufficient bond, payable to the navigation and canal commissioners of such district, in a sum equal to twice the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer of such district, which bond shall be approved by said commissioners, and the treasurer shall be allowed such compensation for his services as such treasurer as may be determined by said commissioners, not exceeding the same per cent as is now allowed by the county for his services as county treasurer. [Id. sec. 28.]

Art. 5989. **Condemnation proceedings.**—The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this chapter. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the state of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commissioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town. [Id. sec. 29.]

Art. 5990. **May acquire property for navigation purposes.**—The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improve-

ments contemplated by this chapter by gift, grant, purchase or condemnation proceedings. [Id. sec. 30.]

Art. 5991. **Commissioners may enter lands to make surveys.**—The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. [Id. sec. 31.]

Art. 5992. **Work, how done; contracts, how let when U. S. government fails to act.**—If the improvement or improvements be not carried out and performed by the government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the state of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said navigation district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each or one contract for all such improvements. [Id. sec. 32.]

Art. 5993. **Bids for work, how awarded.**—Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding article of this chapter, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any of such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners. [Id. sec. 33.]

Art. 5994. **Contracts to be in writing and filed.**—All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors, and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference. [Id. sec. 34.]

Art. 5995. **Contractor's bond.**—The party, firm, or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners. [Id. sec. 35.]

Art. 5996. **Work supervised by engineer; his report.**—All work contracted for by the navigation and canal commissioners, unless done under the supervision of the government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been so complied with. [Id. sec. 36.]

Art. 5997. Commissioners to inspect work; payment, how made.—The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this article shall affect the provisions of this chapter providing for the carrying out and performing of the improvement or improvements by the government of the United States. [Id. sec. 37.]

Art. 5998. Commissioners report of work to contain what.—The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter. [Id. sec. 38.]

Art. 5999. Commissioners may employ assistant engineers and legal counsel.—The commissioners are hereby authorized and empowered to employ such assistant engineers and other employes as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employes, and for all expense incident and pertaining to the navigation district. [Id.]

Art. 6000. Unlawful for officers to be interested in contracts.—Neither the county judge, nor any county commissioner, nor member of the navigation board, nor the navigation and canal commissioners or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district. [Id. sec. 40.]

Art. 6001. Commission may sue and be sued.—All navigation districts established under this chapter may, by and through the navigation and canal commissioners, sue and be sued in all courts of this state in the name of such navigation district; and all courts of this state shall take judicial notice of the establishment of all such districts. [Id. sec. 41.]

TITLE 97.

NOTARIES PUBLIC.

	Article.		Article.
Governor shall appoint.....	6002	Powers, etc.	6010
Bond and oath.....	6003	Shall keep book, etc.....	6011
To be removed, when.....	6004	May take depositions, etc.....	6012
Office to become vacant, when.....	6005	Copies of records, etc.....	6013
Seal, and what it shall contain.....	6006	Printed lists to be sent to county clerks	
Duty of county clerk when office be-		by secretary of state.....	6014
comes vacant.....	6007	To qualify, when.....	6015
Their powers.....	6008	Clerk shall notify secretary of state,	
Duty on vacating office.....	6009	when, etc.....	6016

Article 6002. [3503] **Governor shall appoint.**—There shall be appointed by the governor, by and with the advice and consent of the senate, a convenient number of notaries public for each organized county, and not to exceed six notaries public for each unorganized county in this state, who shall hold their offices for the term of two years from the first day of June after appointment at a regular session of the legislature; provided, that nothing herein shall be so construed as to exempt them from jury service. [Acts 1889, p. 89. Acts 1885, p. 1. Acts 1903, p. 158.]

Art. 6003. [3504] **Bond and oath.**—Every person who may be appointed a notary public, before he enters on the duties of his office, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk of the county court of his county, payable to the governor and his successors in office, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, with the certificate of the officer administering the same; said bond shall be recorded in the office of the clerk of the county court, and deposited in said office, and shall not be void on the first recovery, and may be sued on in the name of any party injured from time to time until the whole amount thereof has been recovered. [Acts of 1881, p. 94.]

Art. 6004. [3505] **To be removed, when.**—Every notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law. [Id. sec. 3.]

Art. 6005. [3506] **Office to become vacant, when.**—Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant. [Id. sec. 4.]

Art. 6006. [3507] **Seal, and what it shall contain.**—Every notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of, Texas," around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith; and any notary public or other officer required by law to keep and use a seal, who shall us, in attesting any instrument any seal not such as is required by law to keep and use for that purpose, or shall fail or refuse to deliver to the county clerk of his county his seal, record books and all public papers pertaining to his office, or any of them, in case of his resignation or removal from the county, shall be punished as provided in the Penal Code. [Id. sec. 5.]

Art. 6007. [3508] **Duty of county clerk when office becomes vacant.**—Whenever the office of notary public shall be vacated by resignation, removal or death, it shall be the duty of the county clerk of the county where said notary resides to obtain and deposit in his office the seal, record books and all

public papers belonging in the office of said notary; provided, that the seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county. [Id. sec. 6.]

Art. 6008. [3509] **Their powers.**—Notaries public may take acknowledgments or proof of all instruments of writing in the manner provided by law, to entitle them to registration, and give certificates of all such acknowledgments and proof under their hand and official seals; they may take the examination and acknowledgments of married women to all deeds and instruments of writing, conveying or charging their separate property, of their interest in the homestead, in the manner provided by law. [Id. sec. 7.]

Art. 6009. [3510] **Duty on vacating office.**—Whenever any notary public shall vacate his office in any manner, his record books and all public papers in his office shall be deposited with the clerk of the county court of his county.

Art. 6010. [3511] **Shall have power to administer oaths, etc.**—Every notary public shall have power to administer oaths and give certificates thereof under his hand and official seal. He may take the proof or acknowledgments of all instruments of writing relating to commerce and navigation, and also letters of attorney and other instruments of writing, make declarations and protest, and certify under his hand and seal the truth of the matters or things done by virtue of his office. [Id. sec. 8.]

Art. 6011. [3512] **Shall keep a well-bound book.**—Every notary public shall procure and keep a well-bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee thereof shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered, shall be an original public record, and the same shall be open to inspection by any citizen at all reasonable times; and such notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon. [Id. sec. 9.]

Art. 6012. [3513] **May take depositions.**—Notaries public shall have power to take the depositions of witnesses in the manner prescribed by law; to attest the oath of any person to a petition or answer in any suit, and the same when so attested shall be valid in all the courts of this state. [Id. sec. 10.]

Art. 6013. [3514] **Copies of records.**—Copies of all records, declarations, protests and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made. [Id. sec. 11.]

Art. 6014. [3515] **Printed list to be furnished by secretary of state.**—When notaries public have been appointed by the governor and shall have qualified, it shall be the duty of the secretary of state to furnish to the clerks of the county courts a printed list of all notaries public so appointed and qualified; and it shall be the duty of said clerks to preserve said list for public inspection and post a copy thereof on the court house door. [Id. sec. 12.]

Art. 6015. [3516] **To qualify, when.**—When a notary is appointed, the secretary of state shall forward the commission to the clerk of the county court of the county where the party resides; and the said clerk shall immediately notify said party to appear before him within ten days, pay for his commission, and qualify according to law; provided, that, if said party be

absent from the county, or sick at the time of reception of said commission by the clerk, then he shall have ten days from his return to said county in which to appear and qualify. [Id. sec. 13.]

Art. 6016. [3517] **Clerk shall notify secretary of state.**—The clerk receiving the commission shall indorse thereon the day on which notice was given, and, if the party pay the state fee for commission and qualify according to law, the said clerk shall notify the secretary of state of his qualification, giving date of same, and remit the fee to said officer; but if the party fails to qualify and pay the fee within the limited time the appointment shall be void, and the clerk shall certify on the back of the commission that the party has failed to qualify, and return it to the secretary of state. [Id.]

TITLE 98.

OFFICERS—REMOVAL OF.

<p>Chapter. 1. Removal of State and Certain District Officers. 2. Removal of County and Certain District Officers.</p>	<p>Chapter. 3. Removal of Certain Other Officers. 4. Removal of Mayors and Aldermen. 5. Removal of Officers Guilty of Nepotism.</p>
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CHAPTER ONE.

REMOVAL OF STATE AND CERTAIN DISTRICT OFFICERS.

<p>State and district officers removable by impeachment 6017 Judges of supreme, appellate and district courts, and commissioner of insurance, removed by address 6018 Cause for removal to be set out 6019 Notice to be given 6020 Vote, how taken 6021 District judges removed by supreme court 6022</p>	<p>Article. Preceding article shall apply to the criminal district judge 6023 Jurisdiction of supreme court in such cases 6024 Presentment shall be founded upon what 6025 Supreme court may issue process, etc. 6026 State officers appointed by the governor removed, how 6027</p>
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Article 6017. [3518] **State and district officers removable by impeachment.**—The governor, lieutenant-governor, attorney general, treasurer, commissioner of the general land office, comptroller, commissioner of agriculture, the commissioner of insurance and banking and the judges of the supreme court, court of criminal appeals, courts of civil appeals and district courts, and the judges of the criminal district court of Galveston and Harris counties and of Dallas county, shall be removable from office by impeachment in the manner provided in the constitution. [Const., art. 15, secs. 1, 2. Act Aug. 21, 1876, p. 226, sec. 26.]

Art. 6018. [3519] **Judges of supreme, appellate and district courts, and commissioner of agriculture, etc., removed by address.**—The judges of the supreme court, court of criminal appeals, courts of civil appeals, district courts, the judge of the criminal district court of Galveston and Harris counties and of Dallas county, and the commissioner of agriculture, and commissioner of insurance and banking, shall be removed from office by the governor on the address of two-thirds of each house of the legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause, which shall not be sufficient ground for impeachment. [Const., art. 15, secs. 7, 8. Id.]

Art. 6019. [3520] **Cause for removal to be set out.**—The cause for such removal shall be stated at length in such address, and entered on the journals of each house. [Id.]

Art. 6020. [3521] **Notice to be given.**—The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. [Id.]

Art. 6021. [3522] **Vote, how taken.**—In all such cases, the vote shall be taken by yeas and nays and entered on the journals of each house respectively. [Id.]

Art. 6022. [3523] **District judges removed by supreme court.**—Any judge of the district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail

to execute in a reasonable measure the business of his court, may be removed by the supreme court. [Const., art. 15, sec. 6.]

Art. 6023. [3524] **Preceding article shall apply to the criminal district judge.**—The provisions of the preceding article shall also apply to the criminal district judge of the counties of Galveston and Harris and the criminal district judge of Dallas county. [R. S. 1879.]

Art. 6024. [3525] **Jurisdiction of supreme court in such cases.**—The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing, upon the oaths taken before some judge of a court of record of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the courts of civil appeals. [Id.]

Art. 6025. [3526] **Presentment shall be founded upon what.**—The presentment provided for in the preceding article shall be founded either upon the knowledge of the person making it, or upon the written oaths, as to facts, of credible witnesses. [Id.]

Art. 6026. [3527] **Supreme court may issue process, etc.**—The supreme court may issue all needful process, and prescribe all needful rules to give effect to the four preceding articles, and such cases shall have precedence and be tried as soon as practicable. [Id.]

Art. 6027. [3528] **State officers appointed by the governor, how removed.**—All state officers appointed by the governor, or elected by the legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the legislature thereafter. [Id.]

CHAPTER TWO.

REMOVAL OF COUNTY AND CERTAIN DISTRICT OFFICERS.

Article.	Article.
Certain convictions work a removal from office.....6028	General issues alone submitted—verdict.....6043
Appeal supersedes order of removal.....6029	Citation, how and when to issue.....6044
Officers removable by the district judge, etc.....6030	Application made in vacation.....6045
Causes to be set forth in writing.....6031	Citation shall issue.....6046
"Incompetency," what is.....6032	Time to answer.....6047
"Official misconduct," what is.....6033	How trial shall be conducted.....6048
Two preceding articles apply to mayors and aldermen.....6034	May be suspended from office, how.....6049
"Habitual drunkenness," what is.....6035	Appeal or writ of error.....6050
Further defined.....6036	Bond for costs, when.....6051
"Drunkenness not habitual," defined.....6037	Relator to give security for costs.....6052
Must be three times convicted.....6038	Against district attorney, where commenced.....6053
Three convictions sufficient ground for removal, etc.....6039	Criminal district attorney included in district attorney.....6054
Failure to give bond ground for removal.....6040	Not to be removed for acts done prior to his election.....6055
Proceedings, how commenced and by whom.....6041	Appeal and writ of error.....6056
Requisites of petition.....6042	Mandate, when to issue.....6057

Article 6028. [3529] **Certain convictions work a removal from office.**—All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted; and such judgment of conviction shall, in every instance, embody within it an order removing such officer. [R. S. 1879.]

Art. 6029. [3530] **Appeal supersedes order of removal.**—When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment should deem it to the public interest to suspend such officer from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided in this chapter. [Id.]

Art. 6030. [3531] **Officer's removal by the district judge.**—All district attorneys, county judges, commissioners, and county attorneys, clerks of the district and county courts, and single clerks in counties where one clerk discharges the duties of district and county clerks, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace, and all other county officers now or hereafter existing by authority either of the constitution or laws, may be removed from office by the judges of the district court for incompetency, official misconduct, habitual drunkenness, or drunkenness not amounting to habitual drunkenness, as hereafter defined in this chapter. [Const., art. 5, sec. 24; art. 15, sec. 7. R. S. 1879.]

Art. 6031. [3532] **Causes to be set forth in writing.**—In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury. [Const., art. 5, sec. 24. R. S. 1879.]

Art. 6032. [3533] **"Incompetency," what is.**—By "incompetency," as used in this title, is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. [1 Bish. Cr. L., secs. 230, 237, 240. R. S. 1879.]

Art. 6033. [3534] **"Official misconduct," what is.**—By "official misconduct," as used in this title with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws; and under this head of official misconduct are included any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law. [Trigg v. State, T. L. J., June 26, 1878; 2 Bouv. Dic. in verb. Bishop supra. R. S. 1879.]

Art. 6034. [3535] **Two preceding articles apply to mayor and aldermen.**—The two preceding articles shall apply also to mayors and aldermen, whose removal is hereafter provided for in this title. [R. S. 1879.]

Art. 6035. [3536] **"Habitual drunkenness," what is.**—By "habitual drunkenness," as used in this title in relation to county officers, is meant the frequent and customary use to excess of intoxicating drinks, resulting in that condition of the body and the mind produced by the excessive use of intoxicating liquors, spirituous, vinous or malt, confirmed by habit. [Trigg v. State, Bish. Cr. Law, ch. 15, secs. 298, 305. R. S. 1879.]

Art. 6036. [3537] **Further defined.**—In order to constitute habitual drunkenness under this title, it shall not be necessary to show that the officer is incapable of discharging the duties of his office, or of taking care of himself; but the proof of the fact of habitual drunkenness to the satisfaction of the judge and jury shall be sufficient cause of removal without reference to his capacity or incapacity to discharge the duties of his office. [Trigg v. State, T. L. J., June 26, 1876. Act Aug. 16, 1876, p. 135, sec. 3.]

Art. 6037. [3538] **"Drunkenness not habitual" defined.**—By "drunkenness not amounting to habitual drunkenness," as named in this chapter in connection with county officers, is meant the immoderate use of any spirit-

uous, vinous or malt liquors to such a degree as to incapacitate the officer for the time being or permanently from the discharge of the duties of his office. [Trigg v. State. Act July 31, 1876, p. 76, secs. 1, 4.]

Art. 6038. [3539] **Must be three times convicted.**—No county officer shall be removed from office on the charge of drunkenness, as defined in the preceding article, until he shall have been three times convicted of such offense of drunkenness. [Act July 21, 1876, p. 76, sec. 4.]

Art. 6039. [3540] **Three convictions sufficient ground for removal, etc.**—The fact of a third conviction, as provided in the preceding article, shall be sufficient ground for his removal from office by the district judge, on the matter being brought before him in the manner provided in this chapter for bringing before him other causes of removal. [R. S. 1879.]

Art. 6040. [3541] **Failure to give bond ground for removal.**—All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court. [Id.]

Art. 6041. [3542] **Proceedings, how commenced, and by whom.**—The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resides, by a citizen of the state who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county. [Id.]

Art. 6042. [3543] **Requisites of the petition.**—The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall, in every instance, be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same. [Id.]

Art. 6043. [3544] **General issue alone submitted—verdict.**—In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained. [Trigg v. State, T. L. J., June 26, 1876. R. S. 1879.]

Art. 6044. [3545] **Citation, how and when to issue.**—After the filing of such petition, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. [Smith v. Brennan, T. L. J., July 24, 1878, p. 373. R. S. 1879.]

Art. 6045. [3546] **Application made in vacation.**—If the application for said citation is made to the judge in vacation, he shall indorse his action,

whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. [R. S. 1879.]

Art. 6046. [3547] **Citation shall issue.**—Upon the order being granted, and, if granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. [Id.]

Art. 6047. [3548] **Time to answer.**—In no case whatever shall the period fixed by the judge in his order, in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other civil suits. [Id.]

Art. 6048. [3549] **How trial shall be conducted.**—The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases. [Id.]

Art. 6049. [3550] **May be suspended from office, how.**—At any time after the issuance of the order for the citation, as herein provided, the district judge may, if he sees fit, suspend temporarily from office the officer against whom the petition is filed, and appoint for the time being some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, on such conditions as the judge may see fit to impose, to pay the person so suspended from office all damages and costs that he may sustain by reason of such suspension from office, in case it should appear that the cause or causes of removal are insufficient or untrue. [Id.]

Art. 6050. [3551] **Appeal or writ of error will lie.**—An appeal or writ of error to the court of civil appeals may be sued out by either party from the final judgment in these cases as in other civil cases. [Id.]

Art. 6051. [3552] **Bond for costs, when.**—If the party has not been temporarily suspended from office, no other bond, when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and courts of civil appeals. [Id.]

Art. 6052. [3553] **Relator to give security for costs.**—On the order for citation being granted, the clerk of the district court will be authorized to demand of the relator security for costs as in other cases. [Id.]

Art. 6053. [3554] **Against district attorneys, where commenced.**—Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district. [Id.]

Art. 6054. [3555] **Criminal district attorney included in district attorney.**—Under the name of "district attorney," as used in this chapter, is included the district attorney for the criminal district court of Galveston and Harris counties; and the judge of said criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the state have in reference to all county officers. [Id.]

Art. 6055. [3556] **Not to be removed for acts done prior to his election.**—No officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office. [Id.]

Art. 6056. [3557] **Appeal or writ of error.**—In these cases, an appeal may be taken or writ of error be made returnable to the court of civil appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. [Amend. 1895, Sen. Jour., p. 480.]

Art. 6057. [3558] **Mandate when to issue.**—When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered. [R. S. 1879.]

CHAPTER THREE.

REMOVAL OF CERTAIN OTHER OFFICERS.

	Article.		Article.
Notary public, how removed.....	6058	Removal of clerk of court of appeals.....	6062
Order of removal to be embodied in judgment	6059	Removal of clerk of district court.....	6063
Public weigher, how removed.....	6060	Order of removal to be embodied in judgment	6064
Removal of clerk of supreme court.....	6061		

Article 6058. [3559] **Notary public, how removed.**—Any notary public who shall be guilty of any wilful neglect of duty or official misconduct may be indicted by the grand jury, and, on conviction, shall be removed from office. [Act June 24, 1876, p. 29, sec. 4.]

Art. 6059. [3560] **Order of removal to be embodied in judgment.**—The order for his removal shall in each instance be embodied in the judgment of the court.

Art. 6060. [3561] **Public weigher, how removed.**—Any public weigher who shall be guilty of official misconduct, or who is incompetent, shall be removed by the governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. [Act March 17, 1875, p. 162, sec. 1. See acts 1879, ch. 108, sec. 1.]

Art. 6061. [3562] **Clerk supreme court, how removed.**—The clerk of the supreme court shall be subject to removal by said court for good cause entered of record on the minutes of said court. [Const., art. 5, sec. 4.]

Art. 6062. [3563] **Clerks of courts of appeals, how removed.**—The clerks of the court of criminal appeals, and courts of civil appeals, shall be subject to removal by their respective courts for good cause entered on the minutes of the court. [Const., art. 5, sec. 6; amend. 1895, Sen. Jour., p. 480.]

Art. 6063. [3564] **Clerk of district court, how removed.**—The clerk of the district court may also be removed by information or by indictment of a grand jury and conviction by a petit jury. [Const., art. 5, sec. 9.]

Art. 6064. [3565] **Order of removal to be embodied in judgment.**—When so removed, the order for his removal shall be embodied in the judgment of conviction. [R. S. 1879.]

CHAPTER FOUR.

REMOVAL OF MAYORS AND ALDERMEN.

	Article.		Article.
Causes of removal.....	6065	Rules which govern proceedings and trial	6070
Complaint against an alderman and proceedings thereon	6066	Judgment	6071
Who shall try an alderman.....	6067	Officer removed ineligible for two years.....	6072
Proceedings against a mayor.....	6068	This chapter does not apply, when.....	6073
Who shall try a mayor.....	6069		

Article 6065. [3566] **Causes of removal.**—The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any of the ordinances of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. [Act March 6, 1875, p. 63, secs. 1, 2.]

Art. 6066. [3567] **Complaint against an alderman and proceedings thereon.**—When complaint in writing and under oath, charging any alderman with any act or omission which may be cause for his removal, shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. [Id. sec. 2.]

Art. 6067. [3568] **Who shall try an alderman.**—The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case. [Id.]

Art. 6068. [3569] **Proceedings against a mayor.**—When any complaint, such as is prescribed in article 6066, is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city, who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for the trial of the case, and notify the mayor and other aldermen to appear on such day. [Id. sec. 3.]

Art. 6069. [3570] **Who shall try a mayor.**—A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial. [Id.]

Art. 6070. [3571] **Rules which govern proceedings and trial.**—The rules governing other proceedings and trials in the courts of justices of the peace, mayors and recorders shall govern in the cases provided for in this chapter.

Art. 6071. [3572] **Judgment.**—If two-thirds of the members of the court present, upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, it shall be the duty of the presiding officer of the court to enter judgment, removing such mayor or alderman, as the case may be, from office, and declaring such office vacant; but, should the party charged be found not guilty, judgment shall be entered accordingly. [Id. sec. 5.]

Art. 6072. [3573] **Officer removed ineligible for two years.**—Any officer removed under the provisions of this chapter shall not be eligible to reelection to the same office for two years from the date of such removal. [Id.]

Art. 6073. [3574] **This chapter does not apply, when.**—The provisions of this chapter shall not apply to any town or city, except such as are incorporated under the general laws of this state. [Id.]

CHAPTER FIVE.

REMOVAL OF OFFICERS GUILTY OF NEPOTISM.

Officers guilty of nepotism to be re-	Article.		Article.
moved from office.....	6074	Suits by attorney general; venue.....	6076
Removals; proceedings.....	6075	Attorney general to be assisted by dis-	
		trict or county attorney.....	6077

Article 6074. **Officers guilty of nepotism; removal of.**—In addition to any other penalty imposed by law, any person who shall violate any of the provisions of the law contained in the Penal Code relating to the offense known as nepotism, and the inhibited acts connected therewith, shall be removed from his office, clerkship, employment or duty, as therein mentioned. [Acts 1909, p. 85, sec. 6, par. 2.]

Art. 6075. **Removals; proceedings.**—Such removal from office shall be made in conformity to the provisions of the constitution of this state concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. [Id.]

Art. 6076. **Suits by attorney general; venue.**—All quo warranto proceedings mentioned shall be instituted by the attorney general in one of the district courts of Travis county, or in the district court of the county in which the defendant may reside; and concurrent jurisdiction in such suits is hereby conferred upon such courts. [Id.]

Art. 6077. **Attorney general to be assisted by district or county attorney.**—In such suits, the district attorney, or the county attorney of the county in which such suit may be filed, shall assist the attorney general whenever he shall so direct. [Id.]

TITLE 99.

OFFICIAL BONDS.

Chapter.	Chapter.
1. The Record of Official Bonds and the Relief of Sureties Thereon.	2. Of Obtaining New Sureties on Official Bonds.

CHAPTER ONE.

THE RECORD OF OFFICIAL BONDS AND THE RELIEF OF SURETIES THEREON.

Article.	Article.
Official bonds to be recorded.....6078	Must give new bond.....6081
Sureties on may be relieved.....6079	Discharge of sureties.....6082
Officer shall cease to act, etc.....6080	

Article 6078. [3575] **Official bonds to be recorded.**—All official bonds of county officers that are required by law to be approved by the commissioners' court, and which have been so approved, shall be recorded by the clerk of the county court in a book kept for that purpose.

Art. 6079. [3576] **Sureties on, to be relieved.**—Any surety on any official bond of any county officer may apply to the commissioners' court of the county to be relieved from his bond, and the clerk of the county court shall thereupon issue a notice to said officer, and a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county. [Act Aug. 12, 1876, p. 132, sec. 1.]

Art. 6080. [3577] **Officer shall cease to act, etc.**—Upon the service of such notice, said officer so notified shall cease to exercise the functions of his office, except to preserve any records or property committed to his charge, and in case of sheriffs and constables, to keep prisoners, preserve the peace and execute warrants for the arrest of persons charged with offenses. [Id.]

Art. 6081. [3578] **Must give new bond.**—Said officer so notified shall give a new bond within twenty days from the time of receiving such notice, or his office shall become vacant. [Id.]

Art. 6082. [3579] **Discharge of sureties.**—If a new bond be given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of such new bond. [Id. sec. 2.]

CHAPTER TWO.

OF OBTAINING NEW SURETIES ON OFFICIAL BONDS.

	Article.		Article.
Commissioners' court may require new	new	Officer to be cited.....	6084
bond, etc.	6083	No appeal allowed.....	6085

Article 6083. [3580] **Commissioners' court may require new bond, etc.**—In all cases where by law the commissioners' court is required to approve the bond of any of the officers of their several counties, it shall be their duty, whenever they shall become satisfied that said bonds from any cause are insufficient, to require new bonds or additional sureties to be given, as the case may require. [Act July 22, 1876, p. 54, sec. 17.]

Art. 6084. [3581] **Officer to be cited.**—The said court shall cause the officer whose bond is complained of to be cited to appear at a term of their court not less than five days after service of said citation, and shall take such action thereon as they may deem best for the interest of the state and county. [Id.]

Art. 6085. [3582] **No appeal allowed.**—From the decision of the commissioners' court in reference to said official bond no appeal shall be allowed, and their decision shall be final and conclusive.

TITLE 100.

PARDON ADVISERS—BOARD OF.

Chapter.		Chapter.
1. Powers and Duties of Board.	|	2. Paroles, Etc.

CHAPTER ONE.

POWERS AND DUTIES OF BOARD.

	Article.		Article.
Governor to appoint.....	6086	Shall examine applications for pardon,	
Shall keep record.....	6087	etc.	6088

Article 6086. [3582a] **Governor shall appoint.**—The governor is hereby authorized to appoint two qualified voters of the state of Texas, and who shall perform such duties as may be directed by him consistent with the constitution, as he may deem necessary in disposing of all applications for pardon. The said two voters shall be known as the board of pardon advisers, and shall be paid out of any money in the treasury not otherwise appropriated a salary of two thousand dollars each per annum on monthly vouchers approved by the governor. [Amended acts 1905, p. 68.]

Art. 6087. **Shall keep record.**—Said board shall be required to keep a record, in which will be entered every case sent it by the governor, giving the docket number of the convict, his name, when and where convicted, his sentence, his offense, when received from the governor, the action taken by said board, and the date of said action. [Id. sec. 2.]

Art. 6088. **Shall examine applications for pardons, etc.**—Said board shall be given a room in the capitol, properly furnished with necessary furniture and file cases, and provided with such stationery, letter books and other appliances which may be necessary for the speedy and proper transaction and dispatch of the business for which it is organized. In addition to the thorough examination of each application which the governor may refer to said board, and reporting its recommendation thereon to him, it shall perform any other work in connection with said business the governor may direct; and said board shall spend such time each year as may be necessary in personally looking into the condition of such convicts as it may desire, or as may be designated by either the governor, the superintendent of penitentiaries, or either of his assistants, or by the prison physician, or either of the commissioners, giving special attention to the cases of those of long service, who may be thus designated, and who have no means or facilities for getting a proper petition before the governor, to the end that the board may have before it such data as will enable it to judge the condition of each. All cases shall be taken up, considered and acted upon by said board in the regular order of reference by the governor, except when it appears to said board there is extraordinary emergency in any case. [Id. sec. 3.]

CHAPTER TWO.

PAROLES, ETC.

	Article.		Article.
Convicts paroled, when.....	6089	Same	6093
Under control of prison commissioners.....	6090	Convicts declared delinquent, when.....	6094
Must be recommended by whom.....	6091	Entitled to discharge.....	6095
Law does not apply to whom.....	6092		

Article 6089. **Convicts paroled, when.**—The prison commissioners and the board of pardons shall have power to make and establish rules and regulations, subject to the approval of the governor, under which meritorious prisoners, who are now or hereafter may be imprisoned under a sentence to penal servitude, and who may have served not less than one-fourth of their respective terms of imprisonment, may be allowed to go upon parole outside the buildings and jurisdiction of the penitentiary authorities, subject to the exceptions hereinafter contained; provided, that in no case shall a convict be paroled until he shall have served two years of his term. [Acts 1905, p. 33, sec. 1.]

Art. 6090. **Under control of prison commissioners.**—While on parole, such prisoners shall remain under control of the prison commissioners and subject at any time to be taken back within physical possession and control of said board, as under their original sentence. And full power to make and establish rules and regulations for the re-taking and re-imprisoning of any convict so upon parole is hereby conferred upon the said prison commissioners, subject to the approval of the governor. And all orders and warrants issued thereunder shall be a sufficient warrant for all officers named therein to return to actual custody any paroled convict, and it is hereby made the duty of all officers to execute such orders as ordinary criminal process. [Id. sec. 2.]

Art. 6091. **Must be recommended by whom.**—No convict confined in the Texas penitentiaries shall be considered eligible for parole, and no application for parole shall be considered by the prison commissioners until such prisoner is recommended as worthy of such consideration by the superintendent, assistant superintendent, and chaplain of the penitentiaries, and, before consideration by the prison commissioners, notice of such recommendation shall be published in a newspaper in the county from which such prisoner was sentenced, and, if none be there published, then in the county whose county site is nearest thereto, provided the expense of such publication shall not exceed one dollar; and in no case shall any prisoner be paroled, unless there is in the judgment of the prison commissioners reasonable ground to believe that he will, if released, live and remain at liberty, without violating the law, and that his release is not incompatible with the welfare of society; and such judgment shall be based upon the record and character of the prisoner established in prison, and his general reputation for honesty and peace prior to conviction. And no petition or other form of application for the release of any prisoner shall be entertained by the said commission, and no attorney or outside persons of any kind shall be allowed to appear before the prison commissioners as applicants for the parole of a prisoner. But these requirements shall not prevent the said prison commissioners from making such inquiries as they may deem desirable in regard to the previous history or environment of such prisoner, and in regard to his probable surroundings if paroled; but such inquiries shall be instituted by the prison commissioners, superintendent, and assistant superintendent, board of pardons, and all such information thus received shall be considered and treated as confidential. [Id. sec. 3.]

Art. 6092. **Law does not apply to whom.**—The provisions of this chapter shall not apply to any convict, unless it be his first conviction for a felony. [Id. sec. 4.]

Art. 6093. **Same.**—The provisions of this chapter shall apply to all convicts, except those convicted of rape, robbery by the use of firearms or any deadly weapon, and murder; provided, that any person convicted of murder in the first degree, and robbery by use of firearms or any deadly weapon, may be paroled after serving fifteen years without commutation for good behavior; and any person convicted of murder in the second degree may be paroled after serving ten years without commutation for good behavior. [Id.]

Art. 6094. **Convicts declared delinquent, when.**—Any prisoner violating the conditions of his parole, as prescribed by rules issued by said commissioners, when by a formal order entered in the proceedings of same, or issued by the superintendent of penitentiaries, he is declared delinquent, shall thereafter be treated as an escaped prisoner, owing service to the state, and shall be liable when arrested to serve out the unexpired period, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served. Any prisoner at large upon parole committing a fresh crime, and, upon conviction thereof, being sentenced anew to the penitentiary, shall be subject to serve a second sentence after the first sentence is served or annulled, to commence from the date of termination of his liability upon the first or former sentence. [Id.]

Art. 6095. **Entitled to discharge.**—When a convict who has been paroled shall have complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, he shall, upon a written or printed discharge from the superintendent and prison commissioners, setting forth these facts, be entitled to a restoration of his citizenship by the governor of the state of Texas. [Id.]

TITLE 101.**PARTITION.**

[See "Estates of Decedents," Title 52, Chapter 26.]

Chapter.

1. Partition of Real Estate.
2. Partition of Personal Property.

Chapter.

3. Miscellaneous Provisions.

CHAPTER ONE.**PARTITION OF REAL ESTATE.**

Article.	Article.
Joint owner may compel partition.....6096	May cause land to be surveyed.....6107
Petition for, and what it shall contain.....6097	Shall divide real estate, how.....6108
Citation and service.....6098	Shall allot shares.....6109
Citation and service when defendant is unknown.....6099	Report of commissioners, and what it shall contain.....6110
Court shall determine, what.....6100	When property is incapable of division, same shall be sold.....6111
Decree of the court, and appointment of commissioners.....6101	Objections may be filed to report, etc...6112
Writ of partition.....6102	Partition not prejudicial to reversioner, etc.....6113
Service of writ of partition.....6103	Each party shall hold in severalty, sub- ject, etc.....6114
Court may also appoint surveyor.....6104	Decree of court shall vest title.....6115
Writ returnable when, and return there- of.....6105	
Commissioner shall proceed to partition, etc.....6106	

Article 6096. [3606] **Joint owner may compel partition.**—Any joint owner or claimant of any real estate, or of any interest therein, may compel a partition thereof between the other joint owners or claimants thereof, in the manner provided in the succeeding articles of this chapter. [R. S. 1879.]

Art. 6097. [3607] **Petition for and what it shall state.**—Such joint owner or claimant may file his petition in the district court of the county in which the real estate sought to be partitioned, or a portion thereof, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such real estate.

2. The share or interest which the plaintiff and the other joint owners, or claimants, of said real estate own or claim so far as known to the plaintiff.

3. The real estate sought to be partitioned shall be described in such manner as that the same may be distinguished from any other real estate, and the estimated value thereof stated. [Id.]

Art. 6098. [3608] **Citation and service.**—Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the same manner and for the same length of time provided for the service of citation in other cases. [Id.]

Art. 6099. [3609] **Citation and service where defendant is unknown.**—If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person or persons unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding said officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a

newspaper published in said county, but if not, then in the nearest county where a newspaper is published, for four successive weeks previous to the return day of such process; when such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication; and it shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto; and the judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. [Acts of 1879, p. 46.]

Art. 6100. [3610] Court shall determine, what.—Upon the hearing of the cause, the court shall determine:

1. The share or interest of each of the joint owners or claimants in the real estate sought to be divided.

2. All questions of law or equity affecting the title to such real estate, or any part thereof, which may arise. [R. S. 1879.]

Art. 6101. [3611] Decree of the court and appointment of commissioners.—The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole of such property, or any part thereof, is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act. [R. S. 1879. Amended Act 1905, p. 95.]

Art. 6102. [3612] Writ of partition.—The clerk shall issue a writ of partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition. [R. S. 1879.]

Art. 6103. [3613] Service of writ of partition.—The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court. [Id.]

Art. 6104. [3614] Court may also appoint surveyor.—The court may also, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him in the same manner as upon a commissioner. [Id.]

Art. 6105. [3615] Writ returnable, when, and return thereof.—A writ of partition, unless otherwise directed by the court, shall be made returnable to the first day of the next term of the court from whence the same issues; and the officer serving the same shall indorse thereon the time and manner of such service. [Id.]

Art. 6106. [3616] Commissioners shall proceed to partition, etc.—The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of this chapter. [Id.]

Art. 6107. [3617] May cause land to be surveyed.—Should the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels. [Id.]

Art. 6108. [3618] **Shall divide real estate, how.**—The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. [Id.]

Art. 6109. [3619] **Shall allot shares.**—The commissioners shall then proceed by lot to allot and set apart to each of the parties entitled one of said shares, as determined by the decrees of the court. [Id.]

Art. 6110. [3620] **Report of commissioners and what it shall contain.**—When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

1. The real estate divided, describing the same.
2. The several tracts or parcels into which the same was divided by them, describing particularly each of such tracts or parcels.
3. The number of shares and the land which constitutes each share, and the estimated value of each share.
4. The allotment of each share.
5. The report shall be accompanied by such field-notes and maps as may be necessary to make the same intelligible. [Id.]

Art. 6111. [3621] **When property is incapable of division, same shall be sold, etc.**—Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, can not be made, it shall order a sale of so much of such real estate as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution, or by private sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests. [R. S. 1879. Amended Act 1905, p. 95.]

Art. 6112. [3622] **Objections may be filed to report, etc.**—Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases; and, if the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the court, and the same proceedings had as in the first instance. [R. S. 1879.]

Art. 6113. [3623] **Partition not prejudicial to reversion, etc.**—When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates. [Id.]

Art. 6114. [3624] **Each party shall hold in severalty, subject, etc.**—When any partition is made, each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made; and no warranty, lease or right whatsoever shall be impaired or affected by such partition. [Id.]

Art. 6115. [3625] **Decree of court shall vest title.**—The decree of the court confirming the report of the commissioners in partition, when a partition has been made, shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them. [Ross v. Armstrong, 25 Texas Sup., p. 355. R. S. 1879.]

CHAPTER TWO.

PARTITION OF PERSONAL PROPERTY.

	Article.		Article.
Part owner may compel partition.....	6116	|	Decree of court, executed how.....
Suit shall be commenced in what court.....	6117		Property shall be sold, when.....
Court shall ascertain, what.....	6118		How sold, and partition of proceeds....
			6119 6120 6121

Article 6116. [3626] **Part owners may compel partition.**—Part owners of personal property may be compelled to make partition between them in the manner provided in the succeeding articles of this chapter. [Act Dec. 24, 1851. P. D. 4711.]

Art. 6117. [3627] **Suit shall be commenced, in what court.**—Suit for partition shall be commenced in the court having jurisdiction of the value of such property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases. [Id.]

Art. 6118. [3628] **Court shall ascertain, what.**—The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury. [Id. P. D. 4712.]

Art. 6119. [3629] **Decree of court executed, how.**—When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively. [Id. P. D. 4713.]

Art. 6120. [3630] **Property shall be sold, when.**—When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and shall order the property to be sold. [Id. P. D. 4714.]

Art. 6121. [3631] **How sold and partition of proceeds.**—In the case provided for in the preceding article, execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court. [Id. P. D. 4715.]

CHAPTER THREE.

MISCELLANEOUS PROVISIONS.

Provisions of this title shall not affect, what	Article. 6122	|	Pay of commissioners.....	Article. 6124
Rules of pleading, practice and evidence. 6123			Costs to be adjudged how.....	6125

Article 6122. [3632] **Provisions of this title shall not affect, what.**—The provisions of this title shall not affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor shall such provisions preclude partition in any other manner authorized by the rules of equity; which rules shall govern in proceedings under this title in all things not provided for in this title. [R. S. 1879.]

Art. 6123. [3633] **Rules of pleading, practice and evidence.**—The same rules of pleading, practice and evidence which govern in other civil causes shall govern in suits for partition, when not in conflict with any provisions of this title. [Id.]

Art. 6124. [3634] **Pay of commissioners.**—The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, and the same shall be taxed and collected as other costs in the case. [Id.]

Art. 6125. [3635] **Costs to be adjudged, how.**—The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share. [Id.]

TITLE 102.

PARTNERSHIPS AND JOINT STOCK COMPANIES.

Chapter. 1. Partnerships—Limited.		Chapter. 2. Unincorporated Joint Stock Companies.
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CHAPTER ONE.

PARTNERSHIPS—LIMITED.

Article.		Article.
Limited partnership authorized.....	6126	Suits by and against.....
General and special partners.....	6127	Capital of special partner not to be with-
General partners only to act.....	6128	drawn.....
Such partnerships, how formed.....	6129	If reduced, to be made good.....
Certificate to be acknowledged.....	6130	Powers of special partner.....
And filed and recorded.....	6131	Partners to account, and liability for
General partner to file affidavit.....	6132	fraud.....
Prerequisites indispensable.....	6133	Assignments by partnership, when void.....
Terms to be published.....	6134	Assignments in contemplation of insol-
Publisher's affidavit.....	6135	vency.....
Renewals to be with like formalities.....	6136	Effect of concurrence by special partner.....
Certain alterations a dissolution.....	6137	Partnership creditors preferred.....
Firm name.....	6138	Dissolution before time agreed upon.....

Article 6126. [3583] **Limited partnerships authorized.**—Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. [Act May 12, 1846, p. 279, sec. 1. P. D. 4717 et seq.]

Art. 6127. [3584] **General and special partners.**—Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital. [Id. sec. 2.]

Art. 6128. [3585] **General partners only to act.**—The general partners only shall be authorized to transact business and sign for the partnership and to bind the same. [Id. sec. 3.]

Art. 6129. [3586] **Such partnerships, how formed.**—The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock.
5. The period at which the partnership is to commence, and the period at which it is to terminate. [Id. sec. 4.]

Art. 6130. [3587] **Certificate to be acknowledged.**—The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land. [Id. sec. 5.]

Art. 6131. [3588] **And filed and recorded.**—The certificate so acknowledged and certified shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like manner in the office of the clerk of the county court of every such county. [Id. sec. 6.]

Art. 6132. [3589] **General partner to file affidavit.**—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash. [Id. sec. 7.]

Art. 6133. [3590] **Prerequisites indispensable.**—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and, if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. [Id. sec. 8.]

Art. 6134. [3591] **Terms to be published.**—The partners shall publish the terms of the partnership when registered for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general. [Id. sec. 9.]

Art. 6135. [3592] **Publisher's affidavit.**—An affidavit of the publication of such notice by the publisher of the newspapers in which the same shall be published may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. [Id. sec. 10.]

Art. 6136. [3593] **Renewals to be with like formalities.**—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership. [Id. sec. 11.]

Art. 6137. [3594] **Certain alterations a dissolution.**—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last article. [Id. sec. 12.]

Art. 6138. [3595] **Firm name.**—The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner be used in such firm, with his privity, he shall be deemed a general partner. [Id. sec. 13.]

Art. 6139. [3596] **Suits by and against.**—Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners. [Id. sec. 14.]

Art. 6140. [3597] **Capital of special partner not to be withdrawn.**—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the

character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided he may also receive his portion of such profits. [Id. sec. 15.]

Art. 6141. [3598] **If reduced, to be made good.**—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest. [Id. sec. 16.]

Art. 6142. [3599] **Powers of special partner.**—A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management. [Id. sec. 17.]

Art. 6143. [3600] **Partners to account, and liability for fraud.**—The general partners shall be liable to account to each other, and to the special partners, for the management of the concern, both in law and equity, as other partners are by law; and every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured to the extent of his damage. [Id. secs. 18, 19.]

Art. 6144. [3601.] **Assignments by partnership void, when.**—Every sale, assignment or transfer of any property or effects of the partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given, by any such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership. [Id. sec. 20.]

Art. 6145. [3602] **Assignments in contemplation of insolvency.**—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under like circumstances and with like intent, shall be void as against the creditors of the partnership. [Id. sec. 21.]

Art. 6146. [3603] **Effect of concurrence by special partner.**—Every special partner who shall violate any provision of the last two preceding articles, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner. [Id. sec. 22.]

Art. 6147. [3604] **Partnership creditors preferred.**—In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied. [Id. sec. 23.]

Art. 6148. [3605] **Dissolution before the time agreed on.**—No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers, and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one. [Id. sec. 24.]

CHAPTER TWO.

UNINCOPORATED JOINT STOCK COMPANIES—PERMITTING SUIT IN COMPANY NAME.

	Article.		Article.
May sue or be sued in its company name	6149	Effect of judgment, where agent of company only is cited.....	6152
Citation, upon whom served.....	6150	Effect of judgment where individual stockholders are also cited.....	6153
Judgment against, conclusive against stockholders	6151	This chapter cumulative; not to impair existing rights	6154

Article 6149. **May sue or be sued in its company name.**—Hereafter any unincorporated joint stock company or association, whether foreign or domestic, doing business in this state, may sue or be sued in any court of this state having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit. [Act 1907, p. 240, sec. 1.]

Art. 6150. **Citation, upon whom served.**—In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies. [Id. sec. 2.]

Art. 6151. **Judgment against, conclusive against stockholders.**—In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits. [Id. sec. 3.]

Art. 6152. **Effect of judgment where agent of company only is cited.**—Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it. [Id. sec. 4.]

Art. 6153. **Effect of judgment where individual stockholders are also cited.**—In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or associations, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction. [Id. sec. 5.]

Art. 6154. **This chapter cumulative; not to impair existing rights.**—The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law. [Id. sec. 6.]

TITLE 103.

PAWNBROKERS.

	Article.		Article.
Definition of "pawnbroker".....	6155	Within what hours sales shall be made.....	6163
Pawnbroker shall give bond, and its requisites	6156	Report of sale to be made, and what the same shall show.....	6164
Bond shall be recorded, and new bond shall be given every twelve months.....	6157	What expenses shall be allowed and deducted	6165
Shall keep a register, and what the same shall show	6158	Owner or depositor entitled to surplus for thirty days after sale.....	6166
Book shall be open for inspection, etc.....	6159	Surplus shall be paid to county treasurer, when	6167
Property pawned shall be sold after notice, when	6160	Suit upon bond for surplus and damages.....	6168
How notice shall be given.....	6161	Party injured may sue upon bond.....	6169
Advertisements shall state what, and copy shall be filed in office of county clerk	6162	Injured party may sue officer.....	6170
		Common law shall govern, except, etc.....	6171

Article 6155. [3636] **Definition of "pawnbroker."**—A "pawnbroker" is one who pursues the business of lending money upon interest and receiving upon deposit, as security for the payment of such loan and interest, any personal property. [R. S. 1879.]

Art. 6156. [3637] **Pawnbroker shall give bond, and its requisites.**—No person shall pursue the business of a pawnbroker without first having given bond, with at least two good and sufficient sureties, in the sum of one thousand dollars, payable to the state of Texas, and approved by and filed with the clerk of the county court of the county in which such person proposes to pursue said business, conditioned that such person will faithfully comply with each and every requirement of the law governing such business. [Act April 28, 1874, p. 153. P. D. 7168p.]

Art. 6157. [3638] **Bond shall be recorded and new bond shall be given every 12 months.**—The bond required by the preceding article shall be recorded and safely kept in the office of the clerk of the county court of the county in which such pawnbroker pursues such business, the recording fees thereof to be paid by such pawnbroker; and a new bond shall be given, filed and recorded in the same manner as the first one every twelve months during the continuance of such business. [Id. P. D. 7168q.]

Art. 6158. [3639] **Shall keep a register, and what the same shall show.**—Each pawnbroker shall keep a well-bound book, in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show:

1. The article of property received, giving an accurate description of the same.
2. From whom received.
3. The time and the amount for which the article is pawned.
4. The probable value of the article.
5. The rate of interest agreed upon.
6. The final disposition made of such property, and, if sold, to whom sold and the amount for which each article was sold. [Id. P. D. 7168p.]

Art. 6159. [3640] **Book shall be open for inspection, etc.**—Such book shall be kept open for inspection and the broker shall give, to the party pledging, a ticket corresponding to the entry on the book of registry. [Id.]

Art. 6160. [3641] **Property pawned shall be sold after notice, when.**—If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale. [Id. P. D. 7168q.]

Art. 6161. [3642] **How notice shall be given.**—Such notice of sale shall be given by posting written or printed advertisements at not less than three public places in the county where such sale is to take place, one of which places shall be the court house of such county. [Id. P. D. 7168q.]

Art. 6162. [3643] **Advertisement shall state what, and copy shall be filed in office of county clerk.**—The written advertisements of sale shall state the time and place of such sale, and shall contain a full description of the article or articles to be sold, and the name or names of the person or persons depositing the same; and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place. [R. S. 1879.]

Art. 6163. [3644] **Within what hours sales shall be made.**—All sales made by a pawnbroker shall be made between the hours of ten o'clock a. m. and four o'clock p. m., and no sales shall be made upon Sunday or upon a legal holiday. [Id.]

Art. 6164. [3645] **Report of sales to be made, and what the same shall show.**—When a sale has been made, the pawnbroker shall, within five days thereafter, file with the clerk of the county court of the county where such sale was made, a report in writing and under oath, showing:

1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.
4. By whom purchased and the amount which each article was sold for.
5. The amount due the broker, principal, interest and expenses upon each article sold.

6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses. [Id.]

Art. 6165. [3646] **What expenses shall be allowed and deducted.**—The expenses named in the preceding article shall be such expenses as have been agreed upon by the parties to the contract; or, if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneer's commissions, shall be allowed and deducted. [Id.]

Art. 6166. [3647] **Owner or depositor entitled to surplus for thirty days after sale.**—The owner or depositor of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale at any time within thirty days after such sale; and, if no demand therefor be made within thirty days after such sale, such surplus shall become the property of the county where such sale was made. [Id.]

Art. 6167. [3648] **Surplus shall be paid to county treasurer, when.**—Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days. [Id. P. D. 7168q.]

Art. 6168. [3649] **Suit upon bond for surplus and damages.**—Suit may be brought upon the bond of the pawnbroker by the county, or by any party entitled to the surplus of any sale made by him; and upon recovery judgment shall be rendered against such pawnbroker and the sureties upon his bond for the amount of such surplus, together with ten per cent per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker. [Id. P. D. 7168r.]

Art. 6169. [3650] **Party injured may sue upon bond.**—Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with

any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond. [R. S. 1879.]

Art. 6170. [3651] **Injured parties may sue officer, when.**—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of the law governing pawnbrokerage shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect. [Id. P. D. 7168s.]

Art. 6171. [3652] **Common law shall govern, except, etc.**—The rules of the common law pertaining to and governing the business of pawnbrokerage shall govern the civil liability of pawnbrokers, except in so far as the same may be contrary to or inconsistent with any statute. [R. S. 1879.]

TITLE 104.

PENITENTIARIES AND CONVICTS.

[For Parole of Convicts, see "Pardon Advisers," Chap. 2.]

Chapter.

1. System of Prison Government.
2. Prison Regulations and Discipline.

Chapter.

3. Workhouse and County Convicts.
4. Hiring of County Convicts.

CHAPTER ONE.

SYSTEM OF PRISON GOVERNMENT.

Article.	Article.
Policy of prison system.....6172	Modern buildings to be erected and equipped.....6186
Prison system includes what.....6173	Farm and factory products, movable and real property, how sold.....6187
Prison labor not to be leased to private parties.....6174	Prison funds.....6188
Board of prison commissioners; appointment; term.....6175	Commission may make regulations.....6189
Commissioners to give bond.....6176	Commissioners to visit camps and farms.....6190
Salary.....6177	Inventories.....6191
Commissioners to devote whole time to office.....6178	Prison accounts, how kept.....6192
Shall have exclusive management.....6179	Auditor, appointment and duties.....6193
Appointment of under-officer.....6180	Commissioners may administer oaths and examine witnesses.....6194
Quorum; chairman; assignment of duties.....6181	Commissioners, removal of.....6195
May discharge under-officers and employes.....6182	Salaries and qualifications of under-officers and employes.....6196
May purchase instrumentalities for employment of convicts.....6183	Fraudulent conversion of prison property; penalty.....6197
Purchases of land, how made.....6184	Dishonesty of officers or employes; penalty.....6198
Lands to be bought sufficient for employment of prisoners.....6185	Unauthorized punishments; penalty.....6199
	Seal of commission.....6200

Article 6172. **Policy of prison system.**—It shall be the policy of this state, in the operation of its prison system, to so manage and conduct the same that those convicted of violating the law and sentenced to a term in the penitentiary shall have humane treatment and shall be given opportunity, encouragement and training in the matter of reformation. [Acts 1910, 4 S. S., p. 143, sec. 1.]

Art. 6173. **Prison system includes what.**—The prison system of this state, as referred to in this title, shall include the state penitentiary at Huntsville, the state penitentiary at Rusk, and such other penitentiaries as may hereafter be established, and all farms or camps where state prisoners are or may be kept or worked, together with all property of every character belonging thereto or connected therewith. [Id. sec. 2.]

Art. 6174. **Prison labor not to be leased to private parties.**—It is hereby declared the policy of this state to work all prisoners within the prison walls, and upon farms owned by the state, and in no event shall the labor of a prisoner be sold to any contractor or lessee to work on farms or elsewhere, nor shall any prisoner be worked on any farm or otherwise upon shares, or upon any other farm or place other than that owned or controlled by the state of Texas, after January 1, 1914; provided, that all contracts for prison labor in existence January 20, 1911, shall terminate not later than January 1, 1914; and no contract for any prison labor shall be made which would extend beyond January 1, 1914; provided, further, that the board of prison commissioners shall change from the system of leasing and hiring out of prisoners at the earliest practicable time. [Id. sec. 3.]

Art. 6175. **Board of prison commissioners; appointment; term.**—To better carry out such policy, the management and control of the prison system of the

state of Texas shall be vested in a board to be known as the board of prison commissioners, and for the purposes of this title shall be referred to as the prison commission. Said board of prison commissioners shall be composed of three men, to be appointed by the governor, with the advice and consent of the senate, whose term of office shall be two years from date of appointment, except those first appointed under this act, who shall hold their offices respectively for eight, sixteen and twenty-four months from the date of their appointment and qualification. In the appointment of said commissioners first to be appointed under this chapter, the governor shall designate the term each one shall hold under such appointment; provided, however, that in the event of a change in the constitution, extending the term of office of the prison commissioners, then the members of said board of prison commissioners then in office shall adjust their terms of office by lot or in conformance with the provisions of such constitutional amendment without the necessity of further legislative enactment. [Id. sec. 4.]

Art. 6176. **Commissioners to give bond.**—Each member of said commission shall, within ten days after his appointment, execute a bond payable to the governor of this state and his successors in office for the use of the state in the sum of fifty thousand dollars, and conditioned that he will faithfully execute the duties of his office, which said bond shall be executed with two or more good and sufficient sureties, or with some indemnity, fidelity or bonding companies authorized to do business in Texas; the form of which bond shall be prepared by the attorney general, and the sufficiency of the sureties thereon approved by, and the same shall be filed with, the secretary of state; which said bond shall not be void on the first recovery of part or of the whole of the penalty, but shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust, until his successor shall be duly qualified, and shall have entered upon the duties of his office. And it shall be the duty of the attorney general, upon notice of default or failure to perform the duties as contemplated by law by any member of said prison commission, to bring suit in any court of competent jurisdiction in Travis county, Texas, for the forfeiture and collection of said bond; and, before entering upon the duties of his office, each member of said board shall take and subscribe the oath of office prescribed by the constitution of this state. [Id. sec. 5.]

Art. 6177. **Salary.**—Each member of the board of prison commissioners shall receive as compensation for his services the sum of three hundred dollars per month, to be paid at the end of each month; and in addition thereto he shall be allowed all reasonable and necessary traveling expenses actually incurred when traveling on business of the prison system, to be paid, together with said salary, out of the funds of the prison system, all such expense accounts to be itemized and sworn to in duplicate, and approved by the board of prison commissioners, or a majority of said board, one copy to be kept with the records of the board of prison commissioners, and one copy to be filed with the comptroller of public accounts. Each member of said board of prison commissioners shall reside at Huntsville, in Walker county, Texas, which is hereby designated as the headquarters of the prison system, and shall be permitted to occupy free of rent the residence houses belonging to the state at Huntsville. [Id. sec. 6.]

Art. 6178. **Commissioners to devote whole time to office.**—Each member of the prison commission shall devote his entire time to the discharge of the duties of said office, and shall not engage in any other occupation or business during his term of office, nor shall either of the members of said board be directly or indirectly connected with or interested in any contract, sale or

purchase of any property or thing whatsoever which may be made during his term of office, and in which either the state or the prison system are interested. And any violation of any of the provisions of this article shall be sufficient ground for his removal from office. [Id. sec. 7.]

Art. 6179. **Shall have exclusive management.**—Said prison commission shall be vested with the exclusive management and control of the prison system of this state, and shall be held responsible for the proper care, treatment, feeding, clothing and management of the prisoners confined therein, and at all times for the faithful enforcement of the spirit, intent and purpose of the laws and rules governing said system; provided, that the prison commission shall be held responsible for maltreatment of prisoners, and, if permitted, it shall be grounds for removal from office. [Id. sec. 8.]

Art. 6180. **Appointment of under-officers.**—The said prison commission shall have the power, and it shall be their duty, to appoint all necessary officers, all physicians, chaplains, teachers, and all clerical help needed in conducting said prison system, including a secretary of the prison commission; and they shall require all appointees, who, in discharging their duties, are charged with handling any funds of the system or state, to execute bond in such amount as may be fixed by the prison commission, payable to the prison commission for the use and benefit of the state, to be conditioned for the faithful performance of their duties. [Id. sec. 9.]

Art. 6181. **Quorum; chairman; assignment of duties.**—A majority of said prison commission shall constitute a quorum for the transaction of business. The commissioners shall select one of their number as chairman. They shall designate one member to have supervision over the finances and financial transactions of the prison system, one who shall supervise the feeding, clothing, care and treatment of the prisoners, and one who shall supervise the work of all the officers and employes of the prison system, and who shall also be known and designated as the superintendent of parole, and shall direct the enforcement of any parole law, or indeterminate sentence law, which may now or hereafter be in force in this state, unless otherwise directed by law; provided, that the work of each member so designated shall be under the general supervision of and he shall report his actions to the prison commission. The provisions of this article are intended to facilitate the work of the prison commission, and shall not be construed as relieving the full board of prison commissioners of any authority or general responsibility for the management of the prison system. The prison commission shall keep, or cause to be kept, in a well-bound book a minute of the proceedings of all meetings held by them. [Id. sec. 10.]

Art. 6182. **May discharge under-officers and employes.**—The prison commission shall have the authority at all times to discharge any officer or any employe of the prison system for failure to comply with the rules, regulations or laws governing the prison system, or for any dereliction in duty, or whenever they may deem it to be for the best interests of the service. [Id. sec. 11.]

Art. 6183. **May purchase instrumentalities for employment of convicts.**—The prison commission shall have the power to purchase, or cause to be purchased, with such funds as may be at their disposal, any lands, buildings, machinery, tools or supplies for the benefit of said prison system, and may establish such factories as in their judgment may be practicable and that will afford useful and proper employment to prisoners confined in the state prison, under such regulations, conditions and restrictions as may be deemed best for the welfare of the state and the prisoners, it being the purpose of this title to clothe said board of prison commissioners with all power and authority necessary for the proper management of the prison system of this state. [Id. sec. 12.]

Art. 6184. **Purchases of land, how made.**—The prison commission shall have power, with the approval of the governor, to purchase such land as may, in their judgment, be necessary in the operation of said system, and the employment of prisoners confined in said prison; and in the purchase thereof they may pay such sum in cash as may be agreed upon with the vendor; and, for the unpaid purchase money to become due upon said land, they shall execute to the vendor notes payable in such sum and at such time as may be agreed upon between the parties, and the payment of which shall be secured by a deed of trust upon such land in the usual form, and containing such covenants as may be agreed upon between the parties, and may pledge a sufficient amount of the net revenues of the property so purchased to pay the deferred installments of purchase money thereon; and it shall be expressly provided in the conveyance to said land, the notes executed for the unpaid purchase money and the deed of trust, that the vendor relies alone upon the lien created by the deed of trust upon said land and the net revenues so pledged, and that no personal liability against the prison commission or the state of Texas shall arise out of said transaction beyond said liens; and the purchase money paid originally, as well as the installments paid upon the deferred payments, may be paid out of any funds belonging to said prison system. The title to all lands purchased by the prison commission under the terms of this chapter shall be examined, passed upon and approved as good and sufficient by the attorney general; and all conveyances, notes and trust deeds and other instruments executed under the provisions of this chapter shall be prepared, passed upon and approved by the attorney general. The title to all lands so purchased shall vest in the prison commission, and their successors in office, as trustees for the state. [Id. sec. 13.]

Art. 6185. **Lands to be bought sufficient for employment of prisoners.**—The prison commission may buy annually so many acres of land as will, not later than January 1, 1914, or sooner if practicable, enable all prisoners hired out or employed on share or contract farms, and who are not otherwise employed by the state, to be employed directly on farms belonging to the prison system. [Id. sec. 14.]

Art. 6186. **Modern buildings to be erected and equipped.**—The prison commission is authorized, and it shall be its duty, to cause to be constructed upon land now belonging to the prison system, and upon such land as may be bought hereafter, all necessary modern fireproof, well ventilated prison buildings, providing a separate cell or room for each prisoner, as far as conditions and the welfare of the prisoners demand, with proper bathing facilities and all necessary sanitary water closets and other sanitary arrangements within such buildings; also sanitary kitchens, dining rooms, hospitals, school rooms, and chapels, and other necessary conveniences for the benefit of the prisoners. The provisions of this article shall be carried out to completion as rapidly as is practicable, so that the same shall be completed in the entire prison system within six years from January 20, 1911. [Id. sec. 15.]

Art. 6187. **Farm and factory products, movable and real property, how sold.**—The prison commission shall have power to sell and dispose of all farm products and the products of all factories connected with the prison system, and all personal and movable property, at such prices and on such terms as may be deemed best by them, and they may, with the approval of the governor, sell or lease any real estate or other fixed property and appurtenances belonging thereto, upon such terms as to them seem best; and upon the sale thereof they shall have power to execute proper conveyances to the title thereto; which instruments of conveyance shall be prepared and approved by the attorney general. The prison commission shall in the purchase or sale of all real estate, or in the purchase or sale of any machinery or equipment for the

prison system, exceeding in value the sum of five thousand dollars, advertise in the manner prescribed by the prison commission for bids for such property in at least three daily papers in this state having a general circulation, and shall give all such bids received to the public press at least thirty days before any such contract is let. [Id. sec. 16.]

Art. 6188. **Prison funds.**—On Monday of each week, the prison commission shall remit to the state treasurer all moneys received by them as such, from whatever source during the preceding week and belonging to the system. The treasurer shall hold such fund as bailee for the prison commission, which fund shall be known as the prison commission account; and he shall give to the prison commission a deposit receipt for same, and shall pay out same on draft drawn by the officer designated by article 6192. The prison commission is authorized to draw upon the prison commission account with the state treasurer such sum or sums of money and at such time or times, as in their judgment may be necessary for the transaction of the business of the system; provided, they shall not draw for a sum that will give them in hand and in bank, subject to disbursement, a sum in excess of twenty-five thousand dollars; and provided, further, the account of the prison system with the state treasurer shall in no event be overdrawn, and in no event shall the state treasurer ever permit an overdraft against the prison commission account to be paid. On December 1 of each year the state treasurer shall ascertain the interest earned by the fund belonging to the prison system from the state depositories, and place said sum to the credit of the prison commission account and send deposit receipt to the prison commission. [Id. sec. 17.]

Art. 6189. **Commission may make regulations.**—The prison commission may at any time issue such orders and prescribe such rules and regulations for the government of the prison system of this state, not inconsistent with the law, as it may deem proper, or to provide such details not embraced herein, and for such contingencies as may at any time arise concerning the management of the prison system, or its proper and effective operation; and such rules and regulations shall be made with a view of carrying out the general principles on which the penal laws are founded, and for which the prison system is established, and shall be binding on all under-officers, employes, and all persons whomsoever in any way connected with the state prisons, or its management, or its prisoners within and without the walls. The prison commission shall have all laws, rules and regulations of the prison printed in pamphlet form for the information and guidance of all connected with the management of the prison system; and such parts of said rules as relate to the duties of subordinate officers and prisoners shall be printed in suitable form and posted in conspicuous places about the prison, or wherever prisoners may be confined, for the information of all concerned. All officers, employes and guards having supervision of prisoners shall be furnished with a copy of the law, rules and regulations governing the prison system, and shall give a receipt therefor; and the prison commission shall from time to time require examination of such officers, employes and guards as will ascertain their knowledge of such law, rules and regulations; and any such officer, employe or guard, who shall fail to familiarize himself with the law, rules and regulations of the prison system, shall be dismissed from the service. [Id. sec. 18.]

Art. 6190. **Commissioners to visit camps and farms.**—It shall be the duty of some member or members of the prison commission to spend at least one whole day each month, without notice, at each prison, camp or farm where prisoners are kept or worked, and to carefully inspect same with reference to the food, clothing and treatment of the prisoners, the general sanitary conditions existing at such prisons, camps or farms, reporting upon such condi-

tions, the efforts at reformation, the general conduct of all officers and employes connected therewith, and punishment administered for the enforcement of prison discipline; provided, that the various prisons, camps and farms where prisoners are kept may be divided for the purpose of this inspection between two or more members of the prison commission, or such other person as may be designated by the prison commission. [Id. sec. 19.]

Art. 6191. **Inventories.**—The prison commission shall cause to be made annually, on January 1, a full and complete inventory of all lands, buildings, machinery, tools, live stock, and all other property of every description, belonging to the prison system, and shall cause to be set opposite each item the book value, and also the actual value of the same so as to afford an easy comparison with the previous annual statement. And the prison commission shall cause to be kept in the accounting department of the prison system a system of books, showing a separate account with each industry and farm and for the system as a whole, showing the losses, profits, and net earnings of each industry and farm connected with the system, and shall make a report of the same annually on January 1 to the governor; which report shall be published by the governor in a sufficient number of copies to give general publicity to such report; such report to include the rules and regulations in force for the management of said system, and the methods of dealing with the convicts thereof. [Id. sec. 21.]

Art. 6192. **Prison accounts, how kept.**—The member of the prison commission designated by the board to have supervision over the finances and financial transactions of the prison system shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the prison system, including all receipts and disbursements of every character. He shall receive and receipt for all money paid to the prison commission from every source whatsoever, and shall sign all vouchers or warrants authorizing the payment or disbursement of any sum or sums on account of the prison system; and no money shall be paid out on any account of the prison system, except upon a warrant or voucher signed by him. He shall keep full and correct accounts with each industry, department and farm, and with all firms, persons or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officer or employe at stated intervals. All deposits of prison funds with banks shall be kept in the name of the officer in his official capacity, and all funds of the prison system shall be kept separate from private funds. Such accountants and clerical assistance as may be necessary to carry out the provisions of this article shall be provided by the prison commission, in order that a full, complete and correct account may be kept of all financial transactions of the prison system. In the absence of such officer, one of the other prison commissioners may sign such receipts, warrants or vouchers. [Id. sec. 22.]

Art. 6193. **Auditor, appointment and duties.**—On the taking effect of this act, and annually thereafter, there shall be appointed by the comptroller of public accounts, the attorney general and the state treasurer, a permanent auditor for the prison system, who shall hold his office for a term of one year, subject to discharge at any time, as hereinafter provided. It shall be the duty of such auditor to audit all accounts, vouchers, payrolls and all other business transactions of the prison system, and to check all property, material and supplies received and disposed of by or distributed within the prison system, and he shall make a full report thereof to the governor on the first day of January of each year. Such auditor shall be subject to discharge at any time by the comptroller of public accounts, attorney general, and state treasurer, or by a majority of said officers, for any incompetency, neglect, failure or refusal to discharge the duties of his office, or for any wrongful conduct

that, in the judgment of the comptroller of public accounts, attorney general, and state treasurer, renders him unfitted for said office; and, in the case of the discharge or resignation of any auditor, another shall be appointed by said officers or a majority of said officers. During the term of his services, such accountant shall be paid monthly a salary of two hundred dollars per month and all actual and necessary traveling expenses, to be paid at the end of each month, out of any moneys belonging to the prison system, such traveling expenses to be evidenced by an itemized sworn statement by the auditor filed with the board. [Id. sec. 23.]

Art. 6194. **Commissioners may take oaths and examine witnesses.**—Each member of the board of prison commissioners in the discharge of his duties is authorized to administer oaths, to summon and examine witnesses, and take such other steps as he deems necessary to ascertain the truth of any matter about which he may have the right to inquire. [Id. sec. 24.]

Art. 6195. **Commissioners, removal of.**—If any member of the board of prison commissioners shall be guilty of malfeasance or nonfeasance in office, or shall become incapable or unfit to discharge his official duties, or shall wilfully fail, refuse or neglect to discharge the duties of his office, such member shall be subject to removal from office as provided by article 6027. [Id. sec. 28.]

Art. 6196. **Salaries and qualifications of under-officers and employes.**—The prison commission shall, except as provided in this title, fix the salaries of all officers and employes of the prison system upon such basis as the labor and ability of the officer or employe entitles him to, such salary to be paid monthly at the end of each month. They shall pay to those employed as guards of the convicts a salary of not less than thirty-five dollars per month, and furnish them board and lodging free; provided, that, for meritorious service and adaptability to the work, the prison commission may increase the pay of any guard to an amount not to exceed forty dollars per month. No person shall be employed as a guard to guard convicts who is not at least twenty-one years of age, of good moral character, and who is not able to read and write and has not a fair knowledge of the English language; and the prison commission may provide such other qualifications as they may deem expedient; provided, that no person shall be employed as a guard who is in any way addicted to the use of alcoholic or intoxicating liquors; and the prison commission shall require all officers and employes connected with the prison system to familiarize themselves with and conform to the rules and regulations and laws governing the prison system of this state; provided, the prison commission shall require all officers and employes connected with the prison system of this state to take and subscribe to the oath of office prescribed by the constitution. [Id. sec. 29.]

Art. 6197. **Fraudulent conversion of prison property; penalty.**—Any officer or employe of the prison system, who shall fraudulently convert to his own use and benefit any food, clothing, or other property belonging to or under control of the prison system, shall be guilty of theft, and, upon conviction, be punished as prescribed by law. [Id. sec. 55.]

Art. 6198. **Dishonesty of officers or employes; penalty.**—Any officer, agent or employe in any capacity connected with the prison system of this state, who shall be financially interested, either directly or indirectly, in any contract for the furnishing of supplies or property to the prison system, of the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to said prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison

system, shall be guilty of a felony, and, upon conviction thereof, shall be punished as provided by the Penal Code, and each transaction shall constitute a separate offense. [Id. sec. 56.]

Art. 6199. **Unauthorized punishments; penalty.**—Any sergeant, guard or other officer or employe of the prison system of this state, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and, upon conviction thereof, shall be punished as prescribed by law; and it shall be the duty of the prison commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that, in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. [Id. sec. 57.]

Art. 6200. **Seal of commission.**—The prison commission shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Board of Prison Commissioners of Texas," around the margin, which seal shall be used to attest all official acts. [Id. sec. 59.]

CHAPTER TWO.

PRISON REGULATIONS AND DISCIPLINE.

<p>Article. After conviction prisoners must first be sent to Huntsville.....6201 Prison uniforms.....6202 Instruction and recreation of prisoners.....6203 Religious services.....6204 Food.....6205 Monthly reports to board shall contain what.....6206 Prison register to show what.....6207 Classification of prisoners; uniforms, punishments.....6208 Female prisoners shall be kept separate.....6209 Labor for female prisoners; physical condition.....6210 Whites and negroes kept separate.....6211 Only married men employed as guards.....6212 Children of female prisoners.....6213 Compensation paid prisoners, when.....6214 Sunday labor.....6215 Intent of prison law.....6216</p>	<p>Article. Rewards for good conduct; relaxation of discipline; parole; commutation...6217 Commutation of life or long term sentence.....6218 Clothing.....6219 Restrictions of the amount of labor required.....6220 Physical condition.....6221 Prisoners searched; disposition of money in their possession.....6222 Death of prisoner; disposition of remains.....6223 Proceedings in case of death of prisoner.....6224 Medical attention.....6225 Dentists.....6226 Discharge of prisoner.....6227 Visitors admitted, when.....6228 Reward for escaped convict.....6229 Gambling forbidden; penalty.....6230 Convicts employed on public or private works, when.....6231</p>
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Article 6201. **After conviction prisoners must first be sent to Huntsville.**—It shall be the duty of the prison commission to make suitable provision and regulation for the safe and speedy transportation of prisoners from counties where sentenced to the penitentiary at Huntsville, by the sheriffs of such respective counties, if such sheriffs are willing to perform such service as cheaply as said commission can have it done otherwise. Said transportation shall be on state account; and in no instance shall the prisoners be carried direct from the county jails to the state farms, but shall first be carried to the penitentiary at Huntsville, where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at the penitentiary at Huntsville, the prison commission shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and postoffice addresses of his immediate relatives, and such other facts as will tend to show his past habits and

character; and the prison commission shall, by correspondence or otherwise, verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference. [Id. sec. 20.]

Art. 6202. **Prison uniforms.**—Except for third class prisoners, within a reasonable time and not later than six months after January 20, 1911, the prison commission shall abolish striped or checked clothes for prisoners, except as a mode of punishment for the violation of prison discipline, substituting therefor some suitable uniform. [Id. sec. 25.]

Art. 6203. **Instruction and recreation of prisoners.**—The prison commission shall, as soon as practicable, provide at each prison, farm and camp where prisoners are kept or worked, schools for instruction of prisoners in elementary branches of the English language and industrial education, and such other instruction as they may prescribe, and shall provide suitable recreation for the prisoners at reasonable hours, including music; and they shall employ such number of competent teachers to instruct the prisoners in the same, as in the judgment of the prison commission may seem necessary; and the prison commission shall make reasonable rules and regulations whereby the prisoners may attend such schools. The prison commission shall prescribe and furnish to the prisoners suitable books and other reading matter, and to this end may establish and operate among the prisoners a circulating library, and may adopt such other means of distributing among the prisoners good and wholesome literature as in the judgment of the prison commission will best enable the prisoners to avail themselves of the same; provided, that all teachers herein provided for shall, as far as practicable be taken from the convicts, and such teachers may be excused from further labors. The chaplain shall be ex officio librarian of the penitentiary, passing upon all library books, and direct such other work as may be prescribed for such library management. [Id. sec. 26.]

Art. 6204. **Religious services.**—The prison commission shall provide for religious services at prisons, farms and camps where prisoners are kept or worked. They shall employ such chaplains as may be necessary to afford all prisoners an opportunity to attend at least two religious services each month, said chaplains to devote their entire time to religious and moral training and education of the prisoners under their care, teaching them the principles and practice of every Christian and moral duty; provided, that chaplains may also be teachers as provided for in this chapter. [Id. sec. 27.]

Art. 6205. **Food.**—The prison commission shall see that all state prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity and reasonable variety, and they shall hold all under-officers performing this work strictly to account for any failure to carry out this provision. That the food may be properly prepared, the prison commission shall provide for the training of prisoners as cooks. [Id. sec. 30.]

Art. 6206. **Monthly reports to board shall contain what.**—The prison commission shall require, at the end of each month, reports showing fully the condition and treatment of the prisoners, and the changes in prison population during the month, including itemized statements of all different items of food, clothing and utensils used and on hand in each of the units of the prison system, and such other matters as they may require. [Id. sec. 31.]

Art. 6207. **Prison register to show what.**—The prison commission shall keep a register of all prisoners belonging to the prison system, showing the number of each prisoner, giving the aliases, name, age, height, color of hair, color of eyes, complexion, marks on person, sex, nativity, residence, county where convicted, offense of which convicted, date of sentence, date of receipt, previous occupation and habits, if known, and may adopt such other means of identifi-

cation as they may deem proper and necessary. They shall keep a record of the general conditions and conduct of each prisoner, noting all punishments, forfeitures, bad conduct, changes and incidents of importance that may occur during his confinement; and, to the end that complete records may be kept, they may require from all under-officers such monthly and other reports as they may deem proper. They shall issue discharges to such prisoners as are entitled thereto by expiration of sentence or otherwise. [Id. sec. 32.]

Art. 6208. **Classification of prisoners; uniforms; punishments.**—That persons confined in the state prisons of this state may have every opportunity and encouragement for moral reform, it shall be the duty of the prison commission, in addition to the requirements of this title, to provide every reasonable and practicable means for the encouragement of such reforms. To this end, the prison commission shall provide for the classification of all prisoners, separating them into the following classes: In the first class shall be included young men, first offenders, those appearing to be corrigible, or less vicious than others, and likely to observe the laws, and to maintain themselves by honest industry after their discharge. In the second class shall be included those appearing to be less corrigible, or more vicious, but content to work and reasonably obedient to prison discipline as not to seriously interfere with the productiveness of their labor, or with the labor or conduct of those with whom they may be employed. In the third class shall be included those appearing to be incorrigible or so insubordinate or so vicious in their nature as to seriously interfere with the labor and moral development of those with whom they must come in contact. The prison commission shall make rules and regulations for the promotion and reduction of the prisoners from one class to another, and shall transfer them from one class to another, from time to time, as they may seem to merit promotion or reduction. The prisoners in each of the classes hereinbefore named shall be kept in or upon different or separate prisons or farms. Any prisoner, upon entering the prison system, shall be assigned to one of its institutions according to his class, as hereinbefore provided, and shall be entered in said institution in a neutral grade which shall be known as grade No. 2, and in which he shall be furnished with a suitable uniform designated for that grade. The prison commission shall adopt rules for a higher grade which shall be known as grade No. 1, as a reward for obedience to prison discipline and good conduct, and shall provide a suitable uniform for this grade; and they shall provide for a lower grade as a punishment for misconduct and violation of prison discipline, which grade shall be known as No. 3, and in which the prisoner shall be clothed in stripes. The uniforms for grades Nos. 1 and 2 shall not be stripes. The prison commission shall provide rules for promotion of prisoners from any grade to another for good conduct and obedience to prison discipline, and for demotion of prisoners for misconduct and violation of prison discipline. The prison commission shall provide specifically for the extension or denial of privileges for the various grades herein provided. In order that prison discipline may be enforced, the prison commission may adopt such modes of punishment as may be necessary, such punishment being always humane; and placing prisoners in stocks shall be prohibited. Whipping with not exceeding twenty lashes on the bare rump and thighs may be resorted to with prisoners of the third class, who can not be made to observe the rules by milder methods of punishment. The strap to be used must be of leather, not over two and one-half inches wide, and twenty-four inches long, attached to a wooden handle; no convict shall be whipped until same has been authorized by at least two members of the prison commission upon their written order; and such order so issued shall be executed only in the presence of a prison physician, and a sworn report shall be made by the officer executing such order to the penitentiary commis-

sion, who shall keep a record of all such reports in a well-bound book to be kept for that purpose, which shall be at all times open to public inspection; and such report so to be made by such officer executing the order of the penitentiary commission shall state the name of the convict whipped, the number of strokes administered, the size of the strap used, the time and place thereof, in whose presence same was done, and the cause thereof. It shall further be the duty of the penitentiary commission to make a semi-annual report of the whipping of convicts to the district judge of the county where such whippings occurred, who shall report [same to the grand jury, which is hereby authorized to make investigation] thereof, if they deem same advisable. The utmost care must be used by the officer executing the order of the commission not to break the skin of the prisoner whipped; and any person guilty of whipping a prisoner more lashes or other than as provided herein, or striking a prisoner, except in self-defense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars, and imprisoned in the county jail not less than thirty days nor more than six months. White and negro prisoners shall not be worked together when it can be avoided, and shall be kept separate when not at work. [Id. sec. 33.]

Art. 6209. **Female prisoners shall be kept separate.**—All female prisoners shall be kept separate and apart from the male prisoners. Where practicable, the prison commission shall keep the female prisoners upon a separate farm, or at a separate prison, from the male prisoners, and shall provide reasonable rules and regulations for the government of the same. [Id. sec. 34.]

Art. 6210. **Labor for female prisoners; physical condition.**—The prison commission shall provide such labor for said female prisoners as in their judgment they can reasonably perform, but the prison physician for such female prisoners shall at any time have the authority to say whether the physical condition of said female prisoners is such that they can perform any physical labor; provided, that in the absence of the physician the matron shall pass upon the physical condition of said female prisoners. [Id. sec. 35.]

Art. 6211. **Whites and negroes kept separate.**—The prison commission shall keep the white female prisoners separate and apart from the negro female prisoners, and shall select and place over said female prisoners a matron or matrons, whose duty it shall be to give her personal attention to the welfare of such female prisoners. The matron or matrons so employed to look after the welfare of the female prisoners shall reside at the place where female prisoners are kept. [Id. sec. 36.]

Art. 6212. **Only married men employed as guards.**—At the place where female prisoners are kept, none but married men shall be employed as guards; and the houses for such guards and their families shall be provided by the state, in which the families of the guards shall live. And said guards shall be allowed ten dollars per month in addition to his salary in lieu of his board, said houses not to be situated further than one hundred yards from the main prison building where such female prisoners are kept. [Id. sec. 37.]

Art. 6213. **Children of female prisoners.**—If a female prisoner be received with an infant, or if any child be born in the penitentiary, the child shall be permitted to remain with its mother until three to six years of age, in the discretion of and as prescribed by the prison commission. [Id. sec. 38.]

Art. 6214. **Compensation paid prisoners, when.**—Every prisoner who shall become entitled to a diminution of his term of sentence by good conduct shall receive compensation from the earnings of the state prison to the amount of ten cents per day for the time said prisoner is confined in prison; provided, that, whenever any prisoner shall forfeit any part of his good time for misconduct or violation of the rules or regulations of the prison, he shall forfeit

out of the compensation allowed under this section twenty-five cents per day for each day of such good time so forfeited; provided, that, when such prisoner has a family or relatives within the second degree of consanguinity or affinity dependent upon him, such saving shall be paid semi-annually to such of them as may be designated by the prisoner; but if he have no such dependent relatives, then said saving shall be paid to him upon his discharge from prison. And if he be a life term prisoner such saving may be paid as directed by him, with the approval of the prison commission. But if he should die in prison without such dependent relations such saving shall revert to the state. [Id. sec. 39.]

Art. 6215. Sunday labor.—No prisoner shall be worked on Sunday, except in cases of extreme necessity; and all prisoners so required to work on Sunday shall be paid out of the funds of the prison system the sum of one dollar per day for each Sunday so worked. [Id. sec. 40.]

Art. 6216. Intent of law.—The various provisions of this title are designed to secure to the prisoners humane treatment, suitable moral instruction, to provide for their health, and to extend to them such comforts and privileges as may be consistent with their situation, and at the same time to require of them a due attention to their various duties and a strict observance of the discipline, rules and regulations of the prison. [Id. sec. 41.]

Art. 6217. Reward for good conduct; relaxation of discipline; parole; commutation.—In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient comforts and privileges according to their deserts. The rewards to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may not be inconsistent with proper discipline. Commutation of time for good conduct shall be granted by the prison commission, and the following deductions shall be made from the term or terms of sentences when no charge of misconduct has been sustained against a prisoner, viz.: Two days per month off the first year of sentence; three days per month off the second year of sentence; four days per month off the third year of sentence; five days per month off the fourth year of sentence; six days per month off the fifth year of sentence; seven days per month off the sixth year of sentence; eight days per month off the seventh year of sentence; nine days per month off the eighth year of sentence; ten days per month off the ninth year of sentence; fifteen days per month off the tenth year and all succeeding years of sentence. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner, in any year of the term, the commutation allowed for one month of such year may be forfeited; for any sustained charge of escape, or attempt to escape, mutinous conduct, or other serious misconduct, all the commutation which shall have accrued in favor of the prisoner up to that day shall be forfeited, unless in case of escape the prisoner voluntarily returns without expense to the state, such forfeiture may be set aside by the prison commission. For extra meritorious conduct on the part of any prisoner, he shall be recommended to the favorable consideration of the governor for increased commutation or pardon; and, in the case of any prisoner who shall have escaped and been captured, part or all of his good time thereby forfeited may be restored by the prison commission, if in their judgment his subsequent conduct entitles him thereto. [Id. sec. 42.]

Art. 6218. Commutation of life or long term sentence.—Hereafter, life or long term prisoners who have actually served fifteen years and have no sustained charges of misconduct, and have a good prison record, and who shall be favorably recommended to the governor, may receive at the hands of the

governor a reasonable commutation of sentence; and, if a life sentence is commuted to a term of years, then such convict shall have the benefit of the ordinary commutation, as if originally sentenced for a term of years, except the governor shall otherwise direct. [Id. sec. 43.]

Art. 6219. **Clothing.**—Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners; and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only, the prison commission may allow the prisoners to wear citizen underwear. Sufficient food of wholesome quality and variety and wholesomely prepared shall be furnished to all, and such provisions shall be made for serving the food to prisoners as will tend to encourage and elevate them. It shall be the duty of every officer charged with the preparation and serving of food to the prisoners to post in the dining room each Monday morning for the coming week the bill of food for that week, and the rules promulgated by the prison commission shall prescribe the quality, kind and variety of food to be furnished. Prisoners shall not be allowed spirituous, vinous or malt liquors, except upon the prescription of the physician. [Id. sec. 44.]

Art. 6220. **Restrictions on amount of labor required.**—Prisoners shall be kept at work under such rules and regulations as may be adopted by the prison commission; provided, that no prisoner shall be required to work more than ten hours per day, except in case of an extreme and unavoidable emergency, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour. And in case of such extreme and unavoidable emergency, said prisoner shall receive out of the funds of the prison system the sum of ten cents per hour for such work so performed more than ten hours per day. In going to and returning from work, prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison shall be assigned to any labor until first having been examined by the prison physician. Any officer or employe violating any provision of this article shall be dismissed from the service. [Id. sec. 45.]

Art. 6221. **Physical condition.**—Prisoners who have been reported by the physician or other officer in charge as in a condition of health which requires their removal to some other place shall be accordingly removed. [Id. sec. 46.]

Art. 6222. **Prisoners searched; disposition of money in their possession.**—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the prison commission and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employe having charge of a prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. [Id. sec. 47.]

Art. 6223. **Death of prisoner; disposition of remains.**—If any prisoner shall die while in prison, the officer in charge of the prisoner at the time of his death shall immediately report the same to the prison commission, and, if he knows the address or place of residence of any relative within the third degree, either by consanguinity or affinity, shall also notify by wire said relative of the death of such prisoner; and, if the relative of such prisoner

claim the body or will take charge of same, then the body of such prisoner shall be turned over to such relative, and the expense of shipping the body to where it is to be buried, provided it is within this state, shall be paid by the prison commission out of any available penitentiary funds on hand upon the request of such relative. If the residence and address of the relative of such prisoner is unknown, such prisoner shall be decently buried in citizen's clothes, and the grave marked by a stone with the name of said prisoner, date of death and age, if known, inscribed thereon. If the body of such prisoner is not claimed by the relatives, the prison commission shall at once notify the county judge of the county from which the prisoner was sentenced of his death, the date and cause of death and place of burial. The prison commission shall cause to be made and kept a record of the deaths of prisoners; and certified copies of same made by the custodian thereof shall be admissible in evidence under the rules of law applying to official records. Any officer or employe of the prison system of whom any duties are required by this article, who shall fail to discharge such duties, shall be guilty of a misdemeanor, and, upon conviction, shall be punished as provided by the Penal Code [Article 1612.] [Id. sec. 48.]

Art. 6224. **Proceedings in case of death of prisoner.**—The prison commission, or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner; and it shall be the duty of such justice of the peace, when so notified of the death of such prisoner, to go in person and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner; and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the district judge of the county in which said prisoner died; and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury; and the said judge shall charge the grand jury, if there should be any suspicion of wrong doing shown by the inquest papers, to thoroughly investigate the cause of such death. Any officer or employe of the prison system having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by confinement in the county jail not less than sixty days nor more than one year; provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor approved by the prison commission. [Id. sec. 49.]

Art. 6225. **Medical attention.**—The prison commission shall provide for competent medical attention for all prisoners, and shall establish rules whereby all physicians shall be required to keep a record of all cases of sickness, accident or injury which they treat. The physicians so employed shall be reputable practicing physicians of not less than two years of experience in practice. Each physician employed in the prison system shall, at the end of each month, file with the prison commission a report in writing, subscribed and sworn to by him; which report shall state the names, race and sex of each prisoner treated or examined by him during said month, the malady or disease with which each was afflicted, and, if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such other information concerning said matters, and the condition of each prisoner treated or examined by him during said months, as he may possess; provided, further, that for a failure to

make such a report, or any false statement knowingly made by any such physician in any such reports, he shall be prosecuted for the offense of perjury or false swearing, as provided by law. [Id. sec. 50.]

Art. 6226. **Dentists.**—The prison commission shall also provide a competent dentist or dentists, whose duty it shall be to care for the teeth of the prisoners. Such dentist or dentists shall, at the direction of the prison commission, visit the various places where prisoners are kept or worked, at such intervals as may be prescribed. [Id. sec. 51.]

Art. 6227. **Discharge of prisoner.**—When a prisoner is entitled to a discharge from prison, he shall be furnished with a written or printed discharge from the prison commission, with seal affixed, signed by the chairman of the board of prison commissioners, giving prisoner's name, date of sentence, from what county sentenced, amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such other description as may be practicable. He shall be furnished with a decent outfit of citizen's clothing of good quality and fit, two suits of underwear, five dollars in money in addition to any money held to his credit, and unredeemable and non-transferable railroad transportation to the nearest depot from whence sentenced; but, if such prisoner prefers, he may receive such transportation to any point in this state designated by him. [Id. sec. 52.]

Art. 6228. **Visitors admitted, when.**—The governor and all other members of the executive and judicial departments of the state, and members of the legislature, shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts, apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established. [Id. sec. 53.]

Art. 6229. **Reward for escaped convict.**—The prison commission, with the governor's approval, may offer such reward for the apprehension of an escaped prisoner as may be fixed by the prison commission, and to be paid as directed by the prison commission. [Id. sec. 54.]

Art. 6230. **Gambling forbidden; penalty.**—No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employe engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service. [Id. sec. 58.]

Art. 6231. **Convicts employed on public or private works, when.**—The prison commission, by and with the consent of the governor, shall have the power to work convicts on public works, when they can not employ them on the state farms or within the walls by reason of some unforeseen calamity, such as failure of crops, or the destruction of crops by wind or flood. When convicts are worked on public works owned by the state, or a subdivision of the state, the humane provisions of this chapter shall be strictly complied with. [Id. sec. 60.]

CHAPTER THREE.

WORKHOUSES AND COUNTY CONVICTS.

Article.	Article.
Commissioners' courts to establish work-	Where confined when off duty..... 6239
houses 6232	Refractory convicts to be punished... 6240
"County convict" defined..... 6233	Female convicts 6241
Certain convicts only to do manual	Aged or disabled convicts not to work... 6242
labor 6234	Their inability, how determined..... 6243
Commissioners' court to control work-	Convicts to receive credit for labor... 6244
house 6235	Mechanic, etc., to have extra credit... 6245
All officers to obey their orders..... 6236	Convicts to be guarded..... 6246
Overseers and guards..... 6237	Costs to be paid officers..... 6247
To labor upon public works, etc..... 6238	Convict may commute his labor..... 6248

Article 6232. [3727] **Commissioners' courts to establish workhouses, etc.**—The commissioners' courts of the several counties may provide for the erection of a workhouse, and the establishment of a county farm in connection therewith, for the purpose of utilizing the labor of county convicts, in accordance with the provisions of the constitution. [Const., art. 16, sec. 3. Act Aug. 21, 1876, p. 9, sec. 229. Act to adopt and establish R. C. S., passed Feb. 21, 1879. R. S. 1879, 3585-3601.]

Art. 6233. [3728] **"County convict" defined.**—A "county convict," within the meaning of the preceding article, is any person who may have been convicted of a misdemeanor or petty offense, and whose punishment has been assessed at imprisonment in the county jail for any term; or who, under a like conviction, has been adjudged to pay a pecuniary fine, and is unable so to do. [Id. p. 230, sec. 16.]

Art. 6234. [3729] **Certain convicts only to do manual labor.**—When the punishment assessed in a conviction for misdemeanor is confinement in the county jail for a period less than one day, the convict shall not be required to labor, either in the workhouse or elsewhere; but, when such punishment is confinement in the county jail for a longer time than one day, the convict shall be required to do manual labor in accordance with the provisions of this chapter. [Act to adopt and establish R. C. S., passed Feb. 21, 1879.]

Art. 6235. [3730] **Commissioners' court to control workhouses.**—County workhouses and farms shall be under the control and management of the commissioners' court; and such courts are authorized to adopt such rules and regulations not inconsistent with the laws, as they may deem necessary for the successful management and operation of said institutions and for effectively utilizing the labor of county convicts. [Id. sec. 10.]

Art. 6236. [3731] **Officers to obey their orders, etc.**—The sheriff and all other peace officers shall obey the orders and regulations of the commissioners' court, made in pursuance of the preceding article, shall execute such process as may be directed by said court, and shall render all the aid possible in carrying out the provisions of this chapter, and the regulations made in pursuance thereof. [Id. sec. 13.]

Art. 6237. [3732] **Overseers and guards, etc.**—Such overseers and guards may be employed under the authority of the commissioners' court as may be necessary to prevent escapes and to enforce labor on the part of convicts, and they shall be paid out of the county treasury such compensation as said court may prescribe.

Art. 6238. [3733] **To labor on public works, etc.**—County convicts shall be put to labor upon the public roads, bridges, or other public works of the county, when their labor can not be utilized in the county workhouse or farm, and they shall be required to labor not less than eight nor more than ten hours each day. Sundays excepted. [Id. p. 228, sec. 1.]

Art. 6239. [3734] **Where confined when off duty.**—When not at labor, county convicts may be confined in the county jail or workhouse, as may be

most convenient, or as the regulations of the commissioners' court may prescribe.

Art. 6240. [3735] **Refractory convicts to be punished.**—When a convict refuses to labor, or is otherwise refractory or insubordinate, he may be punished by solitary confinement on bread and water, or in such other manner as the commissioners' court may direct.

Art. 6241. [3736] **Female convicts.**—Female convicts shall, under all circumstances, be kept separate and apart from male convicts; and they shall in no case be required to do manual labor, except in the workhouse, or when hired out as is hereinafter provided.

Art. 6242. [3737] **Aged or disabled convicts not to work.**—A convict who, from age, disease or other disability, physical or mental, is unable to do manual labor, shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged, at the rate of one dollar for each day of such confinement in jail.

Art. 6243. [3738] **Inability, how determined.**—The inability of the convict to do manual labor may be determined by the opinion of a competent physician appointed for that purpose by the county judge or commissioners' court, who shall be paid for such service such compensation as the commissioners' court may allow.

Art. 6244. [3739] **How to be credited on fine, etc.**—When a convict who has been committed to jail in default of payment of fine and costs is required to do manual labor, he shall be credited upon such fine and costs at the rate of fifty cents for each day he may labor, and upon satisfaction of such fine and costs in full at said rate he shall be discharged; provided, such work shall be performed on public streets or roads, or on county poor farms. No convict under this chapter shall ever be required to work or be hired for more than one year. [Acts 1889, p. 14.]

Art. 6245. [3740] **Mechanic, etc., to have extra credit.**—If a convict of the kind described in the preceding article be an artisan or mechanic, and be put to labor at his trade or calling in any workhouse, or on any public work, he may be credited upon the fine and costs against him with such extra compensation for his labor as the county judge may determine to be just and proper. [Id. sec. 2.]

Art. 6246. [3741] **Convicts to be guarded, etc.**—Convicts shall be so guarded while at work as to prevent escapes; and no convict shall be compelled to labor at any kind of work nor in any avocation that would endanger his life or health. [Act of 1876, p. 230, sec. 11.]

Art. 6247. [3742] **Costs to be paid officers.**—Whenever a convict, who has been committed to jail in default of payment of fine and costs adjudged against him, has satisfied such fine and costs in full by labor in the workhouse, on the county farm, on the public roads of the county, or upon any public works of the county, said county in which said conviction was had shall be liable to each officer and witness having costs in the case against said convict for only one-half of such costs; and the county judge of said county shall issue his warrant upon the county treasurer in favor of each officer and witness for one-half of all such legal costs as may have been taxed up against said convict, not to include commissions; and the same shall be paid out of the road and bridge fund of the county, or out of any other county funds not otherwise appropriated. [Id. p. 229, sec. 8; amend. 1895, p. 179.]

Art. 6248. [3743] **Convict may commute his labor.**—A convict condemned to imprisonment in the county jail as the punishment, either in whole or in part, for his offense, may avoid manual labor in the workhouse or elsewhere by payment into the county treasury of one dollar for each day of the term

of his imprisonment; and the receipt of the county treasurer to that effect shall be sufficient authority to the sheriff to detain such convict in jail without labor.

CHAPTER FOUR.

HIRING COUNTY CONVICTS

Convicts may be hired out.....	Article. 6249	Suit on bond.....	Article. 6253
Either publicly, privately or generally,	6250	Convict to receive full credit for labor..	6254
etc.	6250	Record in relation to county convicts...	6255
Hirer shall give bond, and its requisites.	6251	Officers' costs, how paid.....	6256
Liability when convict escapes.....	6252		

Article 6249. [3744] **Convicts may be hired out.**—Any person who may be convicted of a misdemeanor, or petty offense, and who shall be committed to jail in default of the payment of the fine and costs adjudged against him, may be worked upon the public roads, or upon the county farms, of the county in which such conviction is had, or be hired out to any individual, company or corporation within the county of conviction, to remain in said county; and the proceeds of said hiring, when collected, shall be applied, first, to the payment of the costs, and second, to the payment of the fine; and every convict shall be entitled to a credit of twenty-five cents on his fine and costs for each day he may serve under such hiring, including Sunday; and he shall be discharged at any time upon payment of the balance due on his fine and costs, or upon the expiration of his term of service, his term of service in no event to be greater than one day for each fifty cents of fine and costs; provided, that in no case shall the counties be responsible to the officers for their costs, and in no case shall such convicts be hired out for a longer period than one year for failure to pay a fine and costs; and on the expiration of said time, unless by his hire such fine and costs have been sooner paid off, said convicts shall be finally discharged. [Acts of 1887, p. 11. R. S. 1879, 3602-3609.]

Art. 6250. [3745] **Either publicly or privately, generally or especially.**—Such hiring may be either by private contract or at public auction, as may be deemed best for the interest of the county, or it may be by general contract for any specified term, embracing the labor of all county convicts of the class prescribed in the preceding article, at some fixed rate per day, week or month.

Art. 6251. [3746] **Hirer shall give bond and its requisites.**—Hirers of convicts shall execute bond payable to the county judge of the county, with two or more good and sufficient sureties, in the amount of hire agreed upon, conditioned as follows:

1. That the hirer will promptly and faithfully pay the amount of money mentioned in the bond when the same becomes due, and it shall be stated in the bond when the same becomes due.
2. That he will treat the convict humanely while in his employment.
3. That he will furnish the convict with a sufficient quantity of good and wholesome food, with comfortable clothing and medicine when sick.
4. That he will not require the convict to work at unreasonable hours, or for a longer time during any one day than other laborers doing the same kind of labor are accustomed to work.

Such bond shall be approved by the county judge and filed in the office of the clerk of the county court. [Id. pp. 228-230, sec. 4, 12.]

Art. 6252. [3747] **Liability of hirer when convict escapes.**—If a convict, hired out, escapes from the hirer, such hirer shall nevertheless be liable for the full amount of the bond, unless such convict is rearrested and placed in the custody of the sheriff of the county in which he was convicted before such bond becomes due; in which case such hirer shall only be liable to pay for the time that such convict remained with him. [Id. p. 229, sec. 4.]

Art. 6253. [3748] **Suit on bond.**—Upon the breach of such bond, the county judge, or commissioners' court, shall cause such bond to be sued upon in any court having jurisdiction thereof; and the amount collected thereon, after deducting therefrom the collection fees and costs, shall be paid into the county treasury by the officer collecting the same, and constitute a part of the road and bridge fund of the county. [Id. sec. 5. Const., art. 16, sec. 24.]

Art. 6254. [3749] **Convict shall receive full credit for labor.**—All moneys arising from hiring out convicts shall be paid over to the county judge, and by him paid into the county treasury, and in every case the convict shall receive full credit for the amount of his labor, to be counted and entered in discharge of the fine and costs adjudged against him; and, whenever his earnings shall be sufficient to pay in full such fine and costs, he shall be discharged. [Id. sec. 6.]

Art. 6255. [3750] **Record in relation to convicts shall be kept.**—County judges shall cause a record of all proceedings in relation to the employment or hiring out of convicts to be kept in well-bound books to be provided for that purpose. Said record shall contain:

1. A descriptive list of all persons known as "county convicts."
2. How such convict has been or is employed.
3. The name of the party hiring a convict.
4. The time when and the price at which such convict has been employed or hired out.
5. The amount credited such convict for such employment or hire.
6. The amount of such hire collected.
7. The amount of fine and costs due by such convict.
8. Such other information as may be necessary and requisite under the rules adopted by the commissioners' court. [Acts Aug. 21, 1876, p. 230, sec. 15.]

Art. 6256. [3751] **Officer's costs, how paid.**—Whenever the amount realized from the hire of a convict is sufficient to discharge in full the fine and costs adjudged against him, the county judge shall issue a warrant upon the county treasurer in favor of each officer, to whom costs may be due, for the amount of his costs, and the same shall be paid out of the road fund of the county, or out of any other funds in the county treasury not otherwise appropriated. [Id. sec. 8.]

TITLE 105.

PENSIONS.

Chapter.

1. Veterans of Mexican War.

Chapter.

2. Confederate Soldiers and Sailors.

CHAPTER ONE.

VETERANS OF MEXICAN WAR.

Article.		Article.	
6257	Who entitled to pensions.....	6262	Pension shall begin, when.....
6258	Application	6263	Proof to be made each quarter.....
6259	Proceedings to obtain.....	6264	Grand jury to investigate.....
6260	Proceedings to be filed with comptroller.....	6265	Attorneys' fees.....
6261	Must be indigent.....	6266	List of, to be printed, etc.....

Article 6257. [3752] **To whom granted.**—To every surviving indigent soldier, or indigent volunteer, who was in the actual military or naval service of Texas at the time of the siege of Bexar, in December, 1835, or at the time of the battle of San Jacinto, in April, 1836, or who actually participated in any battle in Texas in 1836, or who was in such actual military service for as much as six weeks between the commencement of the revolution at Gonzales in 1835, and the first day of January, 1837, and to every indigent surviving signer of the declaration of independence of Texas, and to every indigent surviving widow of any such soldier, volunteer or signer, who is and has always been unmarried since the death of such soldier, volunteer or signer, and so long as such widow may remain unmarried, there shall be and is hereby granted an annual pension of one hundred and fifty dollars as hereinafter provided. [Acts of 1889, p. 43, sec. 1.]

Art. 6258. [3753] **Application.**—Each applicant for a pension under this law shall make application in writing for the same to the county judge of the county of his or her residence, and shall post a copy of such application on the court house door of the county for at least thirty days before the application is acted on by the county judge. Such application shall state the name, age and residence of the applicant, whether or not this applicant received any pension or veteran donation land certificate under any previous law, a list of the real and personal property owned by the applicant, and the present value of the same, and what property and the value thereof that such applicant has sold or conveyed within twelve months prior to the date of such application; and shall further state that the applicant is in indigent circumstances, and is dependent upon his or her labor or on the charity of others for a support; provided, that the word "indigent," within the meaning of this law, shall not allow the ownership of property to exceed one thousand dollars; and that the applicant has not transferred to others any property or values of any kind for the purpose of becoming a beneficiary under this law; and still further, that such applicant is and was for one year preceding the date of the passage of this law a bona fide resident citizen of this state. And in addition to the foregoing, each male applicant shall further state the time he rendered such service, and the command he served in; and each female applicant shall state the name of her deceased husband, the date of his death; that she is unmarried, and has so remained since the death of the husband for whose services she claims a pension; and shall further state, as accurately as she can, the time her said deceased husband rendered such service, and the command he served in. Should the applicant be a signer of such declaration of independence, or a widow of such signer, he or she shall

state all that is hereinbefore required, except as to the military service, and in lieu of which it shall state that the applicant was a signer of such declaration of independence, or is the widow of such signer, which application shall be subscribed and sworn to by the applicant, and the same shall be supported by affidavits of at least two credible witnesses who reside in the state, and shall show that the facts stated by the applicant is known and regarded in his or her neighborhood as a Texas veteran or signer of the declaration of independence, or the widow of a Texas veteran or signer of the declaration of independence. Any veteran whose application and proof heretofore made to the comptroller are in compliance with the requirements of this law shall be entitled to his or her pension on presenting such application and proof to the comptroller, without further proof being made; and, where such application and proof has been returned to the applicant by the comptroller, said applicant may refile the same as if made under this law; provided, that such application has not heretofore been declared fraudulent. [Id. sec. 2.]

Art. 6259. [3754] **Proceedings to obtain.**—Such application so signed and sworn to by the applicant and two credible witnesses shall be presented to the county judge, who shall in open court, at a regular term thereof, hear evidence as to the truth of the statements made in such application; and if he believe from the evidence that the applicant really performed the service for which the pension is claimed, or is a widow of a soldier or volunteer of the Texas revolution, or a signer of the declaration of Texas independence; that he or she is now, and was at the time of the passage of this law, and for ten years previous thereto, a bona fide resident of the state of Texas; that the applicant is in indigent circumstances, and is dependent on his or her labor or on the charity of others for a support, and has not at any time transferred any property for the purpose of becoming a beneficiary under this law; then he shall make his certificate under the seal of his office, attested by the county clerk, reciting the facts as shown by the evidence. Upon the hearing of such application, the state shall be represented by the county or district attorney; and it shall be the duty of such attorney to summon witnesses to testify in behalf of the state who know the pecuniary condition of the applicant, or any other facts affecting the rights of the applicant to obtain a pension, and to examine the assessor's rolls and the records of his county, and any other source of information which may seem to him advisable; and he shall prepare a statement of the testimony given by each witness, including the name of such witness, and also of the facts disclosed by investigating any other source of information, which statements shall be approved by the county judge. For his services in behalf of the state, the attorney shall be allowed a fee of ten dollars, to be paid as follows: He shall present his account for the same to the county judge, who shall approve it if he find it correct, shall date and sign the same officially, and shall cause it to be filed in the office of the county clerk. The said judge shall thereupon give the attorney a draft upon the county treasurer, and the same when presented to the treasurer shall be paid out of any moneys in his hands not otherwise legally appropriated, in the same manner as jury certificates are paid; provided, that, if the applicant shall be proved not to be an indigent, and shall have his application defeated on that ground, then the attorney representing the state shall be entitled to an additional fee of ten dollars, to be taxed against the applicant as costs of suit. [Acts of 1885, p. 94, sec. 3.]

Art. 6260. [3755] **To be filed with comptroller.**—Such application so prepared and certified to, together with the statements of the county judge and attorney hereinbefore provided for, shall be filed with the comptroller of public accounts, whose duty it shall be to examine critically such application and statements, and any other accessible evidence that may prove or disprove the right of the applicant to claim a pension, and may require further proof of the

statements made in such application; and if in his opinion the applicant has not established his or her legal right to a pension, then he shall refuse such application and file reasons therefor in his office; provided, no pension shall be granted to any one under this title whose claim has been rejected by the veteran board of this state as fraudulent. [Acts of 1885, p. 94, sec. 4.]

Art. 6261. [3756] **Must be indigent.**—No person shall be entitled to receive a pension under this title, unless it shall be made to appear to the comptroller, from the evidence, that said person is in indigent circumstances, and is dependent upon his labor or the charity of others for a support. [Id. sec. 5.]

Art. 6262. [3757] **Shall commence, when.**—The pension herein provided for shall begin at the date when the comptroller receives the application, and shall be paid quarterly in advance. The comptroller shall draw his warrant for the same on the treasurer, and, upon presentation, the treasurer shall pay the same out of any money in the treasury which may be appropriated for this purpose. [Id. sec. 6.]

Art. 6263. [3758] **Proof to be made each quarter.**—On or after the first of each quarter, the pensioner shall make his affidavit stating the county of his residence, and that he is the identical person to whom a pension has been granted under this law; which affidavit shall be supported by the affidavit of some other credible person to the same fact, and which affidavit may be made before any one authorized to administer oaths, which affidavit shall be filed with the comptroller, and, upon the filing of the same, the comptroller shall draw his warrant for the quarter found to be due. [Id. sec. 7.]

Art. 6264. [3759] **Investigated by grand jury.**—It shall be the duty of the district judges of this state to specially charge every session of the grand jury to investigate violations of this law. [Id. sec. 8.]

Art. 6265. [3760] **Attorney's fee.**—No person shall receive a greater fee than ten dollars to procure a pension for another, and any contract for a larger sum shall not be enforced by the courts. [Id. sec. 9.]

Art. 6266. [3761] **Lists to be sent county judges for posting.**—It shall be the duty of the comptroller, at least once in each year, to forward to the county judge a printed list of the pensioners in their respective counties, which list shall be posted in a conspicuous place in the office of said judge. It shall also be the duty of the comptroller, on the application of a grand jury, to forward to it, through the district clerk of the county in which the grand jury is convened, copies of any or all original papers on file in his office connected with an application for a pension which said grand jury may desire to investigate; and such copies, with their correctness attested by the comptroller, shall have the same force and value in a court of law that the original papers would have had. [Id. sec. 10.]

CHAPTER TWO.

CONFEDERATE SOLDIERS AND SAILORS.

Article.	Article.		
To whom granted.....	6267	Appropriation shall be prorated.....	6279
Application, how made.....	6268	Perpetuation of Evidence.	
Widow not be granted pension, unless, etc.	6269	Veteran may cause certain persons to make statement under oath.....	6280
Widow may make proof of certain facts by affidavit, etc.....	6270	Statement to be filed with secretary of state	6281
Soldier applying for pension shall have served honorably; evidence, how taken.....	6271	Widow of veteran may establish identity in same way.....	6282
What constitutes indigency.....	6272	Commissioner of Pensions.	
Payments, to be made when.....	6273	Salary and general duties of.....	6283
Pensions denied to whom.....	6274	Shall strike certain persons from roll....	6284
District judges shall charge the grand jury	6275	Copies of certain instruments accepted as evidence before grand jury.....	6285
Fees limited.....	6276		
County judge to be allowed fee for hear- ing application.....	6277		
Inmates of Confederate Home, asylums, etc., not entitled to pension.....	6278		

Article 6267. **To whom granted.**—There shall be paid an annual pension of eight dollars per months, the same to be paid quarterly on the first days of September, December, March and June of each year, to every surviving disabled and indigent Confederate soldier or sailor who is a native of this state, or who came to Texas prior to January 1, 1880, and who is either over sixty years of age or whose disability is the proximate result of the actual service in the Confederate army or navy for a period of at least three months; their widows in indigent circumstances who have never remarried and who have been bona fide residents of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1880; provided that said aid shall not exceed eight dollars per month; and provided, further, that, in the event the appropriation made by the state legislature for any one year shall prove insufficient to pay in full said pensions, that there shall not thereby be created a deficiency outstanding as a valid claim against the state of Texas, and each pensioner shall only receive, except as herein otherwise provided for, his pro rata according to the amount appropriated for that year. [Acts 1909, p. 231, sec. 1.]

Art. 6268. **Application, how made.**—Each applicant for a pension under the law shall make application in writing and under oath for the same to the county judge of the county of his residence. Such application shall state the name, age and residence of the applicant, and his occupation, if able to engage in one, his physical condition, as well as the company and regiment in which he enlisted in the Confederate army, or, if an officer commissioned by the president of the Confederate states, the date of his commission and his rank in the army, or if detailed directly under the provisions of the conscript law for duty in any of the armories or shops of the Confederate government, or for any other labor necessary for the maintenance of the army in the field, or where he served in the Confederate navy, and time of service in each case, what property, effects or income he possesses, and shall furnish the testimony of at least two credible witnesses who personally know that he enlisted in the service and performed the duties of a soldier or a sailor claimed by him; provided, however, that, if an applicant for a pension can not secure the testimony of two witnesses, then he may furnish such documents or evidence in connection with his service in the army as may establish his claim for a pension. These proofs shall be made before the county judge of the county of the residence of the applicant. The county judge shall certify to the trustworthy character of the witnesses and to the citizenship of the applicant, who must have been a bona fide resident of the county in which he makes his or her application for a period of six months next before

the date of said application. He shall in every case administer an oath to each applicant and witness, before they sign the affidavits. [Id. sec. 2.]

Art. 6269. Widow not to be granted pension, unless, etc.—No widow shall be entitled to a pension should her husband, if living, be debarred by reason of his inability to comply with the requisites described in this chapter as to his service in the Confederate army or navy. [Id. sec. 3.]

Art. 6270. Widow may make proof by affidavit, etc.—Any widow of a Confederate soldier or sailor, entitled to a pension under the provisions of this chapter, may make oath to the county judge in writing that she is in fact the widow of a Confederate soldier or sailor, that her said husband rendered valuable service to the Confederacy as such, that he did not desert, and was either killed or died, or was honorably discharged from the army; that she has made diligent search for all information as to the number of regiment and company in which her deceased husband served, and has been unable to learn same; which affidavit shall be filed with the county clerk; whereupon the county judge may proceed to take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may, upon his own motion, recommend to the pension commissioner the grant of a pension to the said widow; and, if the pension commissioner is satisfied that said widow is entitled to a pension under the provisions of this chapter, he may grant same. [Id. sec. 3a.]

Art. 6271. Soldier to have served honorably; evidence, how taken.—Every Confederate soldier applying for a pension under this chapter shall have served honorably from the date of his enlistment until the close of the late civil war between the states, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. It shall be the duty of the county judge to take down the evidence in writing of all witnesses examined by him, which shall be paid for by the applicant at the rate of five cents per hundred words; provided, that the applicant is authorized to have such evidence taken down by his attorney, or by such other person as he or she may employ under the contract of employment to secure his or her pension; and provided, that no greater fee than hereafter provided shall be charged by such attorney, or representative of such applicant; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the commissioner of pensions of the state of Texas. [Id. sec. 4.]

Art. 6272. What constitutes indigency.—To constitute indigency, within the meaning of this chapter, neither the applicant himself nor his wife nor both shall be the owners of property, real or personal, in excess of the value of one thousand dollars, household goods and wearing apparel excluded, nor in the enjoyment of an income annuity, the emoluments of an office or wages for their services in excess of one hundred and fifty dollars a year, or who is in receipt of aid or of a pension from any state, or the United States, or from any other source, or who is an inmate of the Confederate home, or other public institution, at the expense of the state, shall not be entitled to a pension under this chapter. [Id. sec. 6.]

Art. 6273. Payments to be made when.—The payments of such pensions shall begin on the first day of March and September of each year, payable at the end of each quarter; and on and after the first of each quarter the pensioner shall make his or her affidavit, stating the county of his or her residence and postoffice address, and that he or she is the identical person to whom a pension has been granted under this law, and that the conditions which existed at the time of making his or her application and on which

the pension was originally granted still exist; which affidavit shall be supported by the affidavit of some other credible person to the same fact, and which affidavit may be made before any one authorized to administer oaths, which affidavit shall be filed with the commissioner of pensions for examination; and, if approved by him, the comptroller of public accounts shall draw his warrant to the amount of such pension on the treasurer; and upon presentation the treasurer shall pay the same out of any money in the treasury which may be appropriated to this purpose. [Id. sec. 7.]

Art. 6274. Pensions denied to whom.—No application shall be allowed, nor shall any aid be given or pension paid in any case, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this chapter, where it shall appear that any such soldier or sailor deserted his command, or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of any soldier or sailor who has been divorced from any such soldier or sailor, being her husband, nor to any widow who voluntarily abandoned and without cause any such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to any such soldier or sailor who served as a substitute for another, nor to the widow of said substitute. [Id. sec. 8.]

Art. 6275. Grand jury to be charged.—It shall be the duty of the district judges of this state to specially charge the grand jury at every session to investigate violations of this law. [Id. sec. 10.]

Art. 6276. Fees limited.—No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful and shall not be enforced by the courts. [Id. sec. 11.]

Art. 6277. Fees of county judge.—A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; provided, that all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law as it now exists, regulating the fee of the county judges; and provided, further, that said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension. [Id. sec. 12.]

Art. 6278. Certain persons not entitled to.—No person shall, while an inmate of the Texas Confederate home, nor shall any person while confined in any of the asylums of this state, at the expense of the state, or confined in the state penitentiary to satisfy a judgment of conviction, receive a pension under this chapter; and any person having been granted a pension under the provisions of this chapter, and afterwards become an inmate of said home, asylum or penitentiary, shall, while such inmate, forfeit his pension, it being intended that no person shall at the same time receive benefits from both sources, and no pensioner who leaves this state for a period of over six months shall draw a pension while so absent. [Id. sec. 14.]

Art. 6279. Appropriations shall be prorated.—On the first day of September and on the first day of March each year, the commissioner of pensions shall first allot to each blind, maimed and totally disabled soldier and sailor, or the blind and totally disabled widow of such soldier or sailor, the sum of eight dollars per month for each year; and the remainder of said appropriation shall be equally prorated among the pensioners who are in indigent circumstances only, and whose claims to pensions have been established and filed with the commissioner of pensions, as provided by law; and the comptroller shall issue his warrants for the amount due said pensioners in the manner provided by law, and all pensioners to be paid at the end of each quarter, and all such pensions shall begin on the first day of September and March after the filing and establishment of such application; pro-

vided, however, that the commissioner of pensions is authorized to fill, after the apportionment is made, any vacancies created by death or other causes, at any time between the first day of March and the first day of September in each year. [Id. sec. 15.]

PERPETUATION OF EVIDENCE.

Art. 6280. **Certain persons may make statement under oath.**—Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under and by virtue of the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish his such right, may cause such person or persons to go before the county judge, or any notary public, of the county of the residence of such person, and make a statement in writing of all facts within his knowledge concerning and relating to the service as a soldier or sailor in the army or navy of the southern Confederacy during the civil war, such statement in writing when made to be duly subscribed and sworn to by the person making the same. [Acts 1909, p. 215, sec. 1.]

Art. 6281. **Statement to be filed with secretary of state.**—Any such statement as provided for in the preceding article, made and reduced to writing duly authenticated, shall be filed with the secretary of state, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence, at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pension as may be provided by law. [Id. sec. 2.]

Art. 6282. **Widow may establish identity in same way.**—The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this state, shall be entitled to establish her identity and right to such pension in the same way and manner as is herein provided for soldiers and sailors. [Id. sec. 3.]

COMMISSIONER OF PENSIONS.

Art. 6283. **Salary and general duties of.**—There shall be a commissioner of pensions, whose term of office shall be two years, with a salary of two thousand dollars per annum, who shall be appointed by the governor. It shall be the duty of said commissioner of pensions to examine and pass on all pension claims under the existing law, to keep a correct record of all approved claims, with the name, disability, service, county and amount paid, to furnish the county judges with suitable blanks for use of claimants. The said commissioner of pensions shall, on the first day of September of each year, make to the governor a written report, showing the whole number of pensioners, the number of claims allowed for the past year and the amounts paid, together with such information pertaining to his office as the governor may ask. All records, books, claims or other matters connected with the office of said commissioner of pensions shall be kept open to inspection, and under the charge and direction of the governor, and all rulings made by said commissioner shall be subject to revision and change by the governor. This office shall continue for ten years only, unless continued by further legislation. The said commissioner of pensions shall not exercise the power of attorney to draw any pension. [Act 1909, p. 231, sec. 5.]

Art. 6284. **Shall strike certain persons from roll.**—It shall be the duty of the commissioner of pensions, when it shall come to his knowledge that any person has been granted a pension through fraud or perjury, or that any one on the pension roll has, by reason of acquiring property or annuity, emolument or other income that would have prevented the granting of a pension

had such conditions existed at the date of said application, to strike the name of such persons from the pension roll. [Id. sec. 9.]

Art. 6285. **Copies of certain instruments evidence before grand jury.**—It shall be the duty of the commissioner of pensions, on the application of the grand jury, to forward to the district clerk of the county in which the grand jury is convened, copies of any and all original papers on file in his office connected with an application for a pension, which said grand jury may desire to investigate; and such copies, with their correctness attested by the commissioner of pensions, shall have the same force and value in law that the original papers could have had. [Id. sec. 13.]

TITLE 106.

PHARMACY.

Article.	Article.
Governor to appoint board.....	Fees of board.....
6286	6292
Organization of board; secretary's salary	Pharmacists to be licensed.....
and bond; compensation of board.....	6293
6287	Certain persons entitled to be registered
Oath	without examination.....
6288	6294
Duty of; shall make report of money,	Qualifications of applicant.....
etc.	6295
6289	Board to issue license, when.....
Shall hold meetings for examination,	6296
when	Applicants legally registered in foreign
6290	countries to be granted license, when.....
May issue temporary certificates.....	6297
6291	License to be posted; renewals, etc.....
	6298

Article 6286. Governor to appoint board.—The governor shall, on or before September 1, after his inauguration, appoint five persons, licensed as pharmacists, who are actively engaged in the practice of pharmacy within this state at the time of their appointment, and shall have been so engaged for the past five years or more immediately preceding their appointment. The Texas state pharmaceutical association may recommend to the governor, on or before August 1, after his inauguration, a list of names of persons who are licensed pharmacists of this state, of twice the number to be appointed, and the appointments may be made by the governor from this list. The five persons so appointed shall constitute a board to be styled, "The Texas Board of Pharmacy," who shall hold their office for two years, and until their successors shall have been appointed and qualified; provided, however, that no person who is connected with any school or college of pharmacy in any way shall be appointed as a member of the Texas state board of pharmacy; and any member of the board may be removed by the governor for good cause shown him. Provided, further, that no two members of the board shall reside in the same county. In case of a vacancy from death or other cause, the governor shall appoint a successor to fill out the unexpired term, with qualifications as above set forth. [Acts 1907, p. 394, sec. 7.]

Art. 6287. Organization of board; secretary, his salary and bond; compensation of board.—The persons so appointed and constituting the Texas state board of pharmacy shall, within thirty days after their appointment, and annually thereafter, meet and organize by the election of a president, secretary and treasurer, who shall hold their office for the term of one year from the date of their election. The president and the treasurer shall be elected from the members of the board, and the secretary need not be a member of the board. The secretary shall receive such salary as may be prescribed by the board of pharmacy, and his necessary expense while engaged in the performance of his official duties. The board may adopt such by-laws and regulations as they shall deem necessary to carry into execution the provisions of this chapter, but which shall not be inconsistent with this chapter. The treasurer and secretary shall give bond in such sum as the board may determine, which at no time shall be for less amount than the sum handled by them annually. The expense of making such bonds shall be paid by the board. The secretary shall collect all money due the board from all sources, and shall pay the same over to the treasurer within ten days after the taking his receipt therefor. The bonds of the treasurer and secretary of the board shall be payable to the governor of the state of Texas, and shall be conditioned for the faithful performance of all duties imposed by law, or by order of the board of pharmacy. The board shall prescribe the pay of the members thereof, but at no time shall the amount exceed five dollars per day for each member, and this amount to be paid to them for such days during which they are actually engaged in the discharge of their official duties; and they are to receive such additional amounts as they may actually incur

for expenses in the discharge of their duties for mileage, hotel bills, stamps and stationery; provided, no bill either for services of a member of such board or any expense of such member shall be paid until an itemized statement of such service and each item of expense has been made out and sworn to by such member of such board, before some officer authorized under the law to administer oaths, and such account shall have been filed with and approved by said board; provided, that the state shall never be liable for the salary and expense of any members of this board. [Id. sec. 8.]

Art. 6288. **Oath.**—The persons so appointed and constituting the Texas state board of pharmacy, before entering upon the duties of said office, shall take the oath prescribed by the constitution of the state of Texas for state officers, and shall file the same in the office of the secretary of state, who shall thereupon issue to each of said members a certificate of appointment. [Id. sec. 9.]

Art. 6289. **Duty of; shall make report of money, etc.**—It shall be the duty of the board to examine all applications for registration of such persons as may be entitled to the same under the provisions of this chapter, and to make an annual report to the governor, a copy of which shall be furnished to the Texas state pharmaceutical association, upon the condition of pharmacy in Texas; which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board; and said itemized account of money paid out by said board shall show to whom paid and specifically for what purpose it was paid, and also the names of all pharmacists duly registered under this chapter. And it shall be the further duty of the board to deliver all money on hand at the end of the term of each board, after all outstanding debts have been paid, over to their successors in office. [Id. sec. 10.]

Art. 6290. **Shall hold meetings for examination, when.**—The Texas state board of pharmacy shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary; provided, that said regular meetings shall be held on the third Tuesday of January, May and September of each year, in such cities or places as the said board may select, or such cities or places as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board thirty days in advance of said meetings. Three members shall constitute a quorum for the transaction of any and all business. The president and secretary shall have the power to administer oaths in all matters pertaining to the examination and registration of pharmacist and assistant pharmacist. The board shall keep a record of its proceedings and a register of all persons to whom certificates or license as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof; and the books and register of the board, or a copy of any part thereof certified by the secretary, shall be accepted as competent evidence in all the courts. [Id. sec. 11.]

Art. 6291. **May issue temporary certificates.**—Any member of the board of pharmacy may issue a temporary certificate upon satisfactory proof that the applicant is competent; said temporary certificate shall be null and void after the first meeting of the board of pharmacy next after the granting said temporary certificate; provided, that not more than one temporary certificate shall ever be granted to any one person. [Id. sec. 12.]

Art. 6292. **Fees of board.**—The board of pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for the examination of an applicant for license as an assistant pharmacist, two dollars and fifty cents; for renewing the license as a pharmacist, one dollar; for renewing the license

as assistant pharmacist, one dollar; for issuing license to any proprietor or employe to conduct a drug store in towns of not more than one thousand inhabitants, one dollar. All fees shall be paid before any applicant may be admitted to examination, or his name placed upon the register of pharmacists or assistant pharmacists, or before any license or permit or any renewal thereof may be issued by the board. [Id., sec. 13.]

Art. 6293. **Pharmacists to be licensed.**—It shall be unlawful for any person not licensed as a pharmacist, within the meaning of this chapter, to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or to keep exposed for sale at retail any drug, chemicals or poisons, except as hereinafter provided, or for any person not licensed as a pharmacist or assistant pharmacist, within the meaning of this chapter, to compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physician's prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this chapter. And it shall be unlawful for any owner or manager of a pharmacy or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist; provided, however, that nothing in this article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same some one qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper, nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word poison and the names of at least two readily obtainable antidotes. [Id. sec. 1.]

Art. 6294. **Certain persons entitled to be registered without examination.**—All persons registered by district boards of pharmaceutical examiners prior to the nineteenth day of July, 1907, upon presenting proof of such registration in accordance with the law relating to the practice of pharmacy then in force, and the payment of one dollar, shall be entitled to a certificate of registration as a licensed pharmacist under the meaning of this chapter from the said board of pharmacy, without examination; provided, the application for such certificate shall have been made to the said board of pharmacy within ninety days after the first meeting of said board after its creation. Proprietors, and employes of such proprietors, who were on the nineteenth day of July, 1907, actively engaged in the preparation of physician's prescriptions and compounding and vending of medicines in towns of less than one thousand inhabitants in the state of Texas, and also proprietors, and employes of such proprietors, who may become so engaged in such towns during the five years next succeeding the date aforesaid, shall be exempt from examination; provided, he or she shall have registered as required by this chapter, and upon paying said board of pharmacy one dollar, shall receive a certificate of registration, which shall entitle such person to practice pharmacy in towns

of one thousand inhabitants or under; and provided, further, that, should such persons have failed to apply for registration within ninety days from and after the first meeting of said board after its creation, said person shall be required to pay the same fees as for original registration. Every person, except in the cases named, who desires to be licensed as a pharmacist, shall file with the secretary of the board of pharmacy an application upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in the study of the science and art of pharmacy, the experience in compounding physician's prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist; provided, however, if any applicant should fail to pass a satisfactory examination, he or she may at any subsequent meeting of the board of pharmacy, within six months, be permitted to be re-examined without cost. [Id. sec. 2.]

Art. 6295. **Qualifications of applicants.**—In order to be licensed as a pharmacist, within the meaning of this chapter, an applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a board of pharmacy. In order to be licensed as an assistant pharmacist, within the meaning of this chapter, an applicant shall not be less than eighteen years of age, and shall have a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy, and shall pass a satisfactory examination by or under the direction of the board of pharmacy; provided, however, that in the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy may be deducted from the time of experience required of pharmacist and assistant pharmacist, but in no case shall less than two years experience be required for registration as a licensed pharmacist. [Id. sec. 3.]

Art. 6296. **Board to issue license, when.**—If the applicant for license as a pharmacist or assistant pharmacist has complied with all the requirements of the two preceding articles, the board of pharmacy shall enroll his name upon the register of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice, and the board of pharmacy, after due notice, may revoke a license for like cause, or any license which has been procured by fraud. [Id. sec. 4.]

Art. 6297. **Applicants legally registered in foreign countries to be granted license, when.**—The board of pharmacy may issue license to practice as pharmacist or assistant pharmacist in this state, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states, or foreign countries; provided, that the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this state, and that he was registered or licensed by examination in such other state, or foreign country, and that the standard of competency required in such other state, or foreign country.

accords similar recognition to the licentiates of this state. Applicants for license under this article shall, with their application, forward to the secretary of the board of pharmacy the same fees as are required of other candidates for license. [Id. sec. 5.]

Art. 6298. License to be posted; renewals, etc.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employe to conduct a drug store in towns of not more than one thousand inhabitants as above provided and every renewal of such license shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this state and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. The name of the responsible manager of every pharmacy, drug store, or apothecary shop, shall be conspicuously displayed outside of such place of business. [Id. sec. 6.]

TITLE 107.

PILOTS.

Chapter.	Chapter.
1. Commissioners of Pilots.	2. Branch Pilots and Pilots for the Mouth of the Brazos River and Matagorda and Lavaca Bays.

CHAPTER ONE.

COMMISSIONERS OF PILOTS.

	Article.		Article.
Governor to appoint.....	6299	Further powers and duties.....	6302
Duties of commissioners.....	6300	Same subject	6303
Terms of residence and of probation for pilots	6301	County judge to appoint committee, etc., to act in place of board.....	6304

Article 6299. [3790] **Governor to appoint.**—The governor shall appoint, with the consent of the senate, for each port whose population and circumstances will warrant it, and also for Matagorda and Lavaca bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of “commissioners of pilots” for such port and bays, three of whom shall be practical seamen and the other two merchants, who shall be commissioned by the governor for the term of two years; and the governor shall, during the recess of the legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise; provided, however, that no member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust. [Act April 17, 1846, p. 79, sec. 2; Feb. 9, 1861, p. 19. P. D. 4762, 4775.]

Art. 6300. [3791] **Duties of commissioners.**—Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any case of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not be allowed to exercise the functions of his office; the governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners. [Act April 17, 1846, p. 79, sec. 3. P. D. 4763.]

Art. 6301. [3792] **Term of residence and probation for pilots.**—The board of commissioners of pilots of each port shall require a certain term of residence in the state of Texas, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation not exceeding one year, as a deputy pilot, before any person can exercise the functions of branch pilot. [Id. sec. 4. P. D. 4764.]

Art. 6302. [3793] **Further powers and duties.**—The board of commissioners of pilots shall have authority, within the limits provided in this title, to

fix rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this title, as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept; provided, no regulation shall be adopted repugnant to the constitution. [Id. sec. 7. P. D. 4766.]

Art. 6303. [3794] **Same subject.**—The board of commissioners of pilots shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always, that no more than three dollars for each day shall be awarded for mere loss of time; and it shall be the duty of said board to superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case. [Id. sec. 7. P. D. 4767.]

Art. 6304. [3795] **County judge to appoint committee, etc., to act in place of board.**—At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience, who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear. [Id. sec. 13. P. D. 4773.]

CHAPTER TWO.

BRANCH PILOTS AND PILOTS FOR MOUTH OF BRAZOS RIVER AND
MATAGORDA AND LAVACA BAYS.

Article.		Article.	
Appointment, term and vacancies.....	6305	Pilots for mouth of Brazos.....	6313
Bond and oath.....	6306	Their bond, by whom approved.....	6314
May appoint deputies.....	6307	Pilots for Matagorda and Lavaca bays..	6315
Malfeasance and punishment.....	6308	To keep channels staked out.....	6316
Pilotage	6309	Pilotage for said bays.....	6317
Exemptions from extra pilotage.....	6310	Rules for branch pilots applicable.....	6318
Consignee responsible for pilotage.....	6311	Penalty for unlicensed pilot.....	6319
Unauthorized pilot to forfeit fifty dol- lars	6312		

Article 6305. [3796] **Appointment, term and vacancies.**—The governor is authorized and required to appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years. In case of a vacancy in said office, the appointment shall be for the unexpired term. [Act April 17, 1846, p. 79, sec. 1. P. D. 4761.]

Art. 6306. [3797] **Bond and oath.**—Before entering upon the duties of his office, each branch pilot shall enter into bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor and his successors in office, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the governor, to be by him deposited in the office of the secretary of state. Each pilot shall also take and subscribe the oath of office prescribed in the constitution, which shall be indorsed on said bond, and together with the bond shall be recorded in the office of the clerk of the county court of the county in which such port is situated before being forwarded to the governor; and certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals. [Id. sec. 5. Act Feb. 9, 1861, p. 19, sec. 1. P. D. 4765, 4775.]

Art. 6307. [3798] **May appoint deputies.**—Each branch pilot may appoint, subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment; and the said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water. [Id. sec. 8. P. D. 4768.]

Art. 6308. [3799] **Malfeasance and punishment.**—Any branch or deputy pilot who shall be guilty of taking charge of a vessel in a state of inebriety shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity; and if any branch or deputy pilot shall wilfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity, and shall be subject to such punishment as is prescribed by law. [Id. sec. 10. P. D. 4770.]

Art. 6309. [3800] **Pilotage.**—The rate of pilotage on any class of vessels shall not, in any port of this state, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot, whose services she so declined, for the payment of half

pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or, if she has come in without the aid of a pilot, though offered outside, she shall, on so going out, be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from the open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage, on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate, to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. [Act Sept. 26, 1866, pp. 14, 15. P. D. 7201. Acts of 1879, ch. 89, p. 99.]

Art. 6310. [3801] **Exemptions from extra pilotage.**—The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to-wit: All vessels of twenty tons and under, all vessels of whatsoever burthen owned in the state of Texas and registered and licensed in the district of Texas, when arriving from or departing to any port of the state of Texas; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the state of Texas; all vessels of seventy-five tons or under owned in the state of Texas and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States. [Id. p. 15. P. D. 7201.]

Art. 6311. [3802] **Consignee responsible for pilotage.**—The consignee of any vessel shall be held responsible for the pilotage of said vessel. [Act April 17, 1846, p. 79, sec. 12. P. D. 4772.]

Art. 6312. [3803] **Unauthorized pilot to forfeit \$50.**—If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars, to be recovered before any court having cognizance of the case. [Id. sec. 11. P. D. 4771.]

Art. 6313. [3804] **Pilots for mouth of Brazos.**—The governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos river, whose terms of office, mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges, and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties. [Act March 18, 1848, p. 144. P. D. 4776, 4782.]

Art. 6314. [3805] **Bond, by whom approved.**—The bonds of pilots for the mouth of the Brazos river shall be approved by the county judge of Brazoria county. [Id.]

Art. 6315. [3806] **Pilots for Matagorda and Lavaca bays.**—The governor shall also appoint not less than two nor more than four competent pilots for

Matagorda and Lavaca bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun county. [Act Feb. 9, 1861, p. 19. P. D. 4775.]

Art. 6316. [3807] **To keep channels staked out.**—It shall be the duty of pilots appointed under the preceding article to keep the channels of said bays properly staked and marked out, and in default thereof they shall be subject to removal or suspension. [Id.]

Art. 6317. [3808] **Pilotage for said bays.**—The rate of pilotage for said bays shall be two dollars and fifty cents for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed. [Id.]

Art. 6318. [3809] **Rules for branch pilots applicable.**—All the provisions of this chapter relating to branch pilots at ports, in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos river and for Matagorda and Lavaca bays. [Id.]

Art. 6319. [3810] **Penalty for unlicensed pilot.**—If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river, or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit in any court of competent jurisdiction. [Id.]

TITLE 108.

PRAIRIE DOGS—PROVIDING FOR THE EXTERMINATION OF.

<p style="text-align: right; margin-right: 20px;">Article.</p> <p>Organized counties to hold elections....6320</p> <p>Thirty days' notice of election.....6321</p> <p>Order for election.....6322</p> <p>Election, where held; managers and their pay.....6323</p> <p>Qualifications of electors.....6324</p>	{	<p style="text-align: right; margin-right: 20px;">Article.</p> <p>Form of ballot and returns.....6325</p> <p>Twelve months allowed to exterminate dogs after publication.....6326</p> <p>Who liable, and measure of damages for failure to comply.....6327</p> <p>Venue of suits.....6328</p>
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Article 6320. **Organized counties to hold elections.**—In all organized counties in Texas, upon the written petition of fifty freeholders of any such county, the commissioners' court of such county shall order an election to be held on some day named in the order, for the purpose of enabling the freeholders to determine whether or not the prairie dogs shall be exterminated in said county. [Act 1903, p. 70, sec. 1.]

Art. 6321. **Thirty days' notice of election.**—Upon filing such petition, the commissioners' court, at its next regular term, shall order an election to be held in such county on a day to be designated in the order, not less than thirty days from the date of such order, the election to be held and conducted and the returns thereof made in accordance with the laws regulating general elections in so far as the same are applicable. [Id. sec. 2.]

Art. 6322. **Order for election.**—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election, giving thirty days' legal notice, said notice reciting the petition and the action of the commissioners' court, and naming the date for said election. [Id. sec. 3.]

Art. 6323. **Election, where held; managers and their pay.**—The election shall be held at the regular election boxes in said county by the regularly appointed managers of elections; and for holding said election, those holding the same shall be paid the legal fees as provided by law for such services. [Id. sec. 4.]

Art. 6324. **Qualifications of electors.**—No person shall vote at any election under the provisions of this title unless he be a freeholder in the county, and is also a qualified voter under the constitution and laws of this state. [Id. sec. 5.]

Art. 6325. **Form of ballot, and returns.**—The ballots to be voted in any such election shall either have written or printed on them, "For extermination of prairie dogs," or, "Against extermination of prairie dogs," and those holding the election shall make within ten days time legal returns showing number of votes cast for and against the same to the county judge of the county, who shall tabulate and count the vote in the presence of the commissioners' court and ascertain the result of said election. [Id. sec. 6.]

Art. 6326. **Twelve months allowed to exterminate dogs.**—If a majority of the votes cast at such election shall be, "For extermination of the prairie dogs," the county judge immediately after counting the votes shall issue his proclamation declaring the result of the election, which proclamation shall be posted at the court house door, and, after the expiration of twelve months from its issuance, it shall be unlawful for any land owner or lessee of land in said county to allow to run at large any prairie dog on any lands owned or leased by him, and it shall be his duty to kill the same within twelve months from issuance of proclamation by the county judge. [Id. sec. 7.]

Art. 6327. **Who liable, and measure of damages for non-compliance.**—After the issuance of proclamation by the county judge in any county, de-

claring that the election has been held and that the result was, "For extermination of prairie dogs," at the expiration of twelve months any land owner, or lessee owning land in said county who shall wilfully fail or refuse to kill the prairie dogs inhabiting his land shall be liable for damages to the owners of contiguous land who have complied with the law; and the measure of damages is hereby fixed at two dollars and fifty cents per month for each and every month that he permits the prairie dogs running on his land to run at large. Any land owner owning adjoining lands, who has in good faith complied with the law and removes the dogs from his lands, should his lands be invaded by prairie dogs from the adjoining land, he may bring a suit for damages against such land owner, the amount of damages being hereby fixed at two dollars and fifty cents per month, and such suits are to be filed in the courts having competent jurisdiction; provided, further, that any party desiring to bring suit must notify the party from whom he claims damages, in writing, ninety days prior to the filing of said suit, and no damages shall accrue until after the expiration of said ninety days; provided, however, that in all cases where lands infested with prairie dogs owned by non-residents, and such land or lands are being used by some other person, or inclosed under the fence of another who is paying the owner thereof no compensation for the use thereof, then in all such cases the duty herein imposed as to the extermination of such prairie dogs shall devolve upon the person so using such land or lands or having the same inclosed under his fence. [Id. sec. 8.]

Art. 6328. **Venue of suits.**—The venue of all suits for damages under this title shall be in the county or precinct where the lands of the plaintiff are situated. [Id. sec. 8a.]

TITLE 109.

PRINCIPAL AND SURETY.

[See Article 3732.]

	Article.		Article.
Surety may require suit to be brought.....	6329	One surety may have execution against	
Discharged by failure to sue.....	6330	co-surety, when.....	6334
May have question of suretyship tried,		Sheriff, etc., has same right as surety,	
when	6331	when	6335
Execution levied first on property of		Surety not to be sued alone, unless, etc.	6336
principal	6332	Who is surety within this title.....	6337
Rights of surety who makes payment on			
judgment	6333		

Article 6329. [3811] **Surety may require suit to be brought.**—Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require, by notice in writing, the creditor or obligee forthwith to institute suit upon such contract. [Act Feb. 5, 1858. P. D. 4783.]

Art. 6330. [3812] **Discharged by failure to sue, when.**—If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of court thereafter, or to the second term, showing good cause why he did not bring it to the first term and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon. [P. D. 4784.]

Art. 6331. [3813] **May have question of suretyship tried, when.**—When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the others, the surety may, upon a written statement of the matter being set out in his answer, cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time before or after the trial, or at a subsequent term; but such proceedings shall not delay the suit of the plaintiff. [P. D. 4785.]

Art. 6332. [3814] **Execution, levied first on property of principal.**—If the finding of such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution first upon the property of the principal subject to execution, and situate in the county in which the judgment was rendered, before a levy shall be made upon the property of the surety, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy to be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution. [P. D. 4786.]

Art. 6333. [3815] **Rights of surety who makes payment on a judgment.**—When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder, to the extent of the payment thereon made by such surety, and interest thereon; and such surety shall be entitled to have execution thereon in the name of the creditor for the use of such surety against the principal debtor for the full amount of such payment and interest thereon and all costs, which execution shall be issued upon

the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases. [P. D. 4787.]

Art. 6334. [3816] **One surety may have execution against a co-surety, when.**—Should there be more than one surety, and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties for their proportionate part of the excess so paid by him, and interest thereon. [P. D. 4788.]

Art. 6335. [3817] **Sheriff, etc., has same rights as surety, when.**—If a sheriff or other officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such sheriff or other officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety. [P. D. 4787.]

Art. 6336. [3818] **Surety not to be sued alone, unless, etc.**—No surety shall be sued, unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in the cases provided for in article [1843].

Art. 6337. [3819] **Who is surety within this title.**—The remedy provided for sureties by this title extends to indorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract, or by the operation of law. [P. D. 4789.]

TITLE 110.

PRINTING—PUBLIC.

Article.	Article.
Board of public printing.....	Proposals, to whom addressed.....
Record of proceedings.....	Awarding of contracts.....
Board shall contract for public printing.....	Successful bidder to be notified.....
Expert may be employed.....	Requisites of contract.....
Printing classified, etc.....	Suits on contractors' bonds.....
Proclamations, etc., how published.....	Secretary of senate and clerk to furnish
When published in more than one paper,	journals of.....
etc.....	Secretary of state to furnish laws.....
Stationery, maximum prices of.....	To compare copies and to certify, etc.....
Other printing and stationery.....	Work to be delivered to whom.....
Current printing of legislature to be	When to be delivered.....
done at Austin.....	Account, how audited and paid.....
Number of copies of laws.....	Accounts for current printing of legisla-
Governor's message.....	ture.....
Of other public documents.....	Rates may be altered.....
Advertisements for proposals.....	Contracts may be abrogated.....
To include what.....	May be re-let, etc.....
Bid to be accompanied by, etc.....	Supplies to reporters.....
No officer to be interested.....	

Article 6338. [4219] **Board of public printing provided for.**—The attorney general, the state treasurer, and the secretary of state shall constitute a board of public printing, and a majority of the board shall constitute a quorum for the transaction of business. [Act June 27, 1876, p. 31, secs. 1, 16.]

Art. 6339. [4220] **Record of the proceedings of the board, etc.**—The secretary of state shall keep a record of the proceedings of the board and of all acts done by him in connection with the public printing, under the provisions of this title. [Id. sec. 16.]

Art. 6340. [4221] **Board shall contract for public printing, etc.**—The board of public printing is authorized and required to contract, as herein-after prescribed, with some suitable person or persons, who shall be a resident of this state, to print and bind the laws and the journals of the senate and house of representatives, and to do such other printing and binding, and to furnish such stationery as may be required by law, or may be needed by any department of the state government, or by either house of the legislature, not to include such work as may be done at the deaf and dumb asylum, nor such stationery, printing and binding as may be needed by the judicial department. They are authorized to make a separate contract when printing is to be done in any other language than the English; and in such case the printing board shall employ a competent person, at a price not to exceed thirty cents per hundred words, to translate the matter required into such other language. [Id. sec. 1.]

Art. 6341. [4222] **An expert may be employed, etc.**—The board of public printing shall be authorized to employ a competent practical printer at a salary not to exceed seventy-five dollars per month, who shall be ex officio instructor in the art of printing at the deaf and dumb asylum, and whose further duty it shall be to advise with and assist the board in advertising for proposals for printing and stationery, and in making contracts therefor; and to examine the work done and stationery furnished under such contracts, and to certify to the board whether the same are correct and in accordance with law and with the contracts of the contractors. [Id. sec. 15. Act March 13, 1875, p. 91, sec. 1.]

Art. 6342. [4223] **Printing classified; prices to be paid.**—The public printing shall be divided into four classes, as follows:

First. First class.—The first class shall include the printing and binding of the laws, journals, department reports, governor's messages and like docu-

ments which shall be printed on white calendered book paper of uniform color, twenty-five by thirty-eight inches in size, and weighing not less than forty-five pounds to the ream, from long primer type (except tabular work which may be from such type smaller than long primer as the nature of the work and good taste may require); the pages of the laws, department reports, governor's messages and like documents to be twenty-six ems pica wide and forty-six ems pica long, including head and foot lines, and to contain not less than one thousand eight hundred and twenty-four ems; and the journals shall be printed in octavo form, the pages to be twenty-six and one-half picas wide and forty-six ems pica long, including head and foot lines, from brevier type, two columns to the page, each column thirteen ems pica wide, and each page to contain not less than two thousand eight hundred ems. When printed, the laws and reports shall be neatly folded, stitched, covered and trimmed, and the journals and messages folded, stitched and trimmed. Cover paper shall not be less than thirty-five pounds to the ream. The index to the laws shall be printed from brevier type, and the index to the journals from nonpareil type. The maximum prices for the material and work of the first class shall be: For paper, white and cover, per pound, fifteen cents, and no allowance shall be made for waste; composition, seventy-five cents per thousand ems, printers' measurement; press work, sixteen pages to the form, unless the nature of the work requires a smaller number of pages, fifty cents a token of two hundred and forty impressions or less; binding, forty cents per hundred, for folding, stitching, covering and trimming first signature of sixteen pages, and twenty cents per hundred for each additional signature of sixteen pages or less; for folding, stitching and trimming without covering, thirty cents per hundred for first signature of sixteen pages, and fifteen cents per hundred for each additional signature of sixteen pages or less. No matter shall be leaded, except by the express direction of the printing board. The printing board shall, at the same time the contract is let for the printing of the journal of the two houses of the legislature, include in said contract the printing and delivery of each day's proceedings of the two houses while in session, the same to be printed in octavo form, as provided in this act for the printing of the regular journals of the two houses, five hundred copies for the use of the house of representatives and two hundred copies for the use of the senate, the same to be delivered by the hour of meeting of the day following that on which such proceedings were had.

Second: Second class.—Work of the second class shall consist of all blanks and printed stationery required by any department of the state government, except the judicial department, and shall be on first-class sized and calendered white wove unruled flat papers of such dimensions and weights as the nature of the work may require. The maximum prices for such work shall be as follows: For composition, fifty cents per one thousand ems, printers' measurement; for press work, on forms the size of flatcap sheet or less, forty cents per token; on forms larger than flatcap, fifty cents per token; and a token shall be two hundred and forty impressions or less when the number of copies of a job ordered shall require a less number of impressions. The maximum prices for paper required for work of the second class shall be twenty-five cents per pound. For ruling work of the second class, the maximum price shall be twenty cents per one hundred sheets for each actual and necessary passage through the ruling machine. For numbering with a numbering or paging machine, per one hundred pages or more, one hundred numbers, ten cents. For binding work of the second class, the maximum price shall be, for pads of one hundred copies each of any printed job, quarter sheet cap, demy, post or medium, per pad, five cents; for pads of two hundred copies of any printed job, half sheet cap, demy, post or medium, per pad, ten cents;

for quarter binding quarter sheet cap, demy, post or medium, per quire, ten cents; for quarter binding, half sheet cap, demy, post or medium, per quire, fifteen cents; for quarter binding whole sheet, cap, demy, post or medium, per quire, twenty cents; for half binding quarter sheet cap, demy, post or medium, per quire, twenty-five cents; for half binding and half sheet cap, demy, post or medium, per quire, thirty-five cents; for half binding whole sheet cap, demy, post or medium, per quire, forty-five cents. A quire, within the meaning here intended for binding work of the second class, is not less than forty leaves.

Third: Third class.—Work of the third class shall consist of blank books, either ruled and printed, or ruled without printing. The paper shall be made of linen stock and of the quality known among paper dealers as "P" paper; and the maximum prices shall be as follows: Cap paper, eighteen pounds to the ream, plain ruled half bound sixty cents per quire; ditto printed heads, eighty-five cents per quire; ditto plain ruled, extra full bound, one dollar per quire; ditto printed heads, one dollar and twenty-five cents per quire. Demy paper, twenty-eight pounds to the ream, plain ruled, half bound, seventy-five cents per quire; ditto printed heads, one dollar per quire; ditto plain ruled, extra full bound, one dollar and thirty-five cents per quire; ditto printed heads one dollar and fifty cents per quire. Medium paper, forty pounds to the ream, extra full bound, Russia leather ends and bands, canvas cover with Russia leather corners, plain ruled, three dollars per quire; ditto, printed heads, four dollars per quire. Super royal paper, fifty-four pounds to the ream, extra full bound, Russia leather ends and bands, canvas cover with Russia leather corners, plain ruled, four dollars and fifty cents per quire; ditto, printed heads, five dollars per quire. A quire shall not be less than forty leaves in work of the third class. No extra charge to be allowed for vowelings, paging, labeling, lettering, or gilding. Where changes in the printed heads occur in any blank book ordered, the maximum price shall be fifty cents for each change in ruling and printing together.

Fourth: Fourth class.—Work of the fourth class shall consist of the printing of bills, resolutions, committee reports and such other like work as may be ordered by the legislature, or either house thereof, and shall be on first-class sized and calendered white wove, flat cap paper, of fourteen pounds to the ream, printed on pica type, lines numbered in the margin, with space between the lines of the size of pica, the printing to be thirty-two ems pica wide and sixty-five ems in length. The maximum price for work of the fourth class will be: For two hundred copies, or any number of copies less than two hundred, ordered by either house of the legislature, including composition, paper, press work and binding, two dollars per page for as many pages as are contained in one copy thereof, and when more than two hundred copies of work mentioned in this class are ordered by either house of the legislature, the printer shall be paid only for the paper, press work and binding of such additional copies at such rates as are contracted for, for work of the second class; provided, that the printing board, in having schedules prepared for the use of printers for the first and second class of printing, may fix on other and lower maximum prices than those designated in this article for work and material of the first and second class of printing; and that such schedules may call for bids by the ream on all papers required for the first and second classes, giving dimensions and weights, in no wise to exceed the basis of twenty-five cents per pound, or may call for bids by the ton for all papers required for said class; and provided, that the printing board may in their discretion receive separate proposals and make separate contracts for furnishing in part or all the printing papers required under the provisions of this article for the printing of the first and second classes, under like conditions required by law for contracts to do the printing and furnish the paper; and in the event

of such separate contracts the printing board shall cause the papers so furnished to the state to be delivered to the contractor, to do the printing and binding on written requisition of such contractor, and under proper guards and checks, at such times and in such quantities as the requisites of any job or jobs of printing may require. [Amended Act 1903, p. 12.]

Art. 6343. [4223a] **Proclamations, etc., how published.**—No contract with the public printer shall be made for the publication of executive proclamations, advertisements, and other like documents; but the maximum price for such work shall be one dollar per square of one hundred words for the first publication, and fifty cents per square for each subsequent publication that may be ordered, and fractional parts of a square at proportionate rates, and each square shall contain not less than one hundred words. [Amend. 1895, No. 73, Sen. Jour., p. 482.]

Art. 6344. [4224] **When published in more than one paper.**—When proclamations, advertisements and like publications are authorized or required by law to be published in more newspapers than one, they shall be published under like rules; provided, that proclamations and like documents shall not be published in more than two newspapers in each congressional district, and at different points, and shall not be inserted for a longer period than three months; and proposed amendments to the constitution shall be published once a week for four weeks, commencing at least three months before the time specified by the legislature for an election thereon, in one weekly newspaper in each county in which such newspaper may be published; and all claims presented for publishing advertisements shall be accompanied by a copy of the advertisement as printed, and shall state the dates when the same was published. [Acts of 1876, p. 31, sec. 4.]

Art. 6345. [4225] **Stationery, maximum prices of.**—The maximum rates for stationery shall be as follows:

Legal cap paper—Eighteen pounds to the ream, seven dollars and twenty cents per ream; sixteen pounds to the ream, six dollars and forty cents per ream; fourteen pounds to the ream, five dollars and sixty cents per ream.

Foolscap paper—Sixteen pounds to the ream, six dollars and forty cents per ream; fourteen pounds to the ream, five dollars and sixty cents per ream.

Letter paper—Twelve pounds to the ream, four dollars and eighty cents per ream; ten pounds to the ream, four dollars per ream.

Note paper—Eight pounds to the ream, three dollars and twenty cents per ream; six pounds to the ream, two dollars and forty cents per ream; five pounds to the ream, two dollars per ream.

Engrossing paper—Twenty-eight pounds demy, one-quarter sheets, seven dollars and twenty cents per ream; eighteen pounds cap, one-half sheets, eight dollars per ream.

Envelopes—XX white or buff, number ten, plain, seven dollars and twenty cents per thousand; printed, eight dollars and eighty cents per thousand; XX white or buff, number six, plain, four dollars and eighty cents per thousand; printed, six dollars and forty cents per thousand; XX white or buff, number five, plain, four dollars per thousand.

Blotting paper—One hundred and twenty pounds to the ream, six dollars and forty cents per one hundred sheets; one hundred pounds to the ream, five dollars and twenty cents per one hundred sheets.

Pencils—The kind to be specified in bid, eight dollars per gross.

Red ink—The manufacturer to be named in bid, two dollars and forty cents per dozen.

Mucilage—Quarts, seven dollars and twenty cents per dozen; pints, four dollars and eighty cents per dozen.

Steel pens—Brand to be named, two dollars per box.

Penholders—Five dollars and sixty cents per gross.

Rubber bands—Best, all sizes, two dollars and forty cents per box.

Mammoth ink and pencil eraser—Four dollars per dozen.

Rubber rulers—Twelve inch, one dollar and twenty cents each.

Wood rulers—Fifteen inch, eighty cents each.

Erasing knives—Eighty cents each.

Recording ink—Maker to be named in bid; quarts, fourteen dollars and forty cents per dozen.

Copying ink—Maker to be named in bid; quarts, nineteen dollars and twenty cents per dozen.

Inkstands—C. H. number three, sixty cents each; glass, flat, eighty cents each.

Paper fasteners—Forty cents per box. [Id. sec. 5.]

Art. 6346. [4226] **Other printing and stationery.**—All printing and stationery not embraced within the provisions of the preceding articles of this title shall be furnished by the contractor at rates proportionate to those stipulated for in the contract for work and stationery of similar character, to be fixed by the board of public printing. [Id. sec. 6.]

Art. 6347. [4227] **Current printing of legislature to be done at Austin.**—The current printing of the legislature shall be done at the seat of government. [Id. sec. 12.]

Art. 6348. [4228] **Number of copies of laws, etc.**—There shall be printed not less than eight thousand copies of the laws of a general nature, and as many more as the printing board may require, not to exceed twelve thousand in all; and fifteen hundred copies of the special laws, including all acts for private relief, all acts incorporating towns and cities, all acts having local application, all of a personal nature, and all acts incorporating private associations of every description that may be passed at each session of the legislature; and one thousand copies of the journals of each house of the legislature. [Acts of 1883, p. 5.]

Art. 6349. [4229] **Of the governor's messages, etc.**—There shall be printed such number of copies of the messages of the governor and other documents as the legislature, or either house thereof, may order. [Acts of 1876, p. 31, sec. 7.]

Art. 6350. [4230] **Of other public documents.**—There shall be printed, under the supervision of the secretary of state, eleven hundred copies of the annual reports of the comptroller of public accounts, treasurer, commissioner of the general land office, superintendent of the penitentiary, superintendent of the lunatic asylum, of the asylums of the blind, deaf and dumb, and the reports of all other officers who are required to report to the governor, or the legislature; three hundred copies of which reports shall be delivered by the secretary of state to the two houses of the legislature for their use, at as early a day as practicable after they are printed; three hundred copies shall be delivered to the officer making the report for his use, and the remaining five hundred copies shall be kept by the secretary of state for public use; but the printing board may increase the number of copies of such reports required to be printed, not to exceed two thousand. [Id. sec. 8.]

Art. 6351. [4231] **Advertisement for proposals to do public printing, etc.**—It shall be the duty of the secretary of state, on the first day of August next, and every two years thereafter, or as soon after the first day of August as may be practicable, to advertise for sealed proposals to furnish said stationery and to do such public printing and binding as may be required by the several departments of the government under the provisions of this title. Such advertisement shall be published for thirty days in not less

than two nor more than five newspapers published within the state and having the largest circulation therein. It shall invite separate proposals to furnish the stationery and to do the printing and binding, and shall state as nearly as practicable the probable amount of such printing, binding and stationery which will be required under the contract. It shall also state the time and place of opening the bids and of awarding the contract, which shall be at the office of the secretary of state, not exceeding forty days from the date of the first publication of such advertisement. [Id. sec. 9.]

Art. 6352. [4232] **Proposals to include what.**—Separate proposals shall be made for furnishing the stationery and for doing the printing and binding; and the proposals for printing and binding shall embrace all such work as is included under articles 6342 and 6345, except such as may be done at the deaf and dumb asylum, and the material therefor; and the proposals for stationery shall embrace all material specified in article 6345, and such other articles as are usually included under the term stationery. [Id. sec. 10.]

Art. 6353. [4233] **Bid to be accompanied by bond.**—Each bid shall be accompanied by the bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, he will, without delay, upon being notified of such award, enter into a written contract in accordance with law, and with his said proposal, and will give bond and security, as required by law, for the faithful performance of such contract. [Id. sec. 2.]

Art. 6354. [4234] **No officer to be interested in contract.**—No member or officer of any department of the government shall be in any way interested in such contract, except in contracts for the translation of any public document into some other language. [Id. sec. 17.]

Art. 6355. [4235] **Proposals, to whom addressed.**—Such proposals shall be sealed and addressed to the secretary of state at the seat of government, and shall be indorsed with a memorandum showing that they are proposals for the public printing and binding, or for stationery for the several departments, as the case may be; and upon their receipt they shall be filed by the secretary of state; and the seals thereof shall not be broken until the day named in the advertisement for awarding the contracts, when they shall be opened in the presence of the printing board and such bidders and others as may desire to be present. [Id. sec. 2.]

Art. 6356. [4236] **Awarding of contract.**—It shall be the duty of the printing board on the day fixed in such advertisement, or as soon thereafter as practicable, to make a careful examination and comparison of such bids, and to award the contracts to the lowest and best responsible bidder whose bid may be below the maximum rates as herein prescribed; provided, such bid shall be approved by the governor and comptroller of public accounts. [Id.]

Art. 6357. [4237] **Successful bidders to be notified.**—It shall be the duty of the secretary of state, upon the making of such awards, immediately to notify the successful bidders, respectively, of the acceptance of their said bids, and that they will be required without delay to execute and deliver to him their contracts with the state for the due performance of their said undertakings.

Art. 6358. [4238] **Requisites of the contract.**—Such contract shall be in writing and shall be signed by the bidder, with two or more good and sufficient sureties, to be approved by the printing board in such sum as they shall prescribe, made payable to the state, and conditioned for his faithful compliance with his bid, and with the provisions of the law relating thereto, for the period of two years, and until a new contract shall have been made and approved; the contract shall also be signed on behalf of the

state by the members of the printing board, and shall be approved by the governor and comptroller, and filed in the office of the secretary of state. [Id. sec. 12.]

Art. 6359. [4239] **Suits on contractor's bond.**—On breach by the contractor of the bond provided for in the preceding article, the same may be put in suit on the order of the governor; and such suit may be brought in the proper court of the county in which the seat of government may be; and such bond shall not become void on the first recovery, but suits may be maintained thereon until the whole amount thereof shall be recovered. [Id.]

Art. 6360. [4240] **Secretary of the senate and chief clerk of house to furnish journals, etc., to contractor.**—It shall be the duty of the secretary of the senate, and of the chief clerk of the house of representatives, to deliver to the contractor for the public printing the journals of their respective houses for the purpose of being printed, together with a comprehensive index to the same, to be printed at the end thereof; and it shall be the duty of the contractor to carefully use the same, and to return them without delay, uninjured, to such secretary and clerk respectively when the printing thereof is completed. [Id. sec. 9.]

Art. 6361. [4241] **Secretary of state to furnish laws, etc.**—It shall be the duty of the secretary of state to deliver to such contractor, as soon as practicable after their passage or approval, copies of all laws and resolutions adopted by the legislature, together with a comprehensive index to the same. [Id.]

Art. 6362. [4242] **Secretary of state to compare copies and certify, etc.**—It shall also be the duty of the secretary of state to read and revise the proofs of such laws and resolutions, and to superintend the printing of the same, and to compare the same with the originals in his office, and to certify that the laws and resolutions as published are true copies of such originals; which certificate, together with a statement of the date on which the legislature adjourned, shall be appended to and printed at the end of each volume of such laws and resolutions. But the provision requiring the secretary of state to read and revise the proofs shall not dispense with the duty of the contractor to see that such proofs are properly read and corrected. [Id. secs. 9, 11.]

Art. 6363. [4243] **Work to be delivered to whom.**—The whole number of laws and journals, reports of public officers, and other public documents authorized to be printed, shall be delivered to the secretary of state at his office, except such printing as may be ordered by the two houses of the legislature, or either of them, for their use, which shall be delivered to such persons at such times as such houses, or either of them, may direct. [Id. sec. 10.]

Art. 6364. [4244] **When to be delivered.**—The laws and journals shall be delivered within sixty days after the last copy shall have been furnished to the contractor. The reports of public officers shall be delivered to the governor by the respective officers making the same in sufficient time to be delivered to the contractor one month before the meeting of the legislature, and if so furnished to said contractor shall be delivered by him to the secretary of state within the first week of said session; and if furnished less than one month before the meeting of the legislature, or after, the same shall be delivered by the contractor to the secretary of state within one month after they are so furnished. [Id. sec. 11.]

Art. 6365. [4245] **Account, how audited and paid.**—All accounts for printing done or stationery furnished, under the provisions of this title, except that for the legislature when in session, shall be audited as follows: The account shall be verified by the affidavit of the contractor that said account is just and correct; that the amount of work charged for has act-

ually been performed, or the actual amount of stationery delivered, and that the prices charged in said account are in accordance with the stipulations of the contract, and shall be accompanied with a sample of the work done and stationery furnished. After which it shall be examined by the practical printer and printing board, and, if found correct, approved by said board. Such claim, when thus examined and approved, shall be sufficient authority for the comptroller to issue his warrant, to be paid out of the appropriations for public printing or stationery. [Id. sec. 13.]

Art. 6366. [4246] **Accounts for current printing of legislature.**—All accounts for printing done or stationery used in either house of the legislature shall, in addition to the requirements contained in the preceding article, be approved by the chairman of the committee on public printing and the chairman of the committee on contingent expenses of the house ordering the work, before being presented to the printing board; for which account, when thus approved, the comptroller is authorized to draw his warrant, payable out of the contingent fund. [Id. sec. 14.]

Art. 6367. [4247] **Legislature may alter maximum rates, etc.**—It shall be competent for the legislature, at any time, to change by law the maximum rates hereinbefore prescribed for stationery or printing and binding, and, should the contractors decline to do such work, or to furnish such stationery, at the maximum rates so fixed, the printing board shall immediately proceed to re-let such contract. [Id. sec. 17.]

Art. 6368. [4248] **Contract may be abrogated, when, etc.**—The contracts for printing and stationery herein provided for may be abrogated by the legislature when in session, or by the printing board, with the consent of the governor and comptroller, when the legislature is not in session, if the contractor should fail to perform the work, or to furnish the supplies, in accordance with law and with his contract, and as promptly as the exigencies of the public service demand. [Id.]

Art. 6369. [4249] **Board may re-let contract, etc.**—Should there be no bid for the public printing or stationery within the maximum rates as fixed by law, or should the successful bidder fail to execute the bond with security as herein required, or should the contract be abrogated, it shall be the duty of the printing board, with or without advertisement, as the interest of the state and the exigencies of the public service may seem to require, to proceed to let out a new contract as hereinbefore provided; and they may, in their discretion, make such temporary arrangements to meet the emergency as is demanded by the public interest. [Id.]

Art. 6370. [4250] **Supplies to reporters.**—The reporters for the supreme court and court of criminal appeals shall be furnished by the state printing board with all stationery necessary for the performance of their duties. [Acts 1889, p. 7, sec. 2.]

TITLE 111.

PROPERTY—STOLEN.

<p style="text-align: right; margin-right: 20px;">Article.</p> <p>Treble value of stolen property recover- able, when.....6371</p>		<p style="text-align: right; margin-right: 20px;">Article.</p> <p>Criminal prosecution not affected by this title6372</p>
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Article 6371. [5044] **Treble value of stolen property recoverable, when.**
 —If any person shall purchase, trade or barter for any personal property after nightfall, and the same shall afterward be proved to be stolen property, such persons so purchasing, trading or bartering for said property, shall be liable to the true owner thereof in three times the value of the same, to be recovered in any court having jurisdiction of the case. [Act June 22, 1876, p. 26.]

Art. 6372. [5045] **Criminal prosecution not affected by this title.**—Nothing in this title shall be so construed as to relieve any person so offending from prosecution under the criminal laws.

TITLE 112.

PROPERTY—STATE'S PERSONAL—PRESERVATION OF.

	Article.		Article.
Persons in control of state property to		Incoming and outgoing officers to check	
make inventory.....	6373	inventory; receipt to be given.....	6377
How made and to whom rendered.....	6374	Penalty for non-compliance.....	6378
When made.....	6375	Law cumulative.....	6379
Persons in control of property re-			
sponsible for same.....	6376		

Article 6373. **Persons in control of state property must make inventory.**—It shall be the duty of every official or other person who has in his possession, or under his control, or for which he is in anywise responsible, any personal property belonging to the state of Texas, or in which it has an interest, to make out in triplicate a correct and full list and inventory of all such personal property which is or was in his possession when he assumed charge of such office or position, or had under his control, or for which he is in any way responsible, and which inventory shall contain the name of the article or articles of such personal property, the cost thereof, a fair and reasonable estimate of the present value thereof, a statement of the present condition of the same, how long said property has been in use, and the extent of the probable service, use and benefit that such property will be to the state in future; and, if sold during his term of office, or while in his possession, or under his control, he shall state the selling price thereof, and the disposition of the proceeds. [Act 1899, p. 307, sec. 1.]

Art. 6374. **How made and to whom rendered.**—A copy of said list and inventory, duly sworn to, shall be by such person charged with keeping said property, or who has the same under his control, management, or who is responsible for the same, transmitted by registered letter to the secretary of state at Austin, Texas, whose duty it shall be to enter such list and inventory on a book to be kept by him for the purpose, under its appropriate heading; and said secretary of state is hereby authorized to purchase such book or books as shall be necessary to record all such lists and inventories so made to him, and he shall be responsible for the correct entry of all said articles in such book or books, and shall be responsible for the safe keeping of the original sworn report from each of the persons named in this chapter, including the governor of this state, comptroller of public accounts, treasurer, attorney general, adjutant general, commissioner of insurance and banking, superintendent of public buildings and grounds, the commissioner of the general land office, chief justice of the supreme court, court of criminal appeals, and the several courts of civil, appeals, and the clerks thereof, the managers of each and every asylum in the state of Texas, superintendents and assistant superintendents of the penitentiaries and reformatories, superintendents and managers of all state farms, superintendents and managers of the university and the several branches thereof, normal schools, all the officers and employes of either branch of the legislature having personal property belonging to the state in their possession, and each and every other person holding any personal property in trust for the state of Texas, or having the same under his control, or in his possession, or for which he is in any wise responsible, all of whom are included in this chapter and subject to its provisions. A duplicate of said list and inventory, so sent to the secretary of state, shall be forwarded to the comptroller of public account, who shall carefully preserve the same in his office; and it is made the duty of the person so making out the list to retain in his possession for his successor in office a true

copy thereof, and whose duty it shall be to deliver same to such successor within three days after his qualification and assuming charge of such position, office or agency. [Id. sec. 2.]

Art. 6375. When made.—Upon qualification at the beginning of the terms of office of any of the persons named herein, after each succeeding general election, and within thirty days after taking charge of any personal property as herein named, it shall likewise be his duty to make said report as herein required of the officers now holding any of said positions, and to forward same to the officers herein named, who shall receive them and who shall continue to keep the registration of said reports, lists and inventories, as herein required of the secretary of state under the foregoing article hereof, and who shall, when said lists are received, make comparisons with former reports and note all articles of property not included in former lists, or which were included in former lists, but are not in the list last filed, and shall designate all such articles which are either dropped from or added to those of former lists and inventories. [Id. sec. 3.]

Art. 6476. Persons in control of property responsible for same.—Every person herein named or referred to, in charge of any public institution of Texas, or having under his control any personal property belonging to the state of Texas, is hereby made responsible for the same and the full value thereof; and all persons hereafter coming into any of the offices or positions herein enumerated shall at once become and shall remain responsible for the preservation and safe keeping of all personal property herein named or referred to, whether such persons be under official bonds or not; and all official bonds made by any of the persons herein named or referred to shall be intended as security to the state of Texas for the full value of all such personal property in any such institution or department, or otherwise belonging to the state over which such person is in control, or for which he is by this act made responsible. [Id. sec. 4.]

Art. 6377. Incoming and outgoing officers to check inventory.—Hereafter, when any of the officers named in this chapter, or who are hereby referred to and required to take charge of any of the properties of the state, shall take charge of same, they shall require of their predecessors in such positions, whose duty it is hereby made to furnish same, to make out for them a full list and inventory as above mentioned, of all properties in their possession, or under their control and management, or for which they are in any wise responsible, belonging to the state of Texas; and such outgoing and incoming officers shall together check up said list and inventory and ascertain that the same and each article in said list named is then on hand or duly accounted for. Said incoming officer shall give his receipt to his said predecessor in office for all of such property before he shall be entitled to possession of the same, and said receipt shall be by him delivered to said secretary of state for registration in his office, and a copy of the same shall be likewise delivered to the comptroller of public accounts for preservation in his office. [Id. sec. 5.]

Art. 6378. Penalty for non-compliance.—Should any of the officers, persons, or employes named in this chapter fail to make out said list and inventory, or fail to perform any of the duties herein required of him, he shall become immediately responsible to the state of Texas for the value of any and all articles of furniture, implements, goods, wares, merchandise, live stock and all other personal property which have come into his hands, or for which he may be responsible, and be subject to suit in the name of the state of Texas for the value of the same, and; should he fail to do or perform any of the acts and things required of him by this chapter, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the Penal Code. The jurisdiction for all

suits under this chapter shall be either in the county court of Travis county, or in the county where such officer shall reside at the time of the institution of said suit or prosecution, or where such property may be situated. [Id. sec. 6.]

Art. 6379. **Law cumulative.**—This chapter is not intended to repeal any law now in force for the preservation and protection of any state property, but is cumulative thereof, and all said laws are hereby kept in full force and effect where the same do not specifically conflict with this chapter. [Id. sec. 7.]

TITLE 113.

PUBLIC BUILDINGS, GROUNDS AND PARKS.

Chapter.

1. Public Buildings and Grounds.

Chapter.

2. San Jacinto State Park.

CHAPTER ONE.

PUBLIC BUILDINGS AND GROUNDS.

Article.	Article.
Appointment and term of office of superintendent of public buildings.....	6380
Bond and oath.....	6381
Removal and liability on bond.....	6382
Superintendent to have charge of public buildings.....	6383
Duties as to state cemetery.....	6384
Shall file inventory of property.....	6385
Under whose control public rooms and buildings.....	6386
Public property to be sold, when.....	6387
Shall have charge of halls, rooms, etc., when.....	6388
Not to be used for private purposes.....	6389
Authority as policeman.....	6390
Shall frequently inspect, etc.....	6391
To make report.....	6392
Sheriff to have charge of court house.....	6393
The Alamo.....	6394

Article 6380. [3820] **Appointment and term of office of superintendent.**—The governor shall appoint a suitable person as superintendent of public buildings and grounds, who shall hold his office for a term of two years. In case of a vacancy in said office the appointment shall be for the unexpired term. [Act April 29, 1874, p. 165. P. D. 7234f.]

Art. 6381. [3821] **Bond and oath.**—Before entering upon the duties of his office, the superintendent of public buildings and grounds shall execute a bond in the sum of two thousand dollars, payable to the state, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution, which oath and bond shall be filed in the office of the secretary of state. [Id. sec. 2. P. D. 7234g.]

Art. 6382. [3822] **Removal and liability on bond.**—The superintendent of public buildings and grounds may be removed from office at any time by the governor for neglect of duty, incompetency, or other sufficient cause; and he and his sureties shall be liable on his official bond for all damages occasioned by the injury or loss of any public property under his care, or resulting from any neglect of duty on his part. [Id. sec. 4. P. D. 7234.]

Art. 6383. [3823] **Superintendent to have charge of public buildings.**—It shall be the duty of the superintendent to have and take charge and control of all public buildings, grounds and property of the state, which may not be used by the different officers of the state government, including the state cemetery, and to properly care for and protect the same from damage, intrusion or improper uses. [Acts of 1884, p. 60.]

Art. 6384. [3824] **Duties pertaining to state cemetery.**—The superintendent shall also control, superintend and beautify the grounds of the state cemetery. He shall preserve such grounds and everything pertaining thereto from depredation and injury, and shall procure and erect at the head of each grave without a permanent monument an obelisk of marble, on which shall be engraved the name of the deceased therein buried. [Act April 14, 1871, p. 35. P. D. 5885.]

Art. 6385. [3825] **Shall file inventory of property.**—Upon his qualification, the superintendent shall file in the office of the secretary of state a true and correct inventory of all public personal property committed to his custody, verified by his affidavit, and a like inventory for all additions to such

property during his term of office; and on his retirement from office such property shall be delivered to his successor, who shall receipt for the same. [Act April 29, 1874, p. 165, sec. 2.]

Art. 6386. [3826] **Diferent public rooms and buildings, under whose control.**—The executive mansion, and grounds belonging to the same, and the executive offices in the state capitol, and the rooms therein occupied severally by the secretary of state, the comptroller, the treasurer, the attorney general, the adjutant general, the board of education, the commissioner of agriculture, and other officers shall be under the charge and control of each of said officers occupying or using the same; and the rooms on the third floor wherein are the supreme court library and the rooms used and occupied as the offices of the clerks of the supreme court, court of criminal appeals, and court of civil appeals, shall be under the control and in the charge of the clerks of said courts. [Acts of 1884, p. 60.]

Art. 6387. [3827] **Public property to be sold, when.**—All property belonging to the state situated or being in the city of Austin, or to any department, board or office of the state, when the same shall become unfit for use or no longer needed, shall be turned over to the said superintendent, who shall sell the same at public auction, after advertising it for not less than five days; and the money arising therefrom, less the expense of advertising and selling, shall be deposited in the state treasury to the credit of the department, board or office from which it was obtained, to be expended by the said superintendent for improvements or repairs whenever needed by the said departments, boards or offices, or for the state cemetery. The said superintendent shall make his report in writing to the comptroller, stating articles received, articles sold, to whom and at what price, and also a report showing how said funds were expended. [Id.]

Art. 6388. [3828] **Shall have charge of halls, rooms, etc., when.**—Said superintendent, during the recess of the legislature, shall have the charge and control of the halls and committee rooms of said capitol, except as hereinbefore provided; and before the assembling of each session of the legislature he shall prepare the different rooms for the uses of the legislature. [Acts of 1884, p. 60.]

Art. 6389. [3829] **Not to be used for private purposes.**—No room, apartment or office in said building shall at any time be used by any person as a bedroom or for any private purposes whatever; provided, that this article shall not apply to the rooms occupied by the judges of the supreme court and courts of civil and criminal appeals, on the third and fourth floors of the capitol. [Id.]

Art. 6390. [3830] **Authority as a policeman.**—The watchmen employed about and around the capitol and other buildings and grounds shall have all the powers and authority of a policeman of the city of Austin; and whenever, for the purpose of properly executing the provisions of this law, under the approval of the governor, by the said superintendent, there may arise a conflict with any ordinances or authority granted or given under or by virtue of the charter of the city of Austin, then and in that event so much of the said charter as authorizes the granting of such ordinances or the giving of such authority, be and the same is hereby repealed in so far as they prevent the said superintendent from efficiently performing his duties hereunder. [Id.]

Art. 6391. [3831] **Shall frequently inspect all state property.**—It shall be the duty of the said superintendent to frequently inspect all the public buildings and property of the state at the capital, and at such other places as the governor may direct; to act as adviser to all state boards in the preparation of specifications and plans for improvements and repairs to public buildings or property of the state, and to superintend the construction of said work, where the same is not otherwise specially provided for by law. The said state boards and departments shall notify the said superintendent of improvements

and repairs needed for their respective buildings and offices, and the same shall be made under his direction. He shall also be required to give his special attention to the effective maintenance of the state sewers and their connections, in use at the public buildings, and to keep the same in such sanitary condition at all times as to prevent the dissemination of disease therefrom, and to see that the gas and water pipes, with their connections and appliances, are maintained in working order, ready at any time for immediate use. He shall also be required to prepare and have in his office a copy of the plans of all public buildings and improvements thereto under his charge, showing the exact location of all water, gas and sewerage pipes, so that in case of needed repairs or inspection, their position can be determined without unnecessary expense. [Id.]

Art. 6392. [3832] **To make reports.**—It shall be the duty of said superintendent to make a report to the governor on the first day of December, biennially, showing the manner in which he has discharged his duties, the improvements and repairs that have been made under his superintendence, with an itemized account of his receipts and expenditures, and the condition of all property under his charge, including an estimate of needed improvements and repairs to same. [Id.]

Art. 6393. [3835] **Sheriffs to have charge of court houses.**—The sheriffs of the several counties shall have charge and control of the court houses of their respective counties, subject to such regulations as the commissioners' court may prescribe; and the official bonds of such sheriffs shall extend to and include the faithful performance of their duties under this article.

Art. 6394. **The Alamo.**—The part of the old Alamo Mission property purchased by the state, adjoining the building known as the Alamo church, together with the Alamo church, are delivered to the care and custody of the Daughters of the Republic of Texas, to be maintained by them in good order and repair, without charge to the state, as a sacred memorial to the heroes who immolated themselves upon that hallowed ground, and, by the Daughters of the Republic of Texas, to be maintained or remodeled upon plans adopted by them, and approved by the governor of Texas; provided, that no changes or alterations shall be made in the Alamo church proper, as it now stands, except such as are absolutely necessary for its preservation; all of said property being subject to future legislation by the legislature of the state of Texas. [Acts 1905, p. 7, sec. 3.]

CHAPTER TWO.

SAN JACINTO STATE PARK.

	Article.		Article.
Establishing state park on battlefield.....	6395	}	Duties of commissioners.....
Commissioners	6396		6397

Article 6395. **Establishing state park on battlefield.**—The lands owned and acquired by the state, commonly called the San Jacinto battlefield, shall be known and styled, “The San Jacinto State Park,” and, with the exceptions, reservations and limitations herein mentioned, the said San Jacinto state park shall be under the care and direction of the state superintendent of public buildings and grounds. Said superintendent and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within and connected with said San Jacinto state park. [Acts 1907, p. 104, sec. 9.]

Art. 6396. **Commissioners.**—The governor shall, every two years, appoint three resident citizens of the state, who shall be known as “San Jacinto State Park Commissioners,” and whose duties shall be to advise with and assist the superintendent of public buildings and grounds in the improvement, care and preservation of the lands now owned and hereafter acquired by the state, known as the San Jacinto battlefield; provided, that one or more of said commissioners may, in the discretion of the governor, be selected from the patriotic organization known as San Jacinto chapter, daughters of the republic of Texas, or from any kindred organization; provided, further, that said commissioners shall serve without compensation. [Id. sec. 6.]

Art. 6397. **Duties of commissioners.**—It shall be the duty of said commissioners, acting with the advice and consent of the superintendent of public buildings and grounds, to cause to be erected upon a site by them selected a keeper’s cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purposes of caring for and protecting the property of the state; to provide the necessary teams, implements and other utensils for the use of such keeper and other employes in the work of beautifying, improving and protecting said grounds; to cause to be erected around, about and upon said grounds such fence and fences as shall, in the judgment of the commissioners and superintendent of public buildings and grounds, serve the best interests of the state in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the superintendent for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the state’s interest therein. [Id. sec. 7.]

[Note.—For the acts of the legislature providing for the purchase of the land upon which this park is situated, see twenty-fifth legislature, p. 144; twenty-sixth legislature, p. 6 and p. 238, and thirtieth legislature, p. 104.]

TITLE 114.

QUO WARRANTO.

[See "Corporations," "Trusts" and "Officers—Removal of."]

	Article.		Article.
Petition for, when presented.....	6398	Judgment of court.....	6402
Joinder of parties, when.....	6399	Law cumulative.....	6403
Citations to issue, etc.....	6400	Venue of suit for state office.....	6404
Proceedings as in civil cases.....	6401		

Article 6398. [4343] **Quo warranto, when.**—In case any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes any office or franchise, or any office or any corporation created by the authority of this state, or any public officer shall have done or suffered any act which by the provisions of law works a forfeiture of his office, or any association of numbers of persons shall act within this state as a corporation without being legally incorporated, or any incorporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as a corporation, or exercises power not conferred by law, or if any railroad company doing business in this state shall charge an extortionate rate for the transportation of any freight and passengers, or refuse to draw or carry the cars of any other railroad company over its line as required by the laws of this state, the attorney general, or district or county attorney of the proper county or district, either of his own accord, or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof, in vacation, for leave to file an information in the nature of a quo warranto in the name of the state of Texas; and, if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition and order the information to be filed and process to issue. [Acts of 1879, S. S., p. 43.]

Art. 6399. [4344] **Joinder of parties in one action, when.**—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise. [Id. sec. 2.]

Art. 6400. [4345] **Citations to issue.**—When the information is filed, as hereinbefore provided, the clerk shall issue citations in like form as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation, the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court. [Id. sec. 3.]

Art. 6401. [4346] **Proceedings as in civil cases.**—Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil causes in this state; and, in cases of appeal to which either party shall be entitled, the said court shall give preference to such case and hear and determine the same at the earliest day practicable; and all such appeals shall be prosecuted to the term of the court in session, or the first term to be held, if not in session, after judgment has been rendered in the district court. [Id. sec. 4.]

Art. 6402. [4347] **Judgment of court.**—In case any person or corporation against whom any such proceeding is filed shall be adjudged guilty, as charged in the information, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise, and shall also give judgment in favor of the relator for costs of the prosecution. [Id. sec. 5.]

Art. 6403. [4348] **Remedy cumulative.**—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing. [Id. sec. 6.]

Art. 6404. [4349] **Venue of suit for state office.**—Suits against persons illegally claiming or holding any state office or appointment, as contradistinguished to a county or district office, shall be brought in the district court of Travis county. [Id. sec. 7.]

TITLE 115.

RAILROADS.

Chapter.

1. Incorporation of Railroad Companies.
2. Amending or Changing Charter.
3. Public Offices and Books.
4. Officers of Railroad Companies.
5. By-laws.
6. Stock and Stockholders.
7. Meetings of Directors and Stockholders.
8. Right of Way.
9. Other Rights of Railroad Companies.
10. Restrictions Upon, Duties and Liabilities of Railroad Corporations.

Chapter.

11. Collection of Debts from Railroad Corporations.
12. Forfeitures of Charter.
13. Ticket Agents—Authority and Duty.
14. Liability for Injuries to Employes.
15. Railroad Commission of Texas.
16. Issuance of Stocks and Bonds Regulated.
17. Interurban Railroad Companies.
18. Street Railways.
19. General Provisions.

CHAPTER ONE.

INCORPORATION OF RAILROAD COMPANIES.

	Article.
Not less than ten persons may form.....	6405
Who may build railroads.....	6406
Amount of stock subscribed and to be paid	6407
Articles of incorporation must contain what	6408
Shall be submitted to attorney general.....	6409
And filed in office of secretary of state.....	6410

	Article.
Existence of corporations begins when.....	6411
May proceed to act when.....	6412
Shall not be for more than fifty years.....	6413
Manner of renewing corporation.....	6414
When authorized to be sold or conveyed under special law.....	6415
Shall take, subject to special liens.....	6416

Article 6405. [4350] **Not less than ten persons may form company.**—Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad, by complying with the requirements of this chapter. [Act Aug. 15, 1876, p. 141, sec. 1.]

Art. 6406. **Who may build railroads.**—No corporation, except one chartered under the laws of the state of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railway within this state. [Act 1903, p. 90.]

Art. 6407. [4351] **Amount of stock which must be subscribed and paid.**—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of said road so intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid in to the directors of such proposed company. [Act 1876, p. 141.]

Art. 6408. [4352] **Articles of incorporation shall contain what.**—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same; provided, however, that local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.

3. The place at which shall be established and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation. [Acts of 1889, p. 17.]

Art. 6409. [4353] **Articles shall be submitted to attorney general, etc.**—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the attorney general of the state, whose duty it shall be to carefully examine the same; and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States or of this state, he shall attach thereto a certificate to that effect. [Acts of 1876, p. 141, sec. 2.]

Art. 6410. [4354] **Shall be filed in office of secretary of state.**—When said articles have been examined and certified as provided in the preceding article, the same shall be filed in the office of the secretary of state, accompanied by an affidavit in writing, signed and sworn to by at least three of the directors named in such articles, before some officer of the state authorized by law to administer oaths, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the secretary of state shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. [Id. sec. 3.]

Art. 6411. [4355] **Existence of corporation begins when.**—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the secretary of state; and the certificate of the secretary of state, under the seal of the state, shall be evidence of such filing. [Id. sec. 5.]

Art. 6412. [4356] **Corporators may proceed to act, when.**—When the articles of incorporation have been filed and recorded as herein provided, the persons named as corporators therein shall thereupon become and be deemed a body corporate, and be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this title. [Id. sec. 4.]

Art. 6413. [4357] **Corporation shall not be for more than fifty years, etc.**—No railroad corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time for periods not longer than fifty years, in the manner provided in the succeeding articles. [Id. p. 144, sec. 8.]

Art. 6414. [4358] **Manner of renewing corporation.**—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, which resolution shall specify the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. The said resolution and certificate shall then be filed and recorded in the office of the secretary of state, and the renewal of said corporation shall date from said filing. [Id.]

Art. 6415. [4359] **Where authorized to be sold or conveyed under special law.**—Whenever any line or lines of railway or railway properties within this state are by special law authorized to be sold and conveyed, the persons contemplating or engaging for the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such line or lines of railway by complying, as far as is applicable, with the requirements of this chapter. In the formation of such corporation, the requirements of article 6407 and so much of article 6410 of the Revised Statutes as relates to the affidavit therein provided for may be dispensed with, and words applicable to the case of a purchase may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, for or in lieu of words applicable to the building or construction of a railway. And when such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such line or lines of railway and properties pertaining thereto, and all rights, powers and privileges given by the laws of this state to railway companies, including the right to complete and extend such line or lines of railway, and to construct branch lines thereto; and any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company. [Acts of 1891, p. 128.]

Art. 6416. [4360] **Shall take property subject to liens, etc.**—Every railroad company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the company from which the purchase is made, or against a receiver for such last named company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When any corporation shall be formed under the provisions of article 6415, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each and every railroad operated or owned under such charter, in the same manner as if it were one railroad. [Id. sec. 2.]

CHAPTER TWO.

AMENDING OR CHANGING CHARTER.

	Article.		Article.
May amend articles, when.....	6417	|	May project, etc., branch line, etc., by
How amendment, etc., shall be made.....	6418		amendment, etc.
Shall take effect, when.....	6419		Branch line shall complete ten miles
Shall not amend, when.....	6420		first year, etc.....
			6421 6422

Article 6417. [4361] **Corporation may amend articles, etc.**—Any railroad corporation may amend or change its articles or act of incorporation in the manner provided in the following articles of this chapter. [Act Aug. 15, 1876, p. 142, sec. 5.]

Art. 6418. [4362] **How amendment, etc., shall be made.**—Said amendment or change shall be made in the manner following:

1. It shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the attorney general as in the case of original articles of incorporation, and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the secretary of state.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the secretary of state. [Id. sec. 5.]

Art. 6419. [4363] **Shall take effect, when.**—Such amendment or change shall be in force from the date of the filing of the same in the office of the secretary of state in accordance with the provisions of this chapter. [Id.]

Art. 6420. [4364] **Shall not amend, when.**—Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title, or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. [Id.]

Art. 6421. [4365] **May project, etc., a branch line by amendment.**—Any railroad company may, by its original articles of incorporation, or by its amendments to its charter, project and provide for the locating, constructing, owning and operating of branch lines from any points on its main line, or from any points on its branch line, constructed or projected, to any other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same; or from the branch line, if it commence at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and may, by amendment to its charter, provide for the continuation in its general course of the main line; that any and all amendments of charters, acts or articles of incorporation approved by the attorney general of the state, or his lawful representative, by which any branch railroad or railroads has or have been constructed in accordance with the provisions of this article as herein provided are authorized, validated, sanctioned and confirmed to the same extent as though this article had always read as now amended. [Id. p. 143, sec. 7. Amended act 1901, p. 258.]

Art. 6422. [4366] **Branch line shall complete 10 miles first year, etc.**—Any such corporation making such amendment to its charter, as is authorized by the preceding article, shall complete and put in good running order at

least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each and every succeeding year until the entire extent of the projected branch line is completed. [Id.]

CHAPTER THREE.

PUBLIC OFFICE AND BOOKS.

Shall keep offices in this state..... 6423 What officers to keep offices in this state, etc. 6424 Forfeiture for violation hereof..... 6425 Required to do repair work in Texas..... 6426 Rolling stock, etc., not to be removed for repair 6427 Not to apply in cases of strikes, fires, etc. 6428	Article. Where books to be kept and what they must contain..... 6429 President must report, etc..... 6430 Books to be subject to inspection..... 6431 Legislature may examine..... 6432 Penalty, etc..... 6433 Duty of attorney general..... 6434 May change public office..... 6435 Notice to be given, etc..... 6436 Domicile of corporation..... 6437
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Article 6423. [4367] **Shall keep offices in this state.**—Every railroad company chartered by this state, or owning or operating any line of railway within this state, shall keep and maintain permanently its general offices within the state of Texas at the place named in its charter for the locating of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this state where it shall have contracted or agreed, or shall hereafter contract or agree, to locate its general office for a valuable consideration; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its general office at any certain place within this state, then such general offices shall be located and maintained at such place on its line in this state as said railroad companies may designate to be on its line of railway. And such railroads shall keep and maintain their machine shops and round houses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and, if said general offices and shops and round houses, or either, are located on the line of a railroad in a county which has aided said railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. [Acts of 1889, p. 130, sec. 1.]

Art. 6424. [4368] **What officers are to keep offices in this state.**—It shall be the duty of said railroad company to keep and maintain at the place within this state where its said general offices are located the office of its president, or vice-president, also the office of its secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each and every one of its general offices shall be so kept and maintained, by whatsoever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where the said general offices are required to be located and maintained; and the persons hold-

ing said general offices of a railroad shall reside at the place and keep and maintain their offices at the place where the general offices of said railroad are required by law to be kept and maintained; and, if the duties of any of the above named offices are performed by any person, but his position is called by a different name, it is hereby made the duty of the said railroad company to have and maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter; provided, that if the judgment of the court shall be to forfeit the charter, then it shall allow the railroad company six months from the date of the judgment within which to comply with the requirements of this chapter, and if said railroad company shall comply with the said time no forfeiture shall occur; but if the railroad company shall not comply then the judgment shall be final; the object and meaning of this statute being to require every railroad company owning or operating a line of railway within this state to keep and maintain its general offices within this state at such place as required herein; and the name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one it is required to keep its general offices at; and each and every railroad is hereby required to have and maintain its general offices at the place named herein; provided, further, that where the principal shops of any company are situated on its line in the state, at a place other than the place where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; and provided, further, that the railroad commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may, by an order entered on its record, authorize any such officer to so reside and keep his office at such place. [Acts of 1889, p. 130, sec. 2. Amended act 1899, p. 117.]

Art. 6425. [4369] **Forfeiture for violation of, etc.**—Each and every railroad company chartered by this state, or owning, operating or controlling any line of railroad within this state, which shall violate any of the provisions of this chapter shall forfeit the charter by which it operates its railroad in this state to the state of Texas; and it is hereby made the duty of the attorney general of this state, upon the application of any interested party, or on his own motion, to proceed at once against every railroad company owning, operating or controlling any line of railway within this state by quo warranto to forfeit the charter of the railroad company so offending, or violating any of the provisions of this law; [and every such railroad company] shall in addition to forfeiting the charter to that part of the railroad situated within this state be subject to a penalty of five thousand dollars for each and every day it violates any of the provisions of this chapter; said penalty to be recovered in the name of the state of Texas by a suit which shall be filed by the attorney general in any court in this state having jurisdiction; and on the trial the court shall, if it finds that the railroad company has violated any of the provisions of this chapter, render judgment in the name of the state of Texas at the rate of the sum of five thousand dollars for each and every day said court shall find that said railroad company violated any of the provisions of this chapter. And any money recovered from any railroad company under the provisions of this law shall be paid over into the state treasury and become a part of the available public free school fund. [Id. sec. 3.]

Art. 6426. **Required to do repair work in Texas.**—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall and are hereby required to repair, renovate, or rebuild in the state of Texas any and all defective or broken cars, coaches, locomotives or other

equipment owned or leased by said corporations in the state of Texas, when such rolling stock is within the state of Texas; provided, that such railway shall have, or be under obligation to have, proper facilities in the state to do such work; and provided, this and the two succeeding articles shall not be so construed as to require any railway corporation to violate the safety appliance law of the Congress of the United States; and provided, further, that no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within the state of Texas than would be necessary to reach their repair shops in another state; and provided, further, that no such railway company shall haul, or be permitted to haul for purposes of repair, any disabled equipment by or past any shop owned or operated by any such company where said disabled equipment can be repaired, in order to reach some other repair shop at a greater distance for purposes of repairing said disabled equipment; provided, that the provisions of this and the two succeeding articles shall not apply to companies having less than sixty continuous miles of railroad in operation in this state. [Act 1909, p. 73, sec. 1.]

Art. 6427. **Rolling stock, etc., not to be removed for repair.**—All such railroad corporations, having their repair shops within the state, shall be prohibited from sending or removing any of their cars, coaches, locomotives or other equipment out of the state of Texas to be repaired, renovated or rebuilt, when the same is in a defective or broken condition and within the state. [Id. sec. 2.]

Art. 6428. **Not to apply in cases of strikes, fires, etc.**—The provisions of the two preceding articles shall not apply in cases of strikes, fires, or other unforeseen casualties and emergencies. [Id. sec. 3.]

Art. 6429. [4370] **What books shall contain; open to inspection, etc.**—At the public or general offices of the said railroad companies, established as provided for in this chapter, the principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted by duly authorized officers and agents of said corporations, and where there shall be kept for the inspection of stockholders of such corporation books, in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers.

Provided, that railroad corporations shall be required to keep such office at some place on the line of its road in this state, as heretofore provided. [Acts of 1885, p. 67.]

Art. 6430. [4371] **President shall report, etc.**—The president or superintendent of every railroad company doing business in this state shall report annually under oath to the comptroller, or governor, the true status of said railroad, and such other matters and things as may be inquired about by said comptroller, or governor. [Const., art. 10, sec. 3.]

Art. 6431. [4372] **Books to be kept where.**—The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the state whose duty it may be to inspect such books. [Id. sec. 4.]

Art. 6432. [4373] **Legislature may examine.**—The legislature may, by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary. [Id. sec. 5.]

Art. 6433. [4374] **Penalty for failure, etc.**—It shall be unlawful for any railroad or other corporation to fail or refuse to comply with any of the provisions of this chapter; and, if said railroad or other corporation shall fail to refuse to comply with any part thereof, it shall be liable to pay to the state of Texas the sum of one thousand dollars for each and every month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the state in any court in this state of competent jurisdiction; provided, that an honest mistake in the entries in its books shall not subject a railroad company to the penalties of this article, if the office of said company shall be kept in this state, as herein provided. [Id. sec. 6.]

Art. 6434. [4375] **Duties of attorney general.**—It shall be the duty of the attorney general of this state to bring suit against said corporations, and prosecute them to judgment for any violation of the provisions of this chapter. [Id. sec. 7.]

Art. 6435. [4376] **May change public office.**—Every railroad corporation may change at pleasure its public office by publishing a notice of such change in some newspaper published on the line of its road, if any there be, and, if not, then in some newspaper in the state and having a general circulation in the state, for four successive weeks prior to such a change; provided, however, that the right to make such change shall be subject to the limitations and restrictions herein contained. [Act Feb. 7, 1854. P. D. 4888.]

Art. 6436. [4377] **Notice of establishment of public office, in first instance, shall be given.**—Every railroad corporation shall also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

Art. 6437. [4378] **Public office the domicile of the corporation.**—The public office of a railroad corporation shall be considered the domicile of such corporation. [Act Aug. 15, 1876, p. 150, sec. 32.]

CHAPTER FOUR.

OFFICERS OF RAILROAD CORPORATIONS.

Board of directors.....	Article. 6438	Corporate powers vested, etc.....	Article. 6445
Qualifications	6439	President and other officers.....	6446
Shall be elected by majority of, etc.....	6440	Majority of directors required to elect officers	6447
Same, etc.....	6441	Directors liable when	6448
By-laws in regard to, not to be changed.....	6442	All officers liable when.....	6449
Manner of voting for.....	6443		
Failure to hold election, etc.....	6444		

Article 6438. [4379] **Board of directors.**—Every railroad corporation shall have a board of directors of not less than seven nor more than nine persons. [Act Aug. 15, 1876, p. 144, sec. 11.]

Art. 6439. [4380] **Qualifications of directors.**—Each director shall be a stockholder in said corporation; and a majority of said directors shall be resident citizens of this state, and shall so remain resident citizens during their continuance as such directors. [Id. p. 145, sec. 14.]

Art. 6440. [4381] **Directors shall be elected by stockholders.**—The board of directors shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in such manner as may be prescribed by the by-laws of such corporation, and by this title, and the directors shall hold their offices until their successors are elected. [Id. p. 144, sec. 11.]

Art. 6441. [4382] **Majority of stock required to elect a director.**—It shall require a majority in value of the stock of such corporation to elect any member of such board of directors. [Id. p. 145, sec. 14.]

Art. 6442. [4383] **By-laws in regard to election of directors shall not be changed, except, etc.**—The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in the office of director; and such provisions in such by-laws shall not be changed, except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation. [Id. p. 144, sec. 11.]

Art. 6443. [4384] **Manner of voting for directors.**—In all elections for directors of such corporation, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit; and such directors shall not be elected in any other manner. [Id. p. 149, sec. 29.]

Art. 6444. [4385] **Failure to hold election for directors.**—In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the corporation for that purpose, the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of the corporation. [Id. p. 145, sec. 14.]

Art. 6445. [4386] **Corporate powers vested in directors.**—All the corporate powers of every railroad corporation shall be vested in and be exercised by its legally constituted board of directors. [Id. p. 144, sec. 11.]

Art. 6446. [4387] **President and other officers.**—There shall be a president of the corporation, who shall be chosen from and by the board of directors, and such other subordinate officers as the corporation by its by-laws may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as the corporation, by its by-laws, shall require. [Id. p. 145, sec. 15.]

Art. 6447. [4388] **Majority of directors required to elect or appoint officers.**—In all cases, it shall require a majority of the directors to elect or appoint any officer of the corporation. [Id.]

Art. 6448. [4389] **Directors liable when false and fraudulent dividend is declared.**—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office; provided, that, if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall within thirty days thereafter, or after their return, if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability. [P. D. 4886.]

Art. 6449. [4390] **All the officers liable when false representations are made.**—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. [P. D. 4887.]

CHAPTER FIVE.

BY-LAWS.

	Article.		Article.
Power to enact by-laws.....	6450	When and by what vote by-laws shall be enacted.....	
Each share entitled to a vote.....	6451		6452

Article 6450. [4391] **Power to enact by-laws.**—Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. [Act Dec. 19, 1857, p. 95. P. D. 4911.]

Art. 6451. [4392] **Each share entitled to vote, etc.**—In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. [Id.]

Art. 6452. [4393] **When and by what vote shall be enacted, etc.**—No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation. [Id.]

CHAPTER SIX.

STOCK AND STOCKHOLDERS.

	Article.		Article.
Railroad stock is personal estate and transferable	6453	Increase may be not exceeding amount named in notice	6463
Directors may require payment of stock, etc.	6454	Order or resolution increasing shall be recorded	6464
Sale of stock when owner neglects to pay	6455	President and directors shall furnish statement to stockholders at regular meeting	6465
Stockholders shall have access to books, etc., of corporation	6456	May be required to furnish statement at special meeting	6466
Funds of corporation shall be used only for legitimate purposes	6457	Stockholders may fix amount of loans and interest thereon	6467
Extent of stockholder's liability for debts of corporation	6458	Stockholders may remove officers and elect others	6468
Persons holding stock who are not liable	6459	No stock shall be issued, except, etc.	6469
Capital stock may be increased	6460	Fictitious dividends, etc., void	6470
Notice of meeting for such increase	6461	Penalty for violating two preceding articles	6471
Notice shall state what	6462		

Article 6453. [4394] **Railroad stock is personal estate and transferable.**—The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid. [Act Aug. 15, 1876, p. 145, sec. 17; p. 144, sec. 10.]

Art. 6454. [4395] **Directors may require payment of stock, etc.**—The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. [Id. p. 145, sec. 16.]

Art. 6455. [4396] **Sale of stock when owner neglects to pay.**—If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the state having a general circulation in the state; which notice shall name the stock to be sold and the time and place of such sale; and all stock so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m., and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. [Id. p. 145, sec. 16.]

Art. 6456. [4397] **Stockholders shall have access to books, etc., of corporation.**—All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. [Id. p. 145, sec. 13.]

Art. 6457. [4398] **Funds of corporation shall be used only for legitimate purposes.**—It shall not be lawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them, or any of them, to use the same for other than the legitimate purposes of the corporation. [Id. sec. 17.]

Art. 6458. [4399] **Extent of stockholder's liability for debts of corporation.**—Each stockholder of any railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. [Id. p. 146, sec. 20.]

Art. 6459. [4400] **Persons holding stock who are not liable.**—No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock shall be considered as holding the same and liable as a stockholder accordingly. [Id. sec. 19.]

Art. 6460. [4401] **Capital stock may be increased.**—In case the capital stock of any railroad corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purposes aforesaid. [Id. sec. 18.]

Art. 6461. [4402] **Notice of meeting for such increase, etc.**—Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally, or by depositing the same in a postoffice directed to the postoffice addresses of each of said stockholders severally, postage prepaid, at least sixty days prior to the day appointed for such meeting, and also by advertising the time, place and purpose of such meeting in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any newspaper shall be published therein, at least sixty days next preceding the day appointed for such meeting. [Id.]

Art. 6462. [4403] **Notice shall state what.**—Such notice shall state the time and place of the meeting; the object thereof, and the amount to which it is proposed to increase such capital stock. [Id.]

Art. 6463. [4404] **Increase may be not exceeding amount named in notice.**—At such meeting, the capital stock of the corporation may be so increased by a vote of two-thirds in amount of the capital stock of the corporation to an amount not exceeding the amount mentioned in the notice so given. [Id.]

Art. 6464. [4405] **Order or resolution increasing shall be recorded.**—Every order or resolution increasing the capital stock of any such corporation shall be recorded in the office of the secretary of state; and such increase shall not take effect until such order or resolution has been so recorded. [Id.]

Art. 6465. [4406] **President and directors shall furnish statement to stockholders at regular meeting.**—At the regular annual meeting of the stockholders, it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. [Id. p. 145, sec. 13.]

Art. 6466. [4407] **May be required to furnish statement at special meeting.**—The stockholders may, at any special meeting of stockholders, require statements similar to the one required by the preceding article from the president and directors, and when so required it shall be the duty of such president and directors to furnish the same. [Id.]

Art. 6467. [4408] **Stockholders may fix amount of loans and interest thereon.**—At a regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. [Id.]

Art. 6468. [4409] **Stockholders may remove officers and elect others.**—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of stockholders, remove the president or any director

or other officer of such corporation, and elect others instead of those so removed, in accordance with the by-laws of such corporation, and this title. [Id.]

Art. 6469. [4410] **No stock shall be issued, except, etc.**—No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. [Id. p. 148, sec. 25. P. D. 4921.]

Art. 6470. [4411] **Fictitious dividends, etc., void.**—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [Id.]

Art. 6471. [4412] **Penalty for violation of two preceding articles.**—Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness, as the case may be. [P. D. 4921.]

CHAPTER SEVEN.

MEETINGS OF DIRECTORS AND STOCKHOLDERS.

Article.	Article.
Annual meeting of directors.....6472	Notice of special meeting.....6477
Annual meeting of stockholders.....6473	If quorum of stockholders should not meet.....6478
Directors and stockholders may meet at same time and place.....6474	Proxy must be dated within what time..6479
Quorum of directors and stockholders..6475	What stock shall not vote.....6480
Special meeting of stockholders.....6476	

Article 6472. [4413] **Annual meeting of directors.**—The directors of every railroad company shall hold one meeting annually at their office in this state, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper printed and published in this state. [Const., art. 10, sec. 3. Acts of 1885, p. 67.]

Art. 6473. [4414] **Annual meeting of stockholders.**—The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this state; and it shall be the duty of the board of directors to cause public notice to be given of the time and place of such meeting for thirty days previously thereto, as provided in the preceding article. [Act Aug. 15, 1876, p. 144, sec. 12.]

Art. 6474. [4415] **Directors and stockholders may meet at same time and place.**—The annual meetings of the board of directors and of the stockholders provided for in the two preceding articles may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice.

Art. 6475. [4416] **Quorum of directors and stockholders.**—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of stockholders to transact business. [Id. sec. 12.]

Art. 6476. [4417] **Special meeting of stockholders.**—A special meeting of stockholders may be called at any time during the interval between the reg-

ular annual meetings of such stockholders by the directors, or by stockholders owning not less than one-fourth of all the stock of such company. [Id.]

Art. 6477. [4418] **Notice of special meeting.**—When any special meeting of stockholders is called, notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice. [Id.]

Art. 6478. [4419] **If quorum of stockholders should not meet.**—If at any meeting of stockholders a majority in value of the stockholders equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and, if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as hereinbefore provided. [Id. p. 145, sec. 14.]

Art. 6479. [4420] **Proxy must be dated within what time.**—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time shall not be voted. [P. D. 4908.]

Art. 6480. [4421] **What stock shall not vote.**—Stock issued within thirty days before any stockholders' meeting shall not entitle the holder to vote thereat, except at the first stockholders' meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon, except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock. [P. D. 4923.]

CHAPTER EIGHT.

RIGHT OF WAY.

	Article.
Right to construct anywhere in the state, etc.	6481
Right of way over public lands	6482
Lineal survey, etc.	6483
May lay out road two hundred feet wide	6484
Across streams of water, etc.	6485
Opening through fences, etc.	6486
Width of crossings, etc.	6487
Where may be made, etc.	6488
Demand to be in writing, etc.	6489
Time for completion, etc.	6490
Distance, etc.	6491
Failure, etc.	6492
Intersections of roads and streets	6493
Crossings of public roads, etc.	6494
Culverts, etc.	6495
Navigable waters, etc.	6496
Streets not to be taken without	6497
Along highways, etc.	6498
Other railways, etc.	6499
Intersected railways shall do what	6500
When corporations can not agree	6501
May enter upon adjacent land and take timber and material, etc.	6502
Damages, etc.	6503
When owner and corporation can not agree	6504
Shall not enter on land, except	6505
Statement to be filed, etc.	6506
Regular judge disqualified; special judge appointed	6507

	Article.
County judge shall appoint	6508
Commissioners shall be sworn	6509
Shall set a day and place	6510
To give written notice, etc.	6511
Manner of service, etc.	6512
Return of service, etc.	6513
Property of minors, etc.	6514
Non-residents, or party secreting himself	6515
Proceedings, etc.	6516
Powers of commissioners, etc.	6517
Rules of damages, etc.	6518
Same subject	6519
Same subject	6520
Injuries and benefits not to be estimated as to	6521
Assessments to be in writing	6522
Others may be appointed, when	6523
Compensation of	6524
Cost of service of notice	6525
Shall make out cost bill	6526
May remove cause, when	6527
Decision made judgment, when	6528
How costs awarded	6529
Damages to be paid, when	6530
Practice in case specified	6531
Right of way, how construed	6532
Right of way out of railroad lands	6533
Right of way vested how	6534

Article 6481. [4422] **Right to construct, etc., road anywhere in the state.**—Any railroad corporation shall have the right to construct and operate a railroad between any points within this state and to connect at the state line with railroads of other states. [Const., art. 10, sec. 1.]

Art. 6482. [4423] **Right of way over public lands.**—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this state, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

Art. 6483. [4424] **Lineal survey.**—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. [Act Aug. 15, 1876, p. 147, sec. 23.]

Art. 6484. [4425] **May lay out road two hundred feet wide, etc.**—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation in the manner provided by law. [Id.]

Art. 6485. [4426] **Right to construct across streams of water, etc.**—Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal which the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

Art. 6486. [4427] **Opening through fences, etc.**—All railway corporations in this state, which have or which may hereafter fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof; provided, that, if such fence shall divide any inclosure, that at least one opening shall be made in said fence within such inclosure. [Acts of 1887, p. 39.]

Art. 6487. [4428] **Width of crossings.**—Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of horses, cattle, sheep, hogs and all other domesticated animals, wagons and other vehicles.

Art. 6488. [4429] **Where may be made.**—Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the state who either live or own land within five miles of the place where such crossings may be demanded. [Id. sec. 3.]

Art. 6489. [4430] **Demand to be in writing.**—Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired. [Id. sec. 4.]

Art. 6490. [4431] **Thirty days' time for completion.**—No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings in each one and one-half miles of their road, except inside of inclosures, as provided in article 6486. [Id. sec. 5.]

Art. 6491. [4432] **Distance from place.**—Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed. [Id. sec. 6.]

Art. 6492. [4433] **Failure, etc.**—Whenever any railway company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance herewith, such railway company shall pay to the persons who made such demand each the sum of five hundred dollars for each and every month they shall so fail or refuse to comply with such demand, the same to be recovered by suit in any court of this state having jurisdiction of the amount. [Id. sec. 7.]

Art. 6493. [4434] **Intersections of roads and streets.**—Nothing in this chapter shall be so construed as to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets. [Id. sec. 8.]

Art. 6494. [4435] **Crossings of public roads.**—It shall be the duty of every railroad company in this state to place and keep that portion of its roadbed and right of way over or across which any public county road may run, in proper condition for the use of the traveling public; and, in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each and every week such railroad company may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved in a suit in the name of the county in which the cause of action accrued. [Acts of 1885, p. 45.]

Art. 6495. [4436] **Shall first construct necessary culverts, or sluices.**—In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. [Acts of 1876, p. 147.]

Art. 6496. [4437] **Navigable waters shall not be obstructed.**—Nothing in this chapter shall be so construed as to authorize the erection of any bridge,

or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge, or other obstruction, may be proposed to be placed so as to prevent the navigation of such stream or water. [Id.]

Art. 6497. [4438] **Streets, etc., of incorporated cities or towns shall not be taken without, etc.**—Nothing in this chapter shall be so construed as to authorize the construction of any railroad upon or across any street, alley, square, or highway of any incorporated city or town without the assent of the corporation of said city or town. [Id.]

Art. 6498. [4439] **In case of highways, plank roads, etc.**—In case of the construction of any railway along highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. [Id.]

Art. 6499. [4440] **Shall have the right to cross, intersect, etc., other railways.**—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. [Id.]

Art. 6500. [4441] **Intersected railways shall do what.**—Every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming intersections and connections and grant to such new railway facilities therefor. [Id.]

Art. 6501. [4442] **When the two corporations can not agree.**—If the two corporations can not agree upon the amount of compensation for any such crossing, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law. [Id.]

Art. 6502. [4443] **May enter upon adjacent land and take material, etc.**—Any railroad corporation may enter upon and take from any land adjacent to its road earth, gravel, stone, or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damage occasioned to any such land or appurtenances, and, if such owner and corporation can not agree, then the value of such material and the damage occasioned to such real estate may be ascertained, determined and paid in the manner provided in this chapter. [Id. sec. 22.]

Art. 6503. [4444] **Value of same and damages shall first be paid.**—The value of such material and the damage to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. [Id.]

Art. 6504. [4445] **In case corporation and owner can not agree, etc.**—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or the material thereon, required for the purposes of its incorporation or the transaction of its business for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for new right of way for change or re-location of road bed to shorten the line, or any part thereof, or to reduce its grades, or any of them, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating, or running its road, such corporation may acquire such property in the manner provided in this chapter; provided, that the limitation in width prescribed in article 6484, shall not apply to real estate, or any interest therein, required for the purposes herein mentioned, other than right of way, and that real estate, or any interest therein, to be acquired for such other purposes or any of them need not adjoin or abut on the right of way;

provided, further, that no change of the line through any city or town, or which will result in the abandonment of any station or depot, shall be made, except upon written order of the railroad commission of Texas, authorizing such change; and provided, further, that no railroad corporation shall have the right under this act to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation. [Id. p. 146, sec. 21. Amended Act 1901, p. 46.]

Art. 6505. [4446] **Shall not enter upon land, etc., except for a lineal survey.**—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. [P. D. 4922.]

Art. 6506. [4447] **Statement to be filed with county judge.**—If such company and said owner can not agree upon the damages, it shall be the duty of said company to state in writing the real estate and property sought to be condemned, the object for which the same is sought to be condemned, the name of the owner thereof and his residence, if known, and file the same with the county judge of the county in which such property, or a part thereof, is situated; provided, if the owner resides in either county in which a portion of the land is situated, the same shall be filed in the county of his residence. [Acts of 1885, p. 54.]

Art. 6507. **Regular judge disqualified; special judge appointed.**—Where any petition or statement for condemnation is presented to a county judge, as provided in the preceding article, and such judge shall be disqualified to act by reason of any of the matters mentioned in article 1736, he shall indorse his certificate of such disqualification upon such petition, or statement for condemnation, and file the same with the county clerk, who shall make a certified copy of such petition, or statement for condemnation, and of such indorsement thereon, and forward the same forthwith to the governor; whereupon the governor shall proceed to appoint some person learned in the law to act as special judge, who shall have and exercise all of the powers conferred upon the county judge by this chapter, and shall proceed to make the appointment of commissioners as provided by the succeeding article upon the said petition or statement for condemnation already filed, and in the event objections shall be filed by either party to the award of commissioners, the person so appointed by the governor shall preside at all trials of the cause in the county court until such time as the disqualification of the county judge may have ceased; provided, that any time before such disqualification is so certified to the governor, the parties by agreement may select such special judge. [Acts 1901, p. 20, sec. 1.]

Art. 6508. [4448] **County judge shall appoint commissioners.**—Upon the filing of such statement, the county judge shall forthwith, either in term time or in vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed on between said corporation and said owner. [Acts of 1860, p. 60.]

Art. 6509. [4449] **Commissioners shall be sworn.**—The said commissioners shall be sworn by the county judge, or by any officer authorized by law to administer oaths, to assess said damages fairly and impartially and in accordance with law. [Id.]

Art. 6510. [4450] **Commissioners shall select a day and place of hearing.**—Said commission shall, without delay, appoint a day and place for hearing said parties; and the day appointed shall be the earliest practicable day, and the place selected for such hearing shall be as near as practicable to the prop-

erty in controversy, or at the county seat of the county in which the property is situated. [Id.]

Art. 6511. [4451] **Shall issue written notice to parties.**—The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing. [Id.]

Art. 6512. [4452] **Manner of serving notice.**—Said notice shall be served upon said parties at least five days before the day of hearing, exclusive of the day of service, and shall be served by delivering a copy of the same to the party, his agent or attorney, and may be served by any person competent to testify.

Art. 6513. [4453] **Return of notice.**—The person making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for the hearing, with his return in writing thereon, stating how and when the same was served.

Art. 6514. [4454] **When the property belongs to estate or to a minor, notice shall be served on whom.**—When the property in controversy is the property of the estate of a deceased person, or of a minor, and such estate has a legal representative, or such minor has a guardian, the notice shall be served upon such legal representative, or guardian. [Id.]

Art. 6515. [4455] **Property of non-resident, unknown owner, or one who secretes himself.**—When the property in controversy belongs to a non-resident of this state, or to an unknown person, or to a person whose residence is unknown, or who secretes himself so that the process of law can not be served upon him, such notice may be served upon such owner by publication in the same manner as is provided for service of citation in article 1874 of the Revised Civil Statutes. [Acts of 1885, p. 54; amend, 1895, Sen. Jour., No. 83, p. 482.]

Art. 6516. [4457] **Proceedings of commissioners.**—When service of notice has been perfected, the commissioners shall, at the time and place appointed, or at any other time and place to which said hearing has been adjourned, proceed to fully hear said parties; but, if upon the day set for the hearing, the service of notice has not been perfected the said hearing shall be postponed from time to time until such service has been perfected.

Article 6517. [4458] **Power of commissioners.**—Said commissioners for the purpose mentioned in this chapter shall have power to compel the attendance of witnesses and the production of testimony, and to administer oaths and punish for contempt as fully as is provided by law for the district or county court.

Art. 6518. [4459] **Rule of damages.**—Said commissioners shall hear evidence as to the value of the property sought to be condemned, and as to the damages which will be sustained by the owner thereof by reason of such condemnation, and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by the construction and operation of such railroad, and shall according to this rule assess the actual damage that will accrue to such owner by said condemnation.

Art. 6519. [4406] **Same subject.**—When the whole of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value thereof in the market in which the same is located.

Art. 6520. [4461] **Same subject.**—When only a portion of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner as to the remaining portion of such real estate; whether such remaining portion is increased or diminished in value by such condemnation, and the extent of such increase or diminution, and shall assess the damages accordingly.

Art. 6521. [4462] **Injuries and benefits which shall not be estimated.**—In estimating either the injuries or the benefits, as provided in the preceding

article, those injuries or benefits which the owner of such real estate sustains or receives in common with the community generally, and which are not peculiar to him and connected with his ownership, use and enjoyment of the particular parcel of land, shall be altogether excluded from such estimate.

Art. 6522. [4463] **Assessment shall be in writing, dated, signed, etc.**—When the said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date the same and sign it, and shall file the said assessment, together with all other papers connected with the case, with the county judge without delay.

Art. 6523. [4464] **Other commissioners may be appointed, when.**—Should the said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge may at any time appoint another commissioner or commissioners to supply the place or places of those who are unable or who fail to act.

Art. 6524. [4465] **Pay of commissioners.**—Commissioners appointed under this chapter shall be entitled to receive for their services three dollars each for every day they may be engaged in the performance of their duties as such commissioners, and they may withhold their decision until their said fees are paid to them.

Art. 6525. [4466] **Corporation shall pay expenses of serving notice.**—The railroad company seeking to condemn property shall defray all expenses of serving notice upon the owner of such property, but shall be entitled to recover said expenses from such owner in case it shall be decided that said owner shall pay the costs of the proceeding.

Art. 6526. [4467] **Commissioners shall make out cost bill, etc.**—The commissioners may adjudge the costs against either party, and shall make out a statement in writing of all the costs which have accrued before them, and shall state therein against which party the said costs have been adjudged, and shall sign the same and deliver it, with the other papers of the cause, to the county judge.

Art. 6527. [4468] **Either party, if dissatisfied with decision, may remove cause, etc.**—If either party be dissatisfied with the decision of such commissioners, he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his objection; and thereupon the adverse party shall be cited, and said cause shall be tried and determined as in other civil causes in said court. [P. D. 4922.]

Art. 6528. [4469] **Decision shall be made the judgment of the court, when.**—If no objections are filed to such decision within the time prescribed in the preceding article, the county judge shall cause the said decision to be recorded in the minutes of his court, and shall make the same the judgment of said court, and may issue the necessary process to enforce the same.

Art. 6529. [4470] **How costs awarded.**—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to-wit: If the said commissioners shall award greater damages than the said company offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this chapter, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the said company shall pay all costs; but if the amount awarded by said commissioners as damages, or if the judgment of the county court shall be for the same or less amount of damages than the amount offered by the company before proceedings were commenced, then the costs shall be paid by the owner of the property. [Id.]

Art. 6530. [4471] **Damages must be paid before property is taken.**—In no case shall such corporation be entitled to enter upon and take the property

condemned, without first having paid whatever amount of damages and costs may have been awarded or adjudged against it by such commissioners, or deposited money to cover the same in the court wherein such condemnation proceedings are pending. But if the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

First. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

Second. In addition thereto, it shall deposit in said court a further sum of money equal to the amount of the damages awarded by the commissioners, and which shall be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the judge of the court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the court below or upon appeal.

Third. Should it be determined on final decision of the case that the right to condemn the property in question does not exist, the plaintiff shall surrender possession thereof, if he has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the same law as in other cases; except the judgment of the county court shall not be suspended thereby. The rules hereinbefore laid down for governing railroad corporations shall likewise apply to all persons and corporations having the right of eminent domain. [Const., art. 1, sec. 17. Amended Act 1899, p. 105.]

Art. 6531. [4472] **Practice in case specified.**—When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross-bill asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property. [Acts of 1889, p. 18.]

Art. 6532. [4473] **The right of way, how construed.**—The right of way secured or to be secured to any railway company in this state, in the manner provided by law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. [Act Feb. 7, 1861, p. 12.]

Art. 6533. [4474] **Right of way reserved out of lands granted to railroad companies.**—The right of way is hereby reserved to any railroad companies incorporated by the laws of this state, or that may hereafter be so incorporated, to the extent of one hundred feet on each side of said road, or roads that cross over, or extend through any lands granted, or that may be

hereafter granted, to any railroad company by the legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road. [P. D. 7389a.]

Art. 6534. [4475] **Right of way vested by judgment of the court.**—Whenever the right of way has been acquired, as hereinbefore provided, the judgment of the court shall vest such right in the company so acquiring the same.

CHAPTER NINE.

OTHER RIGHTS OF RAILROAD CORPORATIONS.

Article.	Article.
Shall have succession, etc.....6535	Right to convey persons and property...6541
May have a seal, etc.....6536	Right to erect and maintain buildings, etc. ....6542
Shall have the right to hold lands and other property.....6537	Right to regulate time, etc., of trans- portation .....6543
Shall have the right to receive and hold grants, etc.....6538	Right to borrow money, issue bonds, etc.....6544
Shall alienate lands, except, etc., for- feiture .....6539	Mortgage invalid, unless, etc.....6545
Preceding articles apply to all compa- nies .....6540	Resolution authorizing mortgage shall be recorded.....6546
	Directors may pay bonds with stock...6547
	When terminus on coast is destroyed...6548

Article 6535. [4476] **Shall have succession, etc.**—All railroad corporations shall have succession, and in their corporate name may sue and be sued, plead and be impleaded. [Act Aug. 15, 1876, p. 142, sec. 4.]

Art. 6536. [4477] **May have a seal.**—Any such corporation may have and use a seal, which it may alter at pleasure. [Id.]

Art. 6537. [4478] **Shall have the right to purchase and hold lands and other property.**—Any railroad company shall have the right to purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway. [Id. p. 143, secs. 6, 23.]

Art. 6538. [4479] **Shall have the right to receive and hold grants, etc.**—Such corporations shall have the right to take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. [Id.]

Art. 6539. [4480] **Shall alienate lands, except, etc.; forfeiture.**—All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years, and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the state and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservations for the establishment of machine shops, turn-outs and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the state. [Id.; amend. 1895, Sen. Jour., No. 84, p. 482.]

Art. 6540. [4481] **Preceding articles to apply to all companies.**—The three preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as to those corporations that are not so prohibited. [Id. p. 143, sec. 6.]

Art. 6541. [4482] **Right to convey persons and property.**—Such corporation shall have the right to receive and convey persons and property on its railway by the power and force of steam or by any mechanical power. [Id. p. 147, sec. 23.]

Art. 6542. [4483] **Right to erect and maintain buildings, etc.**—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employes or other persons, to construct any buildings along the line of their railroad to be occupied by their employes or others, except at their respective depot stations and section houses, and at such places only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter for their employes, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. [Id.]

Art. 6543. [4484] **Right to regulate time, etc., of transportation.**—Such corporation shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject nevertheless to the provisions of this or any other law that may hereafter be enacted. [Id.]

Art. 6544. [4486] **Right to borrow money, issue bonds, etc.**—Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of this title. [Id. p. 147, sec. 23.]

Art. 6545. [4487] **Mortgage invalid, unless, etc.**—No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in a manner provided in this title for increasing the capital stock of such corporations. [Id.]

Art. 6546. [4488] **Resolution authorizing mortgage shall be recorded.**—When any such resolution has been adopted in the manner provided in the preceding article, it shall be recorded in the office of the secretary of state, and no such resolution shall take effect until so recorded. [Id.]

Art. 6547. [4489] **Directors may pay bonds with stock.**—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation. [Id.]

Art. 6548. [4490] **When terminus on coast is destroyed.**—Any railway company in the state of Texas having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway company to remove and take up its track from its original terminus on the coast to a

point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site. [Acts of 1887, p. 6.]

CHAPTER TEN.

RESTRICTIONS UPON, DUTIES AND LIABILITIES OF RAILROAD CORPORATIONS.

Article.	Article.		
Roads to pass through county seat.....	6549	Employes limited to sixteen hours labor.....	6584
Shall survey twenty-five miles of road,	6550	Penalties, suits for, venue, etc.....	6585
etc.	6551	Railroad telegraph and telephone opera-	
Subsequent survey of twenty-five miles.	6551	tors eight hours a day work.....	6586
Trains to be regular.....	6552	Penalty, suit and disposition of funds.	6587
Train dispatcher, to maintain, and duties		Shall carry United States mails, and	
of	6553	compensation therefor.....	6588
Refusal to transport, etc.....	6554	Stations shall be erected, etc.....	6589
Double-decked cars for sheep.....	6555	No storage charged, except.....	6590
Rates of freight; penalty.....	6556	Depots opened, lighted, etc., penalty for	
Shall not collect more than specified in		failure	6591
bill of lading.....	6557	Water closets to be erected.....	6592
Freight to be delivered on payment of		Separate closets, how constructed and	
charges	6558	maintained	6593
Penalty for refusal to deliver freight.....	6559	Penalties and suits for.....	6594
Conductor shall wear badge.....	6560	Switch cars shall be furnished, when...	6595
Without it, shall not collect, etc.....	6561	Cattle guards and stops, at what places.	6596
Baggage shall be checked, etc.....	6562	Same subject.....	6597
Signs shall be erected at crossings.....	6563	Character of.....	6598
Bell and steam whistle, duty as to.....	6564	Owner may place, etc., cattle guards,	
Duty to equip with electric headlights.	6565	etc.	6599
Penalty for failure.....	6566	Liability for failure, etc.....	6600
Shall keep lighted from sunset to sun-		Johnson grass not to be permitted to go	
rise, except, etc.....	6567	to seed on right of way.....	6601
Shall place derailing switches, etc., on		Penalty for damages.....	6602
sidings, when, etc.....	6568	Liability for stock, etc.....	6603
Penalty	6569	Consolidation prevented, etc.....	6604
Passenger trains, how formed.....	6570	"Corporation" defined.....	6605
Brakes and brakemen.....	6571	Consolidation, etc.....	6606
Passenger trains without full crew, un-		Maps and profiles of roads to be re-	
lawful to run.....	6572	corded	6607
Freight, gravel or construction trains		To receive freight, etc., from connect-	
without full crew, unlawful to run....	6573	ing lines.....	6608
Light engine without full crew, as de-		What are connecting lines.....	6609
fined, unlawful to run.....	6574	Terms for receiving, etc.....	6610
Penalty and venue of suits.....	6575	All water craft freight to be received	
To what articles apply.....	6576	on same terms.....	6611
Certain kind of ash pans required.....	6577	Penalty	6612
Penalty, evidence, venue of suits.....	6578	Provisions of two foregoing articles,	
"Common carrier" defined.....	6579	how construed.....	6613
Provisions of foregoing articles do not		Declared to be trustees, when.....	6614
apply	6580	Penalty for refusal, etc.....	6615
Shall provide suitable places for em-		Equal facilities, etc.....	6616
ployes to work.....	6581	Damage for failure, etc.....	6617
Penalty	6582	Passenger fare.....	6618
Suits, fees of attorneys.....	6583		

Article 6549. [4491] **Road shall pass through county seat, when.**—No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. [Const., art. 10, sec. 9.]

Art. 6550. [4492] **Shall survey 25 miles of road, locate depot, etc.**—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun; and no railroad company shall change its route or depot grounds after the same have been so designated. [Act Aug. 15, 1876, p. 142, sec. 5.]

Art. 6551. [4493] **Subsequent survey of each twenty-five miles of road.**—Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. [Id.]

Art. 6552. [4494] **Trains to be regular, and notice to be given.**—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, with a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for receiving and discharging way passengers and freights, and shall take, transport and discharge such passengers and property at, from, and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and subject to regulation and correction by the railroad commission. [P. D. 4893. Amended act 1903, 1 S. S., p. 21.]

Art. 6553. **Train dispatcher, to maintain, and duties of.**—And every such railroad corporation operating trains in this state shall employ a competent train dispatcher, whose duty it shall be to keep informed of the movement of all trains upon the lines of such railroad corporation. Said train dispatcher shall also keep all agents at stations having telegraph offices in or near them informed of the movement of all passenger trains thirty minutes prior to the time such passenger train or trains are due, according to the published schedules at such stations; and, if such train dispatcher fails or refuses to furnish the information concerning the movement of trains to agents as required herein, he shall be deemed guilty of a misdemeanor, and be punished as may be provided by law. [Act 1903, 1 S. S., p. 21.]

Art. 6554. [4496] **Refusal to transport passenger or property.**—In case of the refusal by such corporation or their agents so to take and transport any passenger or property, or to deliver the same, or either of them, at the regular appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation; provided, that in all suits against such corporation under this law the burden of proof shall be on such corporations to show that the delay was not negligent. [Acts of 1887, p. 116.]

Art. 6555. [4502a] **Double-decked cars for sheep, etc.**—All railroad companies operating any railroad, or any part thereof, within the limits of this state, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this state; the distance between the floor and the second deck shall be the same as the distance between said second deck and the roof; the floor of said second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time hogs, sheep, goats, or calves, in carload lots. [Acts of 1887, p. 57, sec. 1; Sen. Jour., 1895, p. 483, No. 88.]

Art. 6556. [4502b] **Rates of freight; penalty.**—It shall not be lawful for any railroad company to charge more for shipping a double-decked carload

of sheep, goats, hogs, or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats, or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages, to be recovered in any court of competent jurisdiction; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative. [Id. sec. 2.]

Art. 6557. Shall not collect more than specified in the bill of lading.—It shall be unlawful for any railroad company in this state, its officers, agents or employes, to charge and collect, or to endeavor to charge and collect, from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading. [Act 1899, p. 70.]

Art. 6558. Freight to be delivered on payment of charges.—Any railroad company, its officers, agents or employes, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading. [Id.]

Art. 6559. Penalty for refusal to deliver freight.—Any railroad company, its officers, agents or employes that shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction. [Id.]

Art. 6560. [4503] Conductor, etc., shall wear badge.—Every conductor, baggage master, engineer, brakeman, or other servant of such railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the style of the corporation by which he is employed. [P. D. 4891.]

Art. 6561. [4504] Without badge shall not receive fare, etc.—No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll, ticket, or exercise any of the powers of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property. [Id.]

Art. 6562. [4505] Baggage shall be checked, etc.—A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and, further, no fare or toll shall be collected or received from such passenger; and, if such passenger

shall have paid his fare, the same shall be refunded by the conductor in charge of the train. [P. D. 4895.]

Art. 6563. [4506] **Signs shall be erected at cross-roads, etc.**—Such corporations shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. [P. D. 4890.]

Art. 6564. [4507] **Bell and steam whistle; duty as to.**—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at the distance of at least eighty rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railway crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this article, shall be punished for such neglect as provided in the Penal Code; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect; provided, however, that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, and shall keep a flagman in attendance at such crossing. [Acts of 1883, p. 28; amend. 1893, p. 87.]

Art. 6565. **Duty to equip with electric headlights.**—It shall be the duty of every railroad corporation, or receiver or lessee thereof, operating any line of railroad in this state, to equip all locomotive engines used in the transportation of trains over said railroad with electric headlights of not less than fifteen hundred candle power, measured without the aid of a reflector, or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector; provided, that this article shall not apply to locomotive engines regularly used in the switching of cars or trains. [Acts 1907, p. 54, sec. 1.]

Art. 6566. **Penalty for failure.**—Any railroad company or the receiver or lessee thereof, doing business in the state of Texas, which shall violate the provisions of the preceding article, shall be liable to the state of Texas for a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense; and such penalties shall be recovered and suit brought in the name of the state of Texas, in a court of proper jurisdiction in Travis county, Texas, or in any county in or through which such line of railroad may run, by the attorney general, or by the county or district attorney in any county, in or through which such line of railroad may be operated; and such suits shall be subjected to the provisions of article 6673. [Id. sec. 2.]

Art. 6567. **Shall keep lighted from sunset to sunrise, except, etc.**—It shall be the duty of every railway corporation operating any line of railway in the state of Texas to place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and to keep the same lighted from sunset until sunrise; provided, that this article shall not apply to railways which have all their locomotives equipped with electric headlights. [Act 1905, p. 77, sec. 1.]

Art. 6568. **Shall place derailing switches on sidings, when, etc.**—It shall be the duty of every railway corporation operating any line of railway in the state of Texas to place and maintain good and safe derailing switches on all of

their sidings connecting with the main line of such railway, and upon which sidings cars are left standing; provided, that no derailing switches shall be required where the siding connects with main line on an up grade in the direction of the main line of one-half of one per cent or over; provided, further, that no derailing switches shall be required on inside tracks at terminal points where regular switching crews are employed. [Id. sec. 2.]

Art. 6569. Penalty.—Any railway corporation which shall wilfully violate any of the provisions of the two preceding articles shall be liable to the state of Texas for a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense; and such penalty shall be recovered and suits therefor be brought by the attorney general, or under his direction, in the name of the state of Texas, in Travis county, or in any county through which such railway may run or be operated; and such suits shall be subject to the provisions of article 6673; provided, the provisions of article 6567 shall not apply on railroad lines or divisions on which no trains are regularly run or operated at night. [Id. sec. 3.]

Art. 6570. [4508] Passenger trains, how formed.—In forming a passenger train, baggage, or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed and any accident happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor and engineer of the train shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. [P. D. 4896.]

Art. 6571. [4517] Brakes and brakeman.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also permanently stationed there a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the state. [P. D. 4907.]

Art. 6572. Passenger trains without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside of the yard limits, any passenger train with less than a full passenger crew consisting of four persons, one engineer, one fireman, one conductor and one brakeman. [Act 1909, p. 179, sec. 1.]

Art. 6573. Freight, etc., trains, without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside the yard limits, any freight train, gravel train or construction train with less than a full crew consisting of five persons, one engineer, one fireman, one conductor and two brakemen. [Id. sec. 2.]

Art. 6574. Light engine without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside of the yard limits, any light engine without a full train crew consisting of three persons, one engineer, one fireman and one conductor; provided, that nothing in the two preceding articles shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of yard limits. [Id. sec. 3.]

Art. 6575. Penalty and venue of suits.—Any railroad company, or any receiver of any railroad company, doing business in the state of Texas, which shall violate any of the provisions of the three preceding articles shall be liable to the state of Texas for a penalty of not less than one hundred dollars or more than one thousand dollars for each offense; and such penalty shall be recovered and suit brought in the name of the state of Texas in a court of proper

jurisdiction in Travis county, Texas, or in any county in or through which such line of railroad may run, by the attorney general, or under his direction, or by the county or district attorney in any county [in], or through which such line of railroad may be operated; and such suits shall be subject to the provisions of article 6673. [Id. sec. 4.]

Art. 6576. To what articles apply.—The provisions of the four preceding articles shall not apply to or include any railroad company, or receiver or manager thereof, of any line of railroad in this state, less than twenty miles in length. [Id. sec. 4a.]

Art. 6577. Certain kind of ash pans required.—It shall be unlawful for any common carrier, engaged in moving commerce in the state of Texas by railroad, to use in moving such commerce in said state any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employe going under such locomotive. [Act 1909, p. 67, sec. 1.]

Art. 6578. Penalty; evidence; venue of suits.—Any such common carrier using any locomotive in violation of the provisions of the preceding article shall be liable to the state of Texas for a penalty of not less than one hundred dollars and of not more than one thousand dollars for each offense; and such penalty shall be recovered, and suit brought in the name of the state of Texas, in any court of proper jurisdiction in Travis county, Texas, or in any county into or through which such carrier may be operating a line of railroad, by the attorney general, or under his direction, or by the county or district attorney in any such county. The rules of evidence in suits arising under this article shall be the same as in ordinary civil actions; and the same compensation shall be allowed to the attorney bringing such suit as is provided in article 6673 of the Revised Statutes of the state of Texas. [Id. sec. 2.]

Art. 6579. "Common carrier" defined.—The term, "common carrier," as used in the two preceding articles, shall include the receiver or receivers, or other persons or corporations charged with the duty of managing and operating the business of a common carrier. [Id. sec. 3.]

Art. 6580. Articles do not apply.—Nothing contained in the three preceding articles shall apply to any locomotive upon which, by reason of the use of oil, electricity or other such agency, an ash pan is not necessary. [Id. sec. 4.]

Art. 6581. Shall provide suitable places for employes to work.—Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many as five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered from rain and protected from other inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, or other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. [Act 1910, p. 123, sec. 1.]

Art. 6582. Penalty.—Any person, corporation, or receiver who shall violate the provisions of the foregoing article shall be liable to the state of Texas for a penalty in any sum not less than fifty dollars nor more than one hundred dollars, and each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty; provided, however, that all persons, corporations, or receivers, affected by the preceding article, shall have until June 1, 1911, within which to comply with the provisions thereof. [Id. sec. 2.]

Art. 6583. **Suits; fees of attorneys.**—Suit for recovery of penalties hereunder shall be brought by the attorney general of this state or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fee allowed him by law at this time, and over and above the fees allowed under the general fee bill in force in this state. [Id. sec. 2.]

Art. 6584. **Employees limited to sixteen hours labor.**—It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this state, or any officer, or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. [Act 1909, p. 180, sec. 1.]

Art. 6585. **Penalties, suits for, venue, etc.**—Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this state, or any officer or agent of such railroad or receiver who shall violate any of the provisions of the preceding article shall be liable to a penalty of not to exceed five hundred dollars for each and every violation; and any such penalty shall be recovered and suit therefor shall be brought in the name of the state of Texas in any court having jurisdiction of the amount, in Travis county, or in any county into or through which said railroad may pass. Any suit or suits to recover a penalty or penalties for violating any of the provisions of the preceding article may be brought either by the attorney general, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which said railroad may pass, and such attorney bringing any such suit or suits shall be entitled to compensation of one-third of any penalty or penalties recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents; provided, that the provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; provided, further, that the provisions of this and the preceding article shall not apply to crews of wrecking or relief trains. [Id. sec. 2.]

Art. 6586. **Railroad telegraph and telephone operators, eight hours a day work.**—It shall be unlawful for any person, corporation or association, operating a railroad within this state, to permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed, "Block System," defined as follows: Reporting trains to another office or offices, or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards, or on main tracks out on the lines connecting side tracks or switches, or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone, in dispatching or reporting trains, or receiving or transmitting train orders, as interpreted in this ar-

ticle, to be on duty for more than eight hours in any twenty-four consecutive hours; provided, that the provisions of this article shall not apply to railroad telegraph or telephone operators at stations where the services of only one operator is needed. [Act 1907, p. 222, sec. 1.]

Art. 6587. **Penalty, suit, and disposition of funds.**—Any violation of the preceding article by any person, corporation or association, shall subject him or it to a penalty of one hundred dollars for each violation thereof, to be recovered by an action of debt in the name of the state of Texas for the use of the state; said action to be instituted in any court of the state having appropriate jurisdiction; and the penalty, when so recovered, shall be paid into the public school fund of the state of Texas. [Id. secs. 2, 4 and 5.]

Art. 6588. [4518] **Shall carry U. S. mails, and compensation therefor.**—Every such corporation shall, when applied to by the postmaster-general, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, it shall be lawful for the governor to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting, to the corporation, shall determine and fix the prices, terms and condition aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the postoffice car; and in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services, to be fixed as aforesaid. [P. D. 4903.]

Art. 6589. [4519] **Station depots shall be erected, etc.**—Each and every railroad company is hereby required to erect at each and every depot, station or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares and merchandise and freight of every description from damage by exposure to the weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorney's fees. [P. D. 4923.]

Art. 6590. [4520] **No storage to be charged, except, etc.**—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. [P. D. 4923.]

Art. 6591. [4521] **Passenger depots opened, lighted, warmed, etc.; penalty for failure.**—Every railroad company doing business in this state shall keep its depots or passenger houses in this state lighted and warmed, and open to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with the provisions of this article, shall forfeit and pay to the state of Texas the sum of fifty dollars, which may be sued for and recovered in the name of the state in any court of competent jurisdiction, and shall be liable to the party injured

for all damages by reason of such failure. [Acts of 1891, p. 29; Sen. Jour., 1895, No. 89, p. 483.]

Art. 6592. **Water closets to be erected.**—Each railroad and railway corporation operating a line of railway in the state of Texas for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employes who have business with such railroads and corporations at such station. [Act 1909, p. 175, sec. 1.]

Art. 6593. **Separate closets, how constructed and maintained.**—Said railroads and corporations are hereby required to keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its said train and after the arrival thereof at said station; provided, that said railroad or incorporation shall not be required by the provisions hereof to keep said closets lighted at such stations where the said railroad does not receive and discharge thereat in the night time passengers on and from its cars. [Id. sec. 2.]

Art. 6594. **Penalties, and suits for.**—Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the state of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney for the district including said county, shall, upon credible information furnished him, institute suit or suits in the name of the state of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county; provided, that the state of Texas shall in no event be liable for any costs in suit authorized by this law to enforce its provisions. [Id. sec. 3.]

Art. 6595. [4522] **Switch cars shall be furnished.**—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested so to do, and in default shall be subject to the same penalties as in other cases of neglect of the like character. [P. D. 4934.]

Art. 6596. [4523] **Cattle-guards and stops at what places.**—Each and every railroad company, whose railway passes through a field or inclosure, is hereby required to place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. [P. D. 4925.]

Art. 6597. [4524] **Same subject.**—In case an inclosure or field through which a railway passes shall be enlarged or extended, or the owner of the land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company is hereby required to place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields, or such new fields and keep the same in repair.

Art. 6598. [4525] **Character of cattle-guards and stops.**—Such cattle-guards or stops shall in all cases be so constructed and kept in repair as to

protect such fields and inclosures from the depredations of stock of every description.

Art. 6599. [4526] **Owner may place and keep in repair cattle-guards and stops at cost of company, when.**—Should any such company fail to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that the enlargement or extension, as above provided, was made capriciously and with intent to annoy and molest such company. [P. D. 4925.]

Art. 6600. [4527] **Liability of company for neglect to place and keep in repair cattle-guards and stops.**—Should any such company neglect to construct the proper cattle-guards and stops and keep the same in repair as required by law, such company shall be liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit in any court having jurisdiction. [Id.]

Art. 6601. **Johnson grass not permitted to go to seed on right of way.**—It shall be unlawful for any railroad or railway company or corporation doing business in this state to permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by such railroad or railway company or corporation in this state. [Act 1901, p. 283.]

Art. 6602. **Penalty and damages.**—If it shall appear upon the suit of any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company or corporation that said railroad or railway company or corporation has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way, such person so suing shall recover from such railroad or railway company or corporation the sum of twenty-five dollars, and any such additional sum as he may have been damaged by reason of such railroad or railway company or corporation permitting Johnson grass or Russian thistle to mature or go to seed upon their right of way; provided, any owner of land, or any person controlling land, contiguous to the right of way of any such railroad or railway company, who permits any Johnson grass or Russian thistle to mature or go to seed upon said land, shall have no right to recover from such railroad or railway company as provided for in this article. [Id.]

Art. 6603. [4528] **Liability of companies for stock killed or injured.**—Each and every railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways, which may be recovered by suit before any court having competent jurisdiction of the amount. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle; provided, however, that in all cases, if the railroad company fence its road, it shall only be liable for injury resulting from a want of ordinary care. [Acts 1905, p. 226.]

Art. 6604. [4529] **Consolidation prevented.**—It shall be unlawful for any railroad corporation, or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, property, works or franchises of such corporation with or lease or purchase the stocks, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act as or become an officer, agent, manager, lessee or purchaser of any other railroad corporation in leasing or purchasing any parallel or competing line. [Acts of 1887, p. 137.]

Art. 6605. [4530] **Corporation defined.**—Railroad corporation, or other corporation, as used in the preceding article, is declared to mean any corporation, company, person or association of persons who own or control, manage or operate any line of railroad in this state. [Id. sec. 3.]

Art. 6606. [4531] **Consolidation, etc.**—No railroad company organized under the laws of this state shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other state, or of the United States.

Art. 6607. [4532] **Map and profile of road, etc., shall be recorded.**—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the railroad commission. Every such map shall be drawn on a scale and on paper to be designated by the railroad commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with the provisions of this article shall forfeit to the state of Texas any sum not less than five hundred dollars nor more than one thousand dollars, to be recovered in any court of competent jurisdiction in any county through which such railway company may pass; and each day such railroad company fails or refuses to comply with the provisions of this law shall be considered a separate offense. [P. D. 4904.]

Art. 6608. [4535] **To receive freights and passengers from connecting lines.**—All railway companies doing business in this state shall be and they are hereby required to receive from all other railway companies with which they may connect at the state line of this state, or at any place within this state, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway, in this state, all freights and passengers coming to it from such connecting line and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this state with which it does business; provided, however, that the words, "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or that it accept for itself when transported wholly on its own line, no matter on what part of the line or in what direction the transporting is done. [Acts of 1887, p. 110.]

Art. 6609. [4536] **What are connecting lines.**—Whenever any two or more railroads doing business in this state shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the state to another point in this state, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines re-

ceive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business. [Id.]

Art. 6610. [4537] **Terms for receiving, etc.**—Every railroad, or person, or corporation operating a railway for the carriage of freight and passengers in this state shall receive freight, passengers and baggage for transportation to or into this state, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as to bills of lading, way-bills, tickets, coupon tickets and baggage checks, that any such person, or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this state; and, where railroads within this state receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in any wise resulting from delay; provided, that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges; provided, further, that should the consignee of the goods fail to receive them promptly after such notice is served the liability of the railroads thereafter shall be the same as that of warehousemen. [Id. Acts of 1883, p. 69.]

Art. 6611. **All water craft freight to be received on same terms.**—All railway companies doing business in this state shall be and they are hereby required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this state, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line, or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamship company, steamboat company or owners, or any other water craft or

vessel, with which it does business at such points or stations as aforesaid. [Act 1899, p. 101, sec 1.]

Art. 6612. Penalty.—If any railway company doing business in this state shall fail or refuse to interchange business with any steamship line or company, or any steamboat line or company, or any other water craft or vessel, on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and every railroad company so offending shall, for every such offense, forfeit and pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties, in article 6673, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each and every act of discrimination or violation of this law which may be recovered in a civil action in any court in this state having jurisdiction by law of the amount in controversy, in the name of the corporation, person or persons so suing; provided, that nothing in this article shall be so construed as to prevent the recovery of any other damages by an aggrieved person, firm or corporation accruing by reason of the violation of this article, or to relieve any railway company, or its officers, managers or agents, from prosecution under any penal law of this state. [Id. sec. 2.]

Art. 6613. Provisions of two preceding articles, how construed.—The two preceding articles shall not have the effect to relieve or waive any right of action by the state, or any other person, firm or corporation for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this state; and all penalties accruing under the two preceding articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Id. sec. 3.]

Art. 6614. [4538] Declared to be trustees, etc.—Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of connecting railways to the extent of balances due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers' liens, as already provided by law, and may be enforced in any of the courts of this state having jurisdiction by law of the subject matter and the parties. [Id.]

Art. 6615. [4539] Penalty for refusing to receive from connecting lines.—If any railway company doing business in this state shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this state, or shall fail or refuse to honor or receive the tickets, coupon tickets, way-bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, waybills or baggage checks of any other railway company, or shall violate in any manner any other provisions of this and the four preceding articles, such railway company so offending shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each and every act of

discrimination or violation of this law, which may be recovered in a civil action in any of the courts of this state having jurisdiction by law of such an amount, in the name of the person or corporation so suing; provided, nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the four preceding articles, nor to relieve any railway company, or its officers, managers or agents, from prosecution for violation of any penal law of this state. [Acts of 1887, p. 112.]

Art. 6616. [4540] **Equal facilities to be furnished.**—Every railroad company operating a railroad within this state shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. [Acts of 1887, p. 113.]

Art. 6617. [4541] **Damages for failure to comply, etc.**—Any railroad company, which shall fail to comply with the provisions hereof, shall be liable to the aggrieved party, in an action on the case, for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of the preceding article; and the said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt. [Id. sec. 2]

Art. 6618. [4542] **Passenger fare three cents per mile.**—The passenger fare upon all railroads in this state shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; and provided, further, that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided, further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. [Acts of 1883, p. 70, sec. 9.]

CHAPTER ELEVEN.

COLLECTION OF DEBTS FROM RAILROAD CORPORATIONS.

Article.	Article.
Property of company subject to execution.....	6619
Notice required in reducing wages.....	6620
Time of notice and how given.....	6621
Penalty, etc.....	6622
When wages to be paid discharged employe.....	6623
Road liable to be sold for debt.....	6624
New corporation in case of sale.....	6625
Jurisdiction, etc.....	6626
Sale under deed of trust, where made.....	6627
Judgment, execution, etc.....	6628
Unpaid stock, etc.....	6629
After sale, old directors to be trustees.....	6630
Suit not to abate, when.....	6631
Not to apply to state loans.....	6632

Article 6619. [4543] **Property of company subject to execution.**—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. [Const., art. 10, sec. 4.]

Art. 6620. [4544] **Notice required in reducing wages.**—All persons in the employment of such railway company shall be entitled to receive thirty days' notice from said company before their wages can be reduced by such company; and, in all cases of reduction, the employe shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given, to be recovered in any court of competent jurisdiction. [Acts of 1887, p. 20.]

Art. 6621. [4545] **Service of notice and how given.**—The notice referred to in the preceding article is declared to mean thirty full days immediately prior to the day upon which such reduction is to take effect, and may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other places where said employes are at work; provided, such employe shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether he will or will not accept such reduction; and, if no such information is given such company by such employe, then such employe shall forfeit his right to such notice, and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. [Id. sec. 2.]

Art. 6622. [4546] **Penalty.**—Any railway company violating or evading any of the provisions of the preceding article shall pay to each employe affected thereby one month's extra wages, to be recovered by such employe in any court of competent jurisdiction. [Id. sec. 3.]

Art. 6623. [4547] **When wages to be paid discharged employe.**—Whenever any railroad company shall discharge any employe, or whenever the time of service of any employe of a railroad company shall expire, or whenever any railroad company shall be due and owing any employe, such railroad company, upon such discharge, or upon the termination of the term of such service, or upon the maturity of said indebtedness, shall, within fifteen days after demand therefor upon the nearest station agent of said railroad company, pay to such employe the full amount due and owing him; and in case said railroad company fails or refuses to pay such employe, then it shall be liable and pay to such employe twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. [Acts of 1887, p. 72.]

Art. 6624. [4549] **Road, etc., liable to be sold for debts.**—In case of the sale of the property and franchises of a railroad company, whether by virtue

of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgments heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, however, that said purchaser or purchasers and associates, if any, shall not be deemed and taken to be the owners of the charter of the railroad company and corporators under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers and associates, if any, shall agree to take and hold said property and franchises, charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by an instrument in writing signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the secretary of state of the state of Texas; and, provided, further, that such charter, together with the powers, rights, privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the terms, provisions, restrictions and limitations imposed and to be imposed by law; and provided, further, that the amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the railroad commission of Texas at its discretion save that the total encumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by article 6718 of the Revised Statutes of Texas. [P. D. 4912, amended 4 S. S. 1910, p. 120.]

Art. 6625. [4550] New corporation, in case of sale, may be formed, how.—
In case of any sale heretofore or hereafter made of the property and franchises of a railroad company within this state, the purchaser or purchasers thereof and associates, if any, shall be entitled to form a corporation under chapter one of this title, for the purpose of acquiring, owning, maintainng and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this state upon chartered railroads, including the power to construct and extend; provided, that, notwithstanding such incorporation, the property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and re-

pairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved; and provided, further, that the amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the railroad commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by article 6718 of the Revised Statutes of Texas. This and the preceding articles shall not be construed to in any wise repeal or impair the provisions of chapter 16 of this title, except in so far as the same may be changed thereby. [Acts of 1889, p. 19. Amended 4 S. S. 1910, p. 120.]

Art. 6626. [4551] **Jurisdiction, etc.**—No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization. [Id. p. 20, sec. 2.]

Art. 6627. [4552] **Sale under deed of trust, when and where made.**—Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and, if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale. [P. D. 4913.]

Art. 6628. [4553] **Judgment, execution, levy and sale.**—Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. [P. D. 4914.]

Art. 6629. [4554] **Unpaid stock subscriptions of stockholders of sold-out company.**—The sale of the roadbed, track, franchise and chartered rights, as hereinbefore provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and

liquidation of the debts due by the sold-out company, as hereinafter provided. [P. D. 4915.]

Art. 6630. [4555] **After sale old directors to be trustees.**—Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature or by some court of competent authority), the directors or managers of the sold-out company at the time of the sale, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the sold-out company, and shall have full powers to settle the affairs of the sold-out company, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold-out company, and may be sued as such, and shall be jointly and severally responsible to the creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands. [P. D. 4916.]

Art. 6631. [4556] **Suits not to abate.**—No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold-out company. [Id.]

Art. 6632. [4557] **This title not to apply to state loans, etc.**—The provisions of this title shall not apply to any debt, execution, or deed of trust held by the state against any railroad company, because of any loan made by the state to any company under the provisions of the act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies; nor shall any creditor of any railroad company be allowed to make the state a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the state to foreclose any lien which it may have upon any road, but the lien of the state and its right to enforce the same shall continue as if this title had never been passed, and as if no sale had been made under the provisions of the same. [P. D. 4917.]

CHAPTER TWELVE.

FORFEITURE OF CHARTER.

Forfeiture for failure to build, etc.....	Article. 6633	Relief of, for failure to comply with law.	Article. 6635
Branch lines.....	6634	Neglect to make annual report.....	6636

Article 6633. [4558] **Forfeiture for failure to build and equip.**—If any railroad corporation organized under this title shall not, within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in clause two of article 6408, chapter one, of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of cars thereon. [Acts of 1889, p. 17.]

Art. 6634. [4559] **Same as to branch lines.**—The preceding article shall apply as well to branch lines as to main lines of railroads. [Acts of 1876, p. 143, sec. 7.]

Art. 6635. **Relief of, for failure to comply with the law.**—Any railway company holding a charter filed in the office of the secretary of state since the first day of January, 1900, of which by amendment to its articles of incorporation filed with the secretary of state of this state since the first day of January, 1900, has provided for the construction of one or more branch lines, and which has since the first day of January, 1906, constructed and put in operation fifty miles of railroad in this state, or thirty miles of railroad in the state of Louisiana, or which since the first day of January, 1906, shall have expended not less than twenty thousand dollars for right of way or terminal facilities within or immediately adjacent to any city in this state with a population of not less than forty thousand, as shown by the last Federal census; also any railway company which had been incorporated by articles of incorporation filed in the office of the secretary of state of this state since the first day of January, 1900, and which has since the first day of January, 1902, constructed and put in operation not less than nine miles of railroad within this state, and the length of whose line authorized by its charter does not exceed fifty miles, or which has since January 1, 1906, graded not less than fifty miles of road bed on its line in this state, or which has, in good faith, acquired since January 1, 1907, its right of way for the entire length of its line, and the length of whose line authorized by its charter does not exceed forty miles, or any railroad company which since the first day of January, 1901, and during the first year of its incorporation, did construct and put in operation not less than twenty miles of railroad in this state, shall have two years from the eleventh day of June, 1909, in which to comply, as to its main line or its branch or branches projected by such articles of incorporation or amendments, with the provisions of articles 6422, 6633 and 6634, and each such railway company which shall have forfeited its right to construct, or its

corporate existence, as to any part of its said main line, or is about to do so, or any of its said branches, or any part thereof, shall have, and such corporate existence and right to construct same is hereby restored and preserved to it, and it shall enjoy all of its corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture on account of such failure; provided, that no such railway company shall claim or exercise any right or franchise not allowed, granted or permitted to other railway corporations under the laws now in force in this state, and every such railway company shall comply with the laws now in force in this state pertaining to railway corporations. [Act 1909, p. 227, sec. 1.]

Art. 6636. [4560] **Neglect to make annual report.**—Any railroad corporation which shall neglect to make the annual report to the comptroller, or governor, required by this title, and which has been notified by the comptroller; or governor, of such failure, and shall still neglect to make such report, within three months after such notice, shall forfeit its charter. [P. D. 4902.]

CHAPTER THIRTEEN.

TICKET AGENTS—AUTHORITY AND DUTY.

	Article.		Article.
Authorized agent for sale of tickets.....	6637	Same	6639
Duty of agents.....	6638		

Article 6637. [4560a] **Authorized agents for the sale of tickets.**—It shall be the duty of all railroad companies doing business in this state, or the receiver of any such railroad company, through their duly authorized officers, to provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell, [Acts 1893, p. 97.]

Art. 6638. [4560c] **Duty of agent.**—It shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidence of the holder's right to travel over any railroad within this state, upon demand, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request it, the certificate of his authority to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers. [Amended Act 1903, p. 162.]

Art. 6639. **Same.**—It shall also be the duty of every such railway agent, at stations having telegraph communication with the train dispatcher of the road, to ascertain thirty minutes before the schedule time of the arrival of passenger trains, if such train is on time, and, if on time, to bulletin that fact on a board provided by the company and placed in some conspicuous place at the station; and if the train is late he shall bulletin how late, and from what cause the delay is due. If later than thirty minutes, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every thirty minutes and bulletin such information and the time of the probable arrival of such train. It shall also be the duty of such

agent to keep waiting rooms provided by the company for passengers lighted and heated in accordance with the law of this state. If any such depot agent shall fail or refuse to perform the duties required of him by this and the preceding article, he shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as may be provided by law. [Id.]

CHAPTER FOURTEEN.

LIABLE FOR INJURIES TO EMPLOYEES.

	Article.		Article
Liabile for injuries to fellow-servants.....	6640	No assumed risk where safety appliance not provided.....	6646
Who are vice-principals.....	6641	Double-header trains, no assumed risk by employes.....	6647
"Fellow servants" defined.....	6642	Liabile for injury or death of employe.....	6648
Contract limiting liability void.....	6643	Contributory negligence, rule as to.....	6649
Contributory negligence a defense, except, etc.....	6644	Assumed risk, rule as to.....	6650
When assumed risk not available as a defense	6645	Contract changing liability void.....	6651
		Articles of this chapter construed.....	6652

Article 6640. **Liabile for injury to fellow-servant.**—Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this state, shall be liable for all damages sustained by any servant or employe thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employe of such person, receiver or corporation, and the fact that such servants or employes were fellow-servants with each other shall not impair or destroy such liability. [Act 1897, S. S., p. 14, sec. 1.]

Art. 6641. **Who are vice-principals.**—All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this state who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employes of such person, receiver, or corporation, or with the authority to direct any other employe in the performance of any duty of such employe, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employes. [Id. sec. 2.]

Art. 6642. **"Fellow-servants" defined.**—All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employes who do not come within the provisions of this article shall not be considered fellow-servants. [Id. sec. 3.]

Art. 6643. **Contract limiting liability void.**—No contract made between the employer and employe based upon the contingency of death or injury of the employe and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding. [Id. sec. 4.]

Art. 6644. **Contributory negligence a defense, except, etc.**—Nothing in the preceding articles of this chapter shall be held to impair or diminish the de-

fense of contributory negligence when the injury of the servant or employe is caused proximately by his own contributory negligence, except as otherwise provided in this chapter. [Id. sec. 5.]

Art. 6645. When assumed risk not available as defense.—In any suit against a person, corporation, or receiver, operating a railroad or street railway, for damages for the death or personal injury of an employe or servant, caused by the wrong or negligence of such person, corporation, or receiver, that the plea of assumed risk of the deceased or injured employe where the ground of the plea is knowledge or means of knowledge of the defect and danger which caused the injury or death, shall not be available in the following cases:

First. Where such employe had an opportunity before being injured or killed to inform the employer, or a superior entrusted by the employer with the authority to remedy or cause to be remedied the defect, and does notify, or cause to be notified, the employer, or superior thereof, within a reasonable time; provided, it shall not be necessary to give such information where the employer, or such superior thereof, already knows of the defect.

Second. Where a person of ordinary care would have continued in the service with the knowledge of the defect and danger, and in such case it shall not be necessary that the servant or employe give notice of the defect as provided in subdivision one of this article. [Act 1905, p. 386, sec. 1.]

Art. 6646. No assumed risk where safety appliance not provided.—Any employe of any common carrier engaged in any intrastate commerce, as provided in articles 6640 and 6641 of this title, who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation of such carrier of any of the provisions of said articles contributed to the injury or death of such employe. [Acts 1909, p. 64, sec. 7.]

Art. 6647. Double-header trains; no assumed risk by employes.—Employees of railway companies employed by said companies in the operation of trains within this state, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in operation of such trains; and provided, further, that such injury was occasioned by reason of the operation of two or more engines on such train instead of one. [Act 1900, S. S., p. 15, sec. 3a.]

Art. 6648. Liable for injury or death of employe.—Every corporation, receiver, or other person, operating any railroad in this state, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of the death of such employe, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employe for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employes of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment; provided, the amount recovered shall not be liable for the debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper; and provided, in case of the death of such employe, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court. [Act 1909, 1 S. S., p. 279, sec. 1.]

Art. 6649. Contributory negligence, rule as to.—In all actions hereafter brought against any such common carrier or railroad under or by virtue of any of the provisions of the foregoing article and the three succeeding articles to

recover damages for personal injuries to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe; provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe. [Id. sec. 2.]

Art. 6650. Assumed risk, rule as to.—Any action brought against any common carrier under or by virtue of any of the provisions of the two preceding articles to recover damages for injuries to or the death of any of its employes, such employe shall not be held to have assumed the risks of his employment in any case where the violation of such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe. [Id. sec. 3.]

Art. 6651. Contract changing liability void.—Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier under or by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employe, or the person entitled thereto, on account of the injury or death for which said action was brought. [Id. sec. 4.]

Art. 6652. Articles of this chapter construed.—Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employes, under other articles of this chapter, or under the provisions of the Revised Civil Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the prosecution of any pending proceeding or right of action under any of the laws of this state. [Id. secs. 5 and 6.]

CHAPTER FIFTEEN.

RAILROAD COMMISSION OF TEXAS.

Article.	Article.			
Railroad commission created.....	6653	Shall furnish freight facilities and inter-	change cars with connecting roads....	6687
Powers and duties, etc.....	6654	To interchange cars at junction points....	6688	
Notice to be given, when rates fixed.....	6655	Railroad commission to make rules and	regulations	6689
Rates to be held conclusive, etc.....	6656	Liable for damages, when.....	6690	
When railway dissatisfied, may, etc.....	6657	Other penalty; "shipper" defined.....	6691	
Burden of proof, etc.....	6658	"Reasonable time" defined.....	6692	
To be furnished with schedules of rates	fixed	Duty to provide separate passenger depots	and suitable freight depots.....	6693
Emergency freight rates.....	6659	Railroad commission to require compli-	ance	6694
To what roads apply.....	6660	Commission may order construction of	union depots	6695
Rates to take effect, when, and how long	continued	Penalty for failure to comply.....	6696	
Temporary freight and passenger tariffs,	power to make.....	Right to lease another road.....	6697	
Complainant may apply to commission,	when	Lessor company subject to jurisdiction	of commission.....	6698
May inspect books, etc.....	6664	Exception as to general office.....	6699	
To ascertain cost of railways, etc.....	6665	Process, served upon whom.....	6700	
Blanks for information to be prepared.....	6666	Railroad crossings under control of rail-	road commission	6701
Power to issue subpoenas.....	6667	Interlocking or other safety switches to	be used	6702
Penalty for extorting, etc.....	6668	Expenses of grade crossings paid by	whom	6703
"Unjust discrimination" defined.....	6670	Trains may pass crossings without stop-	ping, when	6704
Damages; penalty; venue in cases of dis-	crimination	Penalty, etc.....	6705	
Penalty not otherwise provided.....	6671	Double-header trains, use prohibited, ex-	cept, when.....	6706
Venue of suits for recovery of penalty.....	6673	Use to be regulated by railroad commis-	sion	6707
Certified evidence	6674	Penalty and venue of suits.....	6708	
All violations of duty to be reported.....	6675	Equipment to be used; commission to su-	perwise	6709
"Railroad," etc., defined; intra-state ship-	ments; one train daily.....	Improved couplers to be used, and how.....	6710	
Law cumulative, etc.....	6677	Draw-bar of engine, length of.....	6711	
Authority and Duties of Commission	Over Other Subjects.	May refuse rolling stock improperly	equipped, by connecting lines.....	6712
Railroad to furnish cars when demanded.....	6678	Rolling stock to be provided with grab	irons, etc.....	6713
Applicaton shall state what.....	6679	Penalty, and how recovered.....	6714	
Penalty for failure to furnish.....	6680	To build sidings and spur tracks.....	6715	
Applicant shall make deposit.....	6681	Railroad commission to enforce compli-	ance	6716
To deliver loaded cars in reasonable time.....	6682			
Necessary for applicant to show what.....	6683			
Duty to furnish cars and other rolling	stock			
Railroad commission to require and au-	thorize mortgage, etc.....			
Penalty for failure to comply.....	6686			

Article 6653. [4561] **Railroad commission created, etc.**—A railroad commission is hereby created, to be composed of three persons to be appointed by the governor, as follows: If the legislature be in session, the governor shall, by and with the advice of the senate, appoint said commissioners, but, if the legislature be not in session, the governor shall make such appointments; and each commissioner so appointed shall hold his office until the second Monday after the inauguration of the next succeeding governor, and until his successor is appointed and qualified. Each succeeding governor shall, on the second Monday after his inauguration, or as soon thereafter as practicable, appoint said commissioners, who shall each hold his office until the second Monday after the inauguration of the next succeeding governor, and until his successor is appointed and qualified.

1. **Qualifications of commissioners.**—The persons so appointed shall be resident citizens of this state, and qualified voters under the constitution and laws, and not less than twenty-five years of age. No person shall be appointed as such commissioner who is directly or indirectly interested in any railroad in this state, or out of it, or in any stock, bond, mortgage, security, or in the earnings of any such road; and if such commissioners shall voluntarily become so interested his office shall become vacant; and, if any railroad commissioner shall become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

2. **Shall hold no other office, etc.**—No commissioner hereunder shall hold any other office under the government of the United States, or of this state, or of any other state government; and shall not, while such commissioner, engage in any occupation or business inconsistent with his duties as such commissioner.

3. **Vacancies.**—The governor shall fill all vacancies in the office of commissioner by appointment; and the person so appointed shall fill out the unexpired term of his predecessor.

4. **Oaths, etc.**—Before entering upon the duties of his office, each of said commissioners shall take and subscribe to the oath of office prescribed in the constitution, and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this chapter, and all laws of this state concerning railroads, which oath shall be filed with the secretary of state.

5. **Salary.**—Each of said commissioners shall receive an annual salary of four thousand dollars, payable in the same manner that salaries of other state officers are paid.

Sessions; may appoint clerks, etc.; their salaries.—The commissioners appointed shall meet at Austin and organize and elect one of their number chairman of said commission. A majority of said commissioners shall constitute a quorum to transact business. Said commission may appoint a secretary at a salary of not more than two thousand dollars per annum, and may appoint not more than two clerks at a salary of not more than fifteen hundred dollars per annum each, and such other persons as experts as may be necessary to perform any duty that may be required of them by this chapter. The secretary shall keep full and correct minutes of all the transactions and proceedings of said commission, and perform such duties as may be required by the commission. The commission shall have power to make all needful rules for their government and for their proceedings. They shall be known collectively as, "Railroad Commission of Texas," and shall have a seal, a star of five points, with the words, "Railroad Commission of Texas," engraved thereon. They shall be furnished with an office in the capitol at Austin, and with necessary furniture, stationery, supplies, and all necessary expenses, to be paid for on the order of the governor.

Expenses.—The commissioners, secretary and clerks shall be entitled to receive from the state their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the commission, to be paid out on the order of the governor upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the commission.

May hold sessions at any place, etc.—Said commissioners may hold sessions at any place in this state when deemed necessary to facilitate the discharge of their duties. [Acts 1891, p. 55, secs. 1, 2.]

Art. 6654. [4562] **Powers and duties.**—The power and authority is hereby vested in the railroad commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this state, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

1. **To classify freights.**—The said commission shall have power, and it shall be its duty to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this

state into such general and special classes or subdivisions as may be found necessary and expedient.

2. **To fix reasonable rates.**—The commission shall have power, and it shall be its duty, to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions.

3. **Classifications to be uniform.**—The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter.

4. **May fix different rates.**—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

5. **Rates for connecting lines.**—The said commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

6. **Commission to fix when there is disagreement.**—If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, the commission shall fix the pro rata part of such charges to be received by each of said connecting lines.

7. **Old rates to exist until changed by the commission.**—Until the commission shall make the classifications and schedules of rates as herein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classifications and rates shall be put into effect in the manner provided for general classifications and schedules of rates.

8. **May alter, abolish, etc.**—The commission shall have power, and it shall be its duty, from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

9. **May adopt rules and regulations.**—The commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints that may be made against the classifications or the rates, the rules, regulations and determinations of the commission.

10. **Empty cars.**—The commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays.

11. **May fix rates for all services.**—The commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

12. **Railways to maintain depots, etc.**—It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable

freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads; provided, that this shall not be construed as repealing any existing laws on the subject. [Id. sec. 3.]

Art. 6655. [4563] **Notice to be given when rates fixed.**—Before any rates shall be established under this chapter, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

1. **May fix rules for all investigations.**—The commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person desiring to be present at any such investigation by said commission shall be denied admission.

2. **May administer oaths, etc.**—The chairman and each of the commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, way-bills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district or county court. [Id. sec. 4.]

Art. 6656. [4564] **Rates to be held conclusive until, etc.**—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by articles 6657 and 6658 of this chapter. [Id. sec. 5.]

Art. 6657. [4565] **When railway dissatisfied, may file petition, etc.**—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause; and said appeal shall be at once returnable to said appellate court, at either of its terms; and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. [Id. sec. 6.]

Art. 6658. [4566] **Burden of proof.**—In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id. sec. 7.]

Art. 6659. [4567] **Railroads to be furnished with schedule of rates fixed.**—The said commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule in suitable form, showing the classification of freight made by them and the rates fixed by said commission

to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this state, if it has such office in this state, and, if not, then to any agent of said company in this state; which said schedule, rules and regulations shall take effect at the date which may be fixed by said commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said commission may at any time abolish, alter, or in any manner amend, the said schedules, or abolish or amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the commission, no changes shall be made, except after ten days' notice to and consent of the commission. [Id. sec. 8.]

Art. 6660. Emergency freight rates.—In addition to the powers conferred on the railroad commission of Texas by articles 6655 and 6659, said commission shall have the power, when deemed by it necessary, to prevent interstate rate wars and injury to the business or interests of the people or railroads of the state, or in case of any other emergency, to be judged of by the commission, it shall be its duty to temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this state, and to fix freight rates where none exist. [Act 1899, p. 311, sec. 1.]

Art. 6661. To what roads apply.—Said emergency rates, so made by the commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the commission. [Act 1897, p. 51, sec. 2.]

Art. 6662. Rates take effect, when, and how long continued.—Said rates, so made, shall take effect at such time and remain in force for such length of time as may be prescribed by the commission. [Id. sec. 3.]

Art. 6663. Temporary freight and passenger tariffs, power to make.—In addition to all other powers conferred by law upon the railroad commission of Texas, said commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said commission, whenever an emergency arises, the sufficiency of which shall be judged of by said commission, in order that justice may be done or injury prevented any person, place or locality; and said commission shall have the power at once to suspend temporarily any existing freight or passenger tariff, and to establish freight and passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. [Act 1907, p. 220, sec. 1.]

Art. 6664. [4568]. Complainants may apply to commission. Proceedings thereunder.—Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing association, or any body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this state, or the provisions of this chapter, for which penalty is provided, may apply to said commission in such manner and under such rules as the commission may prescribe; whereupon, if there shall appear to the commission to be any reasonable grounds for investigating such complaint, it shall give at least five days' notice to such railroad of such charge and complaint, and call upon said road to answer the same at a time and place to be specified by the commission. The commission shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. If the commission finds that there has been a violation, it shall determine if the same was wilful; if it finds that such violation

was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the commission there shall be no prosecution by the state; but if said railroad shall not pay said damage and cost within the time specified by said commission, or if the commission finds such violation to be wilful, it shall institute proceedings to recover the penalty for such violation and the cost of such investigation. All such complaints shall be made in the name of the state of Texas upon the relation of such complainant. All evidence taken before said commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witness, may be used by either party, the state, complainant, or the railroad company, in any proceeding against such railroad involving the same subject matter; provided, further, that the commissioners may require the testimony so taken before them to be reduced to writing when they may deem it necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. The provisions of this article shall not abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this chapter, or any other law of this state. [Acts 1891, p. 55, sec. 9.]

Art. 6665. [4569] **May inspect books, etc.**—The commissioners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employe of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall, for each offense, pay to the state of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any persons other than one of said commissioners who shall make any such demands shall produce his authority, under the hand and seal of said commission, to make such inspection. [Id. sec. 10.]

Art. 6666. [4570] **To ascertain cost of railway, etc.**—The commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures and indebtedness, and the amount respectively thereof, when issued, and rate of interest, when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor. The commission shall also ascertain the amounts paid for salaries to the officers of the railroad and the wages paid its employes. For the purpose in this article named, the commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the attorney general by report.

and file a duplicate thereof with the comptroller for public use; and said information shall be printed from time to time in the annual report of the commission. [Id. sec. 11.]

Art. 6667. [4571] **Blanks for information to be prepared.**—The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof.

1. **Penalty for failure to fill out blanks. Commission to adopt system of bookkeeping.**—If any officer or employe of a railroad company shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or give a false answer to any such questions, where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, such person shall be guilty of a misdemeanor and shall, on conviction thereof, be fined for each day he shall fail to perform such duty after the expiration of the time aforesaid a penalty of five hundred dollars, and the commission shall cause a prosecution therefor in the proper court; and a penalty of a like amount will be recovered from the company when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said commission shall have the power to prescribe a system of bookkeeping to be observed by all the railroads subject hereto, under the penalties prescribed in this article.

2. **Annual reports.**—The said commission shall make and submit to the governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

3. **Duty as to through freights.**—The said commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the interstate commerce commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the commission, the latter is instructed to notify the interstate commerce commission and to apply to it for relief. [Id. sec. 12.]

Art. 6668. [4572] **Power to issue subpoenas. Pay of witnesses. Proceedings to compel attendance of witnesses.**—The said commission, in making any examination or investigation provided in this chapter, shall have power to issue subpoenas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the commission by order of the commission, at a place outside of the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said commission, which shall be ordered paid by the comptroller of public accounts upon the presentation of proper vouchers, sworn to by such witness, and approved by the chairman of the commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly inter-

ested in any railroad in this state or out of it, or who is in any wise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employe of such road, or an officer thereof, when summoned at the instance of such railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpoenas, said commission may issue an attachment for said witness, directed to any sheriff or any constable of the state of Texas, and compel him to attend before the commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding; provided, the commission shall in all cases have the right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this article or under any other provisions of this chapter shall receive such compensation as may be allowed by the commission, not to exceed fees as now prescribed by law for similar services. [Id. sec. 13.]

Art. 6669. [4573] **Penalty for extorting.**—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any persons, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the railroad commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not less than one hundred dollars nor more than five thousand dollars. [Id. sec. 14.]

Art. 6670. [4574] **“Unjust discrimination” defined.**—If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

1. **Same.**—It shall also be an unjust discrimination for any such railroad to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. **Same.**—Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the commission, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust

discrimination; provided, perishable freights of all kinds and live stock shall have precedence of shipment.

3. **Same.**—It shall also be an unjust discrimination for any railroad subject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter than for a longer distance over the same line; provided, that upon application to the commission any railroad may in special cases, to prevent manifest injury, be authorized by the commission to charge less for longer than for shorter distances for transporting persons and property, and the commission shall from time to time prescribe the extent to which such designated railroad may be relieved from the operations of this provision; provided, that no manifest injustice shall be imposed upon any citizen at intermediate points; provided further, that nothing herein shall be so construed as to prevent the commission from making what are known as “group rates” on any line or lines of railroad in this state.

4. **Penalty for unjust discrimination.**—Any railroad company violating any provision of this article shall be deemed guilty of unjust discrimination, and shall for each offense pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. **Law does not apply, when.**—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation, under such circumstances and to such persons as may be allowed or permitted by the law of this state. [Id. sec. 15.]

Art. 6671. [4575] **Damages; penalty; venue in cases of discrimination.**—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation. [Id. sec. 17.]

Art. 6672. [4576] **Penalty not otherwise provided.**—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the railroad commission of Texas, for every such act of violation it shall pay to the state of Texas a penalty of not more than five thousand dollars. [Id. sec. 18. Amended Acts 1901, p. 265.]

Art. 6673. [4577] **Venue of suits for recovery of penalty.**—All of the penalties herein provided, except as provided in article 6671, shall be recovered and suits thereon shall be brought in the name of the state of Texas in the proper court having jurisdiction thereof in Travis county, or in any county to or through which such railroad may run, by the attorney general,

or under his direction; and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the state. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this chapter shall be paid into the treasury of the state; provided, however, suits brought under the acts of 1907, chapter 42, page 93, set out in the Penal Code in title 18, chapter 16, for the recovery of penalties, may be brought in any court in this state having jurisdiction of the subject matter in any county: (1) where an act violative of the provisions hereof is committed; (2) where such company or receiver has an agent or representative; (3) where the principal office of such company is situated, or such receiver or receivers, or either, reside; and one-half of all moneys collected under the provisions of said act, less the commission and expenses allowed by law, shall be paid into the state treasury and constitute a part of the general revenue of the state, and the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county; and be it further provided, that, it is hereby made the duty of the railroad commission of Texas, the attorney general, and the district and county attorneys of this state, under the direction of the attorney general, to see that the provisions of said act are enforced and obeyed, and penalties due the state are recovered and collected; and said commission shall report to the attorney general all violations within their knowledge, with the facts in their possession, and request him to institute, or have instituted, the proper proceedings for the recovery of any penalty that may be due the state. Any provision or provisions of said act which exempt or except any person, corporation or class of persons from the operation and effects of the same, or which authorize any such persons, corporations or class of persons to give, grant, issue, receive or accept free transportation or transportation at any rate other than is granted to any and all persons of this state, shall be held unconstitutional or invalid, such holding as to any such provision or provisions shall not invalidate any other portion of said act. [Act 1891, p. 55, sec. 19.]

Art. 6674. [4578] Certified copies of commission rates to be evidence. Effect given to classifications, when.—Upon application of any persons, the commission shall furnish certified copies of any classification, rates, rules, regulations, or orders; and such certified copies, or printed copies published by authority of the commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be in issue in the trial, is the official act of the commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act. [Id. sec. 20.]

Art. 6675. [4579] All violations of duty to be reported to attorney general.—It is hereby made the duty of such railroad commission to see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected. And said commission shall report all such violations, with the facts in their possession, to the attorney general, or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits be-

tween the state and any railroad shall have precedence in all courts over all other suits pending therein.

1. **Duty to investigate all charges and see that the law is enforced.**—It shall be the duty of the commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this state in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other; which contract, however, shall be submitted to the railroad commission for examination and approval, and when so approved shall be binding; but, if the said contract be not approved by the commission, the same shall be void; provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. [Id. sec. 21.]

Art. 6676. [4580] **“Road,” “railroad,” “railroad companies,” etc., defined. Law applies only to railroads in this state. One train a day to be run.**—The terms, “road,” “railroad,” “railroad companies,” and, “railroad corporations,” as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this state, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this state.

1: The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this state; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns.

2. It shall be the duty of the commissioners to see that, upon every railroad and branch of same carrying passengers for hire in this state, shall be run at least one train a day, Sundays excepted, upon which passengers shall be hauled, and the commission shall have no power to relax this provision, and shall further regulate passenger train service by requiring all passenger trains carrying passengers for hire to stop for a time sufficient to receive and let off passengers at such stations as may be designated by the commissioners; provided, that four trains each way, carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop as aforesaid at all county seat stations. [Id. sec. 22. Amended Act 1903, p. 183.]

Art. 6677. [4581] **Law cumulative.**—Any of the provisions of this chapter which may be inconsistent or in conflict with the act of 1907, chapter 42, page 93, relating to free passes and free transportation of goods, etc., incorporated in and made a part of the Penal Code of the state of Texas, shall be void and inoperative, but to that extent only. And the provisions of the foregoing articles of this chapter shall not have the effect to release or waive any right of action by the state, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this chapter shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Act 1891, p. 55, sec. 23.]

AUTHORITY AND DUTIES OF COMMISSION OVER OTHER SUBJECTS.

Art. 6678. [4497] **Railroad to furnish cars when demanded.**—When the owner, manager, or shipper of any freight of any kind shall make application in writing to any superintendent, agent, or other persons in charge of transportation, to any railway company, receiver, or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railway company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person; provided, if the application be for ten cars or less, the same shall be furnished in three days; and provided, further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. [Acts of 1887, p. 133. Amended Act 1899, p. 67.]

Art. 6679. [4498] **Application shall state what.**—Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired; provided, that the place designated shall be at some station or switch on the railroad. [Id. sec. 2.]

Art. 6680. [4499] **Penalty for failure to furnish.**—When cars are applied for under the provisions of this chapter, if they are not furnished, the railway company so failing to furnish them shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, to be recovered in any court of competent jurisdiction, and all actual damages that such applicant may sustain. [Id. sec. 3.]

Art. 6681. [4500] **Applicant shall make deposit.**—Such applicant shall, at the time of applying for such car or cars, deposit with the agent of such company one-fourth of the amount of the freight charge for the use of such cars, unless the said road shall agree to deliver said cars without such deposit. And such applicant shall, within forty-eight hours after such car or cars have been delivered and placed as hereinbefore provided, fully load the same; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used; provided, that where applications are made on several days, all of which are filled upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; and the penalty prescribed shall not accrue as to any car or lot of cars applied for on any one day, until the period within which they may be loaded has expired. And if the said applicant shall not use such cars so ordered by him, and shall so notify the said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the said failure of the applicant to use said cars. [Id. sec. 4. Amended Act 1899, p. 67.]

Art. 6682. [4501] **To deliver loaded cars in reasonable time.**—When cars have been supplied and loaded, it shall be the duty of the railway company to deliver the same to the party or parties to whom they are consigned within a reasonable time; and the party or parties to whom the cars are consigned shall unload the same within forty-eight hours after delivery and notice, or forfeit to the railway company the sum of twenty-five dollars per day for each car so left unloaded, to be recovered in any court of competent jurisdiction. [Id. sec. 5.]

Art. 6683. [4502] **Necessary for applicant to show what.**—It shall be necessary for the party or parties bringing suit against any railroad company

under the provisions of this law to show by evidence that he or they had on hand at the time any demand for cars was made the amount of lumber, cotton, wool, hides or other freight necessary to load the cars so ordered; provided, that the provisions of this law shall not apply in cases of strikes or other public calamity. [Id. sec. 6.]

Art. 6684. Duty to furnish cars, etc.—It is hereby declared to be the duty of every railroad company incorporated under the laws of the state of Texas and doing business in this state, under limitations and regulations prescribed by the railroad commission of Texas, to equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. [Act 1907, p. 297, sec. 1.]

Art. 6685. Commission to require and authorize mortgage, etc.—The railroad commission shall have authority, and it is hereby made its duty, to see that each and every railroad corporation chartered under the laws of this state, holding itself out as a public highway and common carrier, shall provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic expeditiously and without delay. The railroad commission of Texas shall be vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier and facilitate the movement of all traffic, passenger and freight, and that will supply the transportation accommodations which such common carrier offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The railroad commission is also authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the railroad commission necessary for the proper discharge of its duty as a common carrier. If in the judgment and discretion of the commission any railroad company in this state, which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, it shall be the duty of said railroad commission of Texas, after not less than five days' notice and hearing, to issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the railroad commission of Texas is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. [Id. sec. 2.]

Art. 6686. Penalty for failure to comply.—Any railroad company or common carrier failing to comply with the provisions of the two preceding articles, or to obey the orders of the railroad commission, made in pursuance of the provisions hereof, shall be deemed guilty of an abuse of their rights and privileges, and, upon conviction, shall be subject to a fine of one hundred dollars for a violation or failure to comply with any order that may be issued by the railroad commission as is provided said commission may do by article 6685, and each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. [Id. sec. 3.]

Art. 6687. Shall furnish freight facilities, interchange cars, etc.—It is hereby declared to be the duty of every railroad company operating a line of railroad within this state, to provide sufficient tracks, switches, sidings, yards, depots and other facilities for receiving and delivering freight, motive power, cars and all other needful facilities and appliances, to enable it

with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and to furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered, or to be offered or tendered, to it for shipment within a reasonable time after demand therefor made by any shipper of such freight; and to supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight, at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars in which to load the same; and as to all services to be performed within the limits of this state, as to such freight and cars to transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then to transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, or to be made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and it shall likewise be the duty of each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this state, to receive and transport within a reasonable time such loaded car or cars offered or tendered to it, if in suitable condition for movement, and deliver the same at the destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad; provided, that where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where, by reason of any accidental or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases where suitable cars may be supplied. Provided, that as to freight carried wholly within this state, the railroad commission of Texas shall have the power, and authority is hereby vested in it, to make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Provided, also, that whenever by reason of any accidental or unavoidable cause which can not be reasonably provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees, or as otherwise herein prescribed. But nothing in this article shall in any wise affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any of the provisions of the

statutes of this state, or other duties imposed by law. [Acts 1907, p. 343, sec. 1.]

Art. 6688. To interchange cars at junction points.—For the purpose of facilitating the movement, preservation and exchange of freight, it shall be the duty of every railroad company in this state, whose line of railroad connects with the line of any other railroad company in this state, to exchange at such connecting or junction points, the loaded and empty cars used in or for the transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and it shall be the duty of any such railroad companies forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line, delivering to it any such loaded car or cars of freight at junction points within this state, to furnish to such delivering line within a reasonable time after such loaded cars are so received, at such junction point in this state, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and, upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, it shall be the duty of every such railroad company so receiving the cars of another to return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand therefor; and as to cars exchanged in transporting freight wholly in this state within the time and according to the rules and regulations prescribed by the railroad commission of Texas. [Id. sec. 2.]

Art. 6689. Commission to make rules and regulations.—The railroad commission of Texas is hereby authorized and empowered, as to all freight carried wholly within this state and the cars used therefor, to make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kind and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this state; and to prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage, the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading; or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said commission, whenever it may deem same necessary in order to secure the prompt transportation of

freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this state, including the time for transfer and delivery as between connecting railroads. It shall be the duty of every such railway company to conform to all of the rules and regulations and orders of the commission made in accordance with the two preceding and the three succeeding articles; and the failure of any such railroad company to observe the rules and regulations of the commission, or to comply with the provisions of this law, as to freight carried wholly within this state, shall be deemed an abuse subject to correction by the railroad commission of Texas, and shall subject such railroad company to the penalties hereinafter provided. [Id. sec. 3.]

Art. 6690. **Liable for damages, when.**—Every railroad company which, in violation of any of the provisions of this law, shall fail to furnish any car or cars for the shipment of any freight within a reasonable time, or in case of the shipment of freight between points when within this state, then within the time prescribed by the railroad commission of Texas, in the event it shall prescribe the time by rules or regulations as provided for herein, and, if it shall fail to do so then within a reasonable time, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided for herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury and damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage; and in case of the failure or refusal to so furnish within a reasonable time any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company for such failure to furnish such car or cars within a reasonable time shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case suit is brought to recover the same. Every railroad company which shall fail to furnish cars or to exchange as required by the provisions of this law, or by the rules and regulations of the railroad commission as provided for herein, shall be liable to the railroad company injured thereby for all such damage as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case of suit brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to the party entitled thereto to pay for the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this state, the amount for the use or hire thereof may be prescribed by the railroad commission of Texas, except where the owners of such cars and such railway companies agree upon such compensation, in which case, the amount so fixed shall govern. And, where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the railroad commission, or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof in a suit brought in any court of this state having jurisdiction of the parties, and of the amount in controversy; and such court shall render such judgment as to it shall seem just and reasonable; provided, that no railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon

reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight. [Id. sec. 4.]

Art. 6691. **Other penalty; "shipper" defined.**—Every railroad company which shall wilfully, by its own gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the commission, as to freight carried between points wholly within this state, or if not so prescribed then within a reasonable time, shall, in addition to the other liabilities herein provided for, forfeit to the state of Texas, for each of such violations, not less than one dollar nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such wilful or gross negligence, shall fail or refuse to furnish or exchange shall be treated as a separate offense; such penalties to be recovered at the suit of the attorney general of the state of Texas in the court having jurisdiction of the amount, at Austin in Travis county.

"Shipper" defined.—By the term, "shipper," as herein used, is meant any person, firm, or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of a consignor or consignee. [Id. sec. 5.]

Art. 6692. **"Reasonable time" defined.**—It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more, and it shall be the duty of the railroad companies to furnish their station agents with printed blanks upon which shippers may make application for their cars; provided, that nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this state, then in accordance with the rules and regulations of the railroad commission of Texas. [Id. sec. 6.]

Art. 6693. **Duty to provide suitable freight and passenger depots.**—It shall be the duty of all railroad companies in this state to provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and to keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public; provided, further, that said railroad companies shall keep and maintain separate apartments in such depot buildings for the use of white passengers and negro passengers, and to keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads. [Acts 1909, 2 S. S., p. 401, sec. 1.]

Art. 6694. **Commission to require compliance.**—Power is hereby conferred upon the railroad commission of Texas to require compliance by railroad companies with the provisions of the preceding article under such regulations as said commission may deem reasonable, and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with such requirements. [Id. sec. 2.]

Art. 6695. **Commission may order construction of union depots.**—Where two or more railroad companies reach the same city or town in this state, it shall be the duty of the railroad commission of Texas to ascertain whether it is practicable and feasible for such railroad companies to use a joint or union passenger depot; and, if the railroad commission finds upon investigation that it is practicable for such railroad companies to join in the construction and use of a passenger depot, then it shall give notice to said railroad companies, and, after investigation and public hearing, may require the construction and maintenance of such union passenger depot by the railroad companies entering any such city or town; provided, that it shall appear to the railroad commission that the construction and maintenance of such joint or union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The railroad commission may specify the requirements of such union depot as to kind and character; and said railroad commission may apportion the cost of constructing and maintaining the same to each railroad company in cases where the interested railroad companies can not themselves agree. [Acts 1909, 2 S. S., p. 399, sec. 1.]

Art. 6696. **Penalty for failure.**—Failure upon the part of any railroad company to observe and obey the orders of the railroad commission, issued in compliance with the preceding article, shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees made by the railroad commission of Texas. [Id. sec. 2.]

Art. 6697. **Right to lease another road.**—Any railroad not exceeding thirty miles in length, connecting at or near the state line with any other railroad, may be leased by the company owning such other railroad, on such terms and for such time, not exceeding ten years, as may be approved by the railroad commission of Texas; provided, that said commission may refuse to approve the same for any cause which it may deem sufficient; and provided, further, that at any time before or after the expiration of such lease, the same may be renewed or another lease executed, subject to the provisions and limitations of this chapter; and provided, further, that the provisions of this chapter shall not apply to railroads whose total mileage in this state may exceed thirty miles, although a portion thereof so connecting at the state line may not exceed thirty miles in this state. [Acts 1899, p. 73, sec. 1.]

Art. 6698. **Lessor company subject to jurisdiction of commission.**—During the term of such lease, the lessor company shall remain subject to the jurisdiction of the said railroad commission of Texas, and, notwithstanding such lease, shall be liable for any and all things occurring on or in connection with such road to the same extent as it would be if such lease had not been made, it being the intent hereof that the lease shall not operate to exempt the lessor company from any liability that would otherwise exist against it; but this article shall not be so construed as to release the lessee company from any liability. [Id. sec. 2.]

Art. 6699. **Exception as to general office, etc.**—Any company whose road may be leased under the provisions of the two preceding articles is hereby exempted from the laws of this state requiring general offices to be maintained and the general officers to reside in this state, except in so far as it may be required by section 3, article 10, of the constitution of the state of Texas, and except in so far as may be required by the order or orders of said railroad commission. [Id. sec. 3.]

Art. 6700. **Process served upon whom.**—In any suit against the lessor company, for the purpose of service of process, the officers and agents of the lessee company shall be the officers and agents of the lessor company. [Id. sec. 4.]

Art. 6701. Railroad crossings under control of commission.—Where it should become necessary for the track of one railroad company to cross the track of another railroad company, it shall be the duty of the railroad commission of the state of Texas to ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road which is intended to be crossed; and, if it should appear to the said commission that it is reasonable and practicable to avoid a grade crossing, said commission shall by its order prevent the same. [Acts 1901, p. 255, sec. 1.]

Art. 6702. Interlocking, etc., switches to be used.—In any case where the tracks of two or more railways cross each other at a common grade in this state, it shall be the duty of such railroad company to protect such crossings by interlocking or other safety devices and regulations to be designated by the railroad commission of Texas, to prevent trains colliding at such crossings. [Id. sec. 2.]

Art. 6703. Expenses of grade crossing to be paid by whom.—In case any railway company shall hereafter seek to cross, at grades with its track or tracks, the track or tracks of another railroad, the railroad seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the railroad commission, and to pay all costs of appliances together with the expense of putting them in; provided, that this law shall not apply to crossings of side tracks. [Id. sec. 3.]

Art. 6704. Trains may pass crossings without stopping, when.—Whenever interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the railroad commission in compliance with the two preceding articles, then and in that case it shall be lawful for the engines and trains of such railroad or railroads to pass over such crossings without stopping. [Id. sec. 4.]

Art. 6705. Penalty, etc.—Any company, corporation, receiver or person operating any railroad who shall refuse or neglect to comply with any order made by the said railroad commission in pursuance of the terms of the four preceding articles shall forfeit and pay to the state of Texas a penal sum of five hundred dollars per week for each week of such refusal and neglect; which said sum may be recovered in suit or suits to be brought by the attorney general of the state of Texas in the name of the state of Texas, upon duly verified information of such refusal and neglect, by any such railway company being lodged with said attorney general by the said railroad commission. [Id. sec. 5.]

Art. 6706. Double-header trains, use prohibited, except when.—Where an unreasonable degree of hazard results to its employes, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this state to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; and it shall be the duty of the railroad commission to investigate such abuses and see that the same are corrected, regulated, or prohibited as hereinafter provided. [Acts 1900, S. S., p. 15, sec. 1.]

Art. 6707. Use to be regulated by commission.—After such investigation, should the railroad commission decide to regulate or forbid the practice of using more than one working locomotive in the operation of any train at the same time on any railroad, or part of railroad, within this state, then it shall be their duty to make and record an order fully setting forth their decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated, and how regulated. Notice of said order shall be served upon said railroad affected by it. Said notice shall contain in full

a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to the president, or the vice-president, or the general manager, or the general superintendent, or any general officer of said railroad in this state residing in said county; and said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the commission. [Id. sec. 2.]

Art. 6708. Penalty and venue of suits.—It shall be the duty of such railroad to obey said order; and any railroad corporation, or receiver, who shall at any time after such notice shall have been served for ten days violate the order of the commission, shall be liable to the state of Texas for a penalty of not less than five hundred dollars nor more than five thousand dollars for each offense; and such penalty shall be recovered, and suits therefor shall be brought in the name of the state of Texas in the proper court having jurisdiction thereof in Travis county, Texas, or in any county into or through which such railroad may run, by the attorney general, or under his direction; and such suit shall be subject to the provisions of article 6673. [Id. sec. 3.]

Art. 6709. Equipments to be used; commission to supervise.—It shall be unlawful for any common carrier engaged in intrastate commerce by railroad within the state of Texas to use on its lines in moving intrastate traffic within said state any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, or to run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, or to run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the railroad commission of Texas may, from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage. [Acts 1909, p. 64, sec. 1.]

Art. 6710. Improved couplers to be used.—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to haul or permit to be hauled or used on its line of railroad within the state of Texas, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within the said state which is not equipped with couplers, coupling automatically by impact, and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles. [Id. sec. 2.]

Art. 6711. Drawbar of engine, length of.—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to use in moving intrastate traffic within said state any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such drawbar, is more than thirty-four and one-half inches in height, or less than thirty-one and one-half inches in height. [Id. sec. 3.]

Art. 6712. May refuse rolling stock not properly equipped.—When any person, firm, company, corporation or receiver engaged in commerce as aforesaid, shall have equipped a sufficient number of its locomotives, tenders, cars

and similar vehicles so as to comply with the provisions of article 6709, it may lawfully refuse to receive from connecting lines of road or shippers any locomotives, tenders, cars, or similar vehicles not equipped sufficiently, in accordance with article 6709, with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars, and similar vehicles, as required by this law. [Id. sec. 4.]

Art. 6713. **Rolling stock to be provided with grab irons, etc.**—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to use in moving intra-state traffic within said state any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups. [Id. sec. 5.]

Art. 6714. **Penalty, how recovered.**—Every such common carrier, whether a co-partnership, a corporation, a receiver, or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the state of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense; and such penalty shall be recovered and suit brought in the name of the state of Texas, in any court of proper jurisdiction in the county of Travis, or in any other county in said state into or through which such line of railroad may run, by the attorney general, or under his direction, or by the county or district attorney in the county in which the suit is brought; and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the state; and the fees and compensation so allowed shall be over and above the fees allowed such attorney under other provisions of law. [Id. sec. 6.]

Art. 6715. **To build sidings, etc., when.**—All railroads in Texas shall be required to build sidings and spur tracks sufficient to handle the business tendered such railroads, when ordered to do so by the railroad commission, as hereinafter provided. [Acts 1903, p. 93, sec. 1.]

Art. 6716. **Commission to enforce compliance.**—Power is conferred on the railroad commission of Texas to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the railroad commission as provided herein. [Id. sec. 2.]

CHAPTER SIXTEEN.

ISSUANCE OF STOCKS AND BONDS REGULATED.

Article.	Article.
State vested with regulation of issue of bonds, stocks, etc.....	Duty of secretary of state.....
6717	6725
Prohibiting incumbrance above value...	Forfeiture of charter.....
6718	6726
Commission to ascertain and report values, etc.....	Certificates, bonds, etc., void.....
6719	6727
Effect of judicial or other sale, etc.....	Penalties hereunder.....
6720	6728
Purchasers complying with law may issue bonds.....	State not liable.....
6721	6729
Authority to issue bonds to be secured...	Amendment of charter; construction of branch lines; issuance of bonds.....
6722	6730
How certificates of stock shall issue...	Suburban railroad stocks and bonds valid when.....
6723	6731
Prerequisites to issue of bonds.....	Stocks and bonds may issue for double tracks.....
6724	6732

Article 6717. [4584a] Regulation of issue of stocks, bonds, etc., by railroads vested in state.—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stock and shares thereof, and the execution of all liens and mortgages by railroad corporations in this state are special privileges and franchises, the right of supervision, regulation, restriction, and control of which has always been, is now, and shall continue to be vested in the state government, to be exercised according to the provisions of this and other laws. [Acts 1893, p. 57.]

Art. 6718. [4584b] Issue of incumbrance above value of the road prohibited; except, etc.—Hereafter no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by lien or mortgage on any railroad, or part of railroad, or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the railroad commission that public interests or the preservation of the property demand it, the said commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property. [Id.]

Art. 6719. [4584c] Railroad commission to ascertain and report railroad values; proceeding incident thereto.—It shall be the duty of the railroad commission to ascertain, and in writing report to the secretary of state, the value of each railroad in this state, including all its franchises, appurtenances and property. After it shall have prepared said report of value, the commission shall give the company interested ten days notice in writing, by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it have any objections thereto it must file them, in writing, within forty days after said service, or the same will be so deposited with the secretary of state as correct. Should the company, or its duly authorized representative, file with said commission any objections to said report of value, the commission shall duly investigate and pass on the same. On investigation, if the commission conclude that its report of value is too low or too high, then it shall make the necessary correction before filing it. Should no objections be filed within the time permitted, or being filed and on examination found without merit, the commission shall forthwith file its said report in the office of the secretary of state, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in article 6718. To promote public interests and protect private rights, the commission, after due notice under the rule herein prescribed, may correct its report of value of any railroad at any time it may deem proper. [Id.]

Art. 6720. [4584d] Effect of judicial or other sale of railroad.—Every judicial or other sale of any railroad in this state hereafter made, which shall have the effect to discharge the property so sold from liability in the hands

of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold out, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company organized hereafter to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. [Id.]

Art. 6721. [4584e] **Purchasers complying with law may issue bonds, etc.**—The purchasers of said property who procure it clear of incumbrance, or any company organized by their consent to operate said railroad under and in pursuance of the laws of this state, may issue stock and bonds in the proportion that they may deem advisable, subject to the rules, restrictions and limitations prescribed in the three preceding articles.

Art. 6722. [4584f] **Authority to issue bonds before completion of roads must be obtained, etc.**—Should any company or corporation authorized to construct, own or operate a railroad in this state desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property, in advance of the completion of the said railroad, it shall make application to and first procure the consent of the railroad commission thereto. In said application, it shall exhibit to the commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchises and property proposed as security for said contemplated debts. If, on investigation, the commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and lien to the extent necessary for the demands of the work, at no time to be more than fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with article 6723, and have them registered, as required in article 6724. [Id.]

Art. 6723. [4584g] **Prescribing how certificates of stock shall issue.**—Each railroad company now existing, or that shall hereafter be organized, or that shall be reorganized under the laws of this state, or which shall increase its stock under the laws of this state, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in the state of Texas, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct, and shall sign the same in person. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the railroad commission, and by it filed and preserved in the office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares,

amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall hereafter increase its stock, unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the secretary of state by or at the instance of the railroad commission. [Id.]

Art. 6724. [4584h]. **Prerequisites to the issue by railroad companies of bonds, etc.**—Whenever any railroad company in this state shall hereafter desire to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this state regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date, and shall bear interest not exceeding six per cent per annum. The said bonds, when thus prepared, shall be presented to the railroad commission of this state, with a statement in writing, signed and sworn to by the president of said company, showing the amount of the stock of said company, and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the railroad commission shall be so satisfied, it shall approve said bonds, and shall issue to the secretary of state a direction to register said bonds, specifying the numbers, dates, and amounts thereof. And said commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval; provided, that this provision shall not apply to receivers' certificates where the amount does not exceed one hundred thousand dollars. [Id.]

Art. 6725. [4584i]. **Duty of secretary of state.**—When any such bonds shall be presented to the secretary of state with the direction aforesaid to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The secretary of state shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the railroad commission of Texas." No bond, or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this state, shall be valid or have any force until the same has been registered as required herein.

Art. 6726. [4584j]. **Forfeiture of charter.**—If any railroad company owning or operating a railroad in this state shall hereafter issue or consent to or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work

a forfeiture of the charter of said company; and it shall be the duty of the attorney general to institute proceedings in a court of competent jurisdiction to forfeit the same. [Id.]

Art. 6727. [4584k] **Certificates, bonds, etc., void.**—Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without a compliance with this chapter, shall be void.

Art. 6728. [4584l] **Penalties hereunder; venue.**—Each and every railroad director, president, secretary, or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the railroad commission direction to the secretary of state to register the same, and which shall be by the secretary of state registered, or shall with knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be punished as provided in the Penal Code, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis county, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located.

Art. 6729. [4584m] **State not liable, etc.**—Nothing in this law, and no act done or performed under or in connection with it, shall be held or construed to bind or make the state of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt, or claim executed or assumed under or by virtue of its provisions.

Art. 6730. **Amendment of charter; construction of branch lines; issuance of bonds.**—Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this state, and which on April 15, 1901, owned a line of railway already constructed, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in accordance with chapter 1 of this title, and in accordance with the constitution and laws of this state, and may provide by such amendment for the making of any extension or extensions, or branch line or lines, that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension, or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter; and the railroad commission of the state of Texas is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and, in determining the right to issue such stock and bonds, said commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other of the provisions of this chapter, or of the existing laws of this state, except in so far as the same may be changed by the provisions of this article. [Acts 1901, p. 257, secs. 1 and 2.]

Art. 6731. **Suburban railroad stocks and bonds valid, when.**—In all cases in which the railroad commission of the state of Texas may decide that any

corporation created under chapter 1 of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town, in addition to such mileage as it may have within the same, is not for any reason subject to the control of said railroad commission in reference to the issuance of stock and bonds, or either, under the act of the legislature of this state entitled, "An Act to define franchises, to make public the value of railroads, to make effective section 6, article 12, of the constitution of the state of Texas; to declare the effect of judicial and other sale of railroads; to limit the amount of stocks and bonds and other indebtedness that may be issued by railroad companies, and to regulate the manner of issuing, registering and securing the same; to prescribe penalties for violating the provisions of this act, and to prescribe the duties of the railroad commission and the attorney general in relation thereto," being chapter 50 of the acts of the legislature of Texas of 1893, and this chapter. Said corporation, after such decision of said railroad commission, shall have the right to issue its said stock and bonds, or either, and also to increase its stock and bonds, or either, without the control of said railroad commission, and without complying with the acts aforesaid in reference thereto; and said stock and bonds, when so issued, shall in all respects be as valid and binding as they would be if there were no such acts. [Acts 1903, p. 29, sec. 1.]

Art. 6732. **Stocks and bonds may issue for double tracks.**—Any railroad company chartered under the laws of this state, whenever the railroad commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the railroad commission of the state of Texas is empowered to authorize the execution and issuance of such stock and bonds, or bonds; and, in determining the right to issue such stock and bonds, or bonds, the said commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed. [Acts 1903, p. 131, sec. 1.]

CHAPTER SEVENTEEN.

INTERURBAN RAILROAD COMPANIES.

	Article.		Article.
Right of eminent domain.....	6733	Proceedings to condemn easement.....	6738
Width of right of way, survey, etc.....	6734	"Interurban railway company" defined.....	6739
May construct across streams, streets, etc.	6735	Chartered rights may include sale of electric lights and power.....	6740
Same powers of eminent domain as steam railroads.....	6736	The provisions of this chapter cumula- tive	6741
May condemn easement over other elec- tric railway tracks, etc.....	6737		

Article 6733. **Right of eminent domain.**—All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in the state of Texas, for the transportation of freight or passengers, or both, shall have the right of eminent domain, as fully to all intents and purposes as is now conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants; provided, that no cemetery grounds, nor any part thereof, shall be so taken or condemned. [Acts 1907, p. 23, sec. 1.]

Art. 6734. **Width of right of way, survey, etc.**—Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and, for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees, or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. And to the accomplishment of these ends, such corporation shall have the right to cause such examination and survey of their proposed railways to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands, or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby. [Id. sec. 2.]

Art. 6735. **May construct across streams, streets, etc.**—Such corporations shall have the right and power to construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and shall have the right to erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal; provided, however, that any such bridge or other structure shall be so erected as not unnecessarily or unreasonably to prevent the navigation of any such stream, water course, bay, arm of the sea, or navigable water; and provided, further, that nothing herein contained shall authorize the construction of any such railway upon or across any street, alley, square, or property of any incorporated city or town, without the assent of said corporation of said city or town, and that in case of the construction of any electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same. [Id. sec. 3.]

Art. 6736. **Same powers of eminent domain as steam railroads.**—All rights and powers of eminent domain and condemnation of property in this title

hereinbefore set out and conferred upon steam railway companies of this state, and the manner of exercise thereof, are hereby conferred upon interurban railway companies mentioned in this chapter. [Id. sec. 4.]

Art. 6737. May condemn easement over other electric railway tracks, etc.—The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn, for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this state for the purpose hereinafter mentioned, subject to the consent, authority and control of the city council of such town or city. [Id. sec. 5.]

Art. 6738. Proceedings to condemn easement.—Any such interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street railway company for the purposes only of securing an entrance into and an outlet from a town or city upon a route to be designated by the city council or other city authorities in control of the streets and alleys of such city. And in any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case, shall define and fix the terms and conditions upon which such easement or right of way shall be used; provided, the court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited, or to impair the exercise thereof; provided, that no application for a rehearing shall be made until two years after the final judgment on the last preceding application. [Id. sec. 5.]

Art. 6739. "Interurban railway company" defined.—An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this state for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns, or between one city and one incorporated town in this state; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred by this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of this provision of this article shall operate to forfeit such easements or rights of way. If this article shall be held by the courts of this state invalid for any reason, such invalidity shall not affect any other article or portion of this chapter. [Id. sec. 5.]

Art. 6740. Chartered rights include sale of electric lights and power.—Such interurban electric railway companies shall also have the right and authority to produce, supply and sell electric light and power to the public and to municipalities. [Id. sec. 6.]

Art. 6741. **Provisions of this chapter cumulative.**—The provisions of this chapter shall be held and construed to be cumulative of all general laws of this state on the subject of interurban electric railways when not in conflict herewith; but nothing contained in this chapter shall be construed to have the effect to confer the power of eminent domain, or any of the powers herein conferred, except those conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, corporation, or to add to the powers already possessed by any such railroad, or railroad company, person, firm, association or corporation, so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date; provided, that nothing contained in this article shall be construed to take from any interurban railroad company, person, firm, association or corporation, any power of eminent domain already possessed by it. [Id. sec. 7.]

CHAPTER EIGHTEEN.

STREET RAILROADS.

	Article.		Article.
Half fare for children in cities of forty thousand or more inhabitants.....	6742	Free fare for children under five years of age.....	6744
Reduced tickets, how used and sold, etc....	6743	Transfers regulated.....	6745

Article 6742. **Half fare for children in cities of forty thousand and more inhabitants.**—All persons or corporations, owning or operating street railways in or upon the public streets of any town or city in this state of not less than forty thousand inhabitants, are required to carry children of the age of twelve years or less at and for one-half the charge or fare regularly collected by such person or corporation for the transportation of adult persons; provided, that this article shall not apply to street cars carrying children or students to and from schools, colleges, or other institutions of learning, situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run. [Acts 1903, p. 182, sec. 1.]

Art. 6743. **Reduced tickets, how used and sold, etc.**—All such persons or corporations, owning or operating street railways, shall sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, at and for one-half the regular fare or charge collected for the transportation of adult persons, to students not more than seventeen years of age in actual attendance upon any academic, public or private school, of grades not higher than the grades of the public high schools of this state, situated within or adjacent to the town or city in which such street railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase the same of the written certificate of the principal of the school upon which he is in attendance, showing that he is not more than seventeen years of age, is in regular attendance upon such school, and is within the grades hereinbefore provided. Such tickets are not required to be sold to such

students, and shall not be used, except during the months of the year when such schools are in actual session, and such students shall be transported at half fare only upon the presentation of such tickets. [Id. sec. 2.]

Art. 6744. **Free fare for children under five years.**—All such persons or corporations are required to transport children of the age of five years or less, when attended by a passenger of above said age, free of charge. [Id. sec. 3.]

Art. 6745. **Transfers regulated.**—All such persons or corporations are required to accord to all passengers referred to in the foregoing articles of this chapter the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare. [Id. sec. 4.]

CHAPTER NINETEEN.

GENERAL PROVISIONS.

Article.	Article
Separate coaches for white and negro passengers	6746
"Negro" defined	6747
Separate coaches, how defined and marked	6748
Penalty	6749
	Exceptions and limitations as to provisions
	Law to be posted conspicuously
	Does not apply to excursions
	Conductor to exclude passengers from wrong car
	6750
	6751
	6752
	6753

Article 6746. **Separate coaches for white and negro passengers.**—Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this state as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience. [Acts 1907, p. 58.]

Art. 6747. **"Negro" defined.**—The term "negro," used herein, includes every person of African descent as defined by the statutes of this state. [Id. sec. 2.]

Art. 6748. **Separate coaches, how defined and marked.**—Each compartment of a railroad coach, divided by good and substantial wooden partitions with a door therein, shall be deemed a separate coach within the meaning of this chapter; and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of the street car or interurban car, divided by board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this chapter. [Id. sec. 3.]

Art. 6749. **Penalty.**—Any railway company, street car company, or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each and every failure to a penalty not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction; and each trip, run with such train or street car or interurban

car without such separate coach or compartment shall be deemed a separate offense. [Id. sec. 4.]

Art. 6750. Exceptions and limitations as to provisions.—The provisions of this chapter shall not be so construed as to prohibit nurses from traveling in any coach or compartment with their employer, or employes upon the train or cars in the discharge of their duty, nor shall it be construed to apply to such freight trains as carry passengers in cabooses; provided, that nothing herein contained shall be construed to prevent railroad companies in this state from hauling sleeping cars, dining or cafe cars, or chair cars, attached to their trains, to be used exclusively by either white or negro passengers, separately but not jointly. [Id. sec. 6.]

Art. 6751. Law to be posted conspicuously.—Every railroad company carrying passengers in this state shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law. [Id. sec. 7.]

Art. 6752. Does not apply to excursions.—The provisions of this law shall not apply to any excursion train or street car or interurban car as such for the benefit of either race. [Id. sec. 8.]

Art. 6753. Conductors to exclude passengers from wrong car.—Conductors of passenger trains, street cars, or interurban lines, provided with separate coaches, shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law; and the conductor in charge of the train or street car, or interurban car, shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this chapter, and upon his refusal to do so knowingly shall be punished as provided in the Penal Code of this state. [Id. sec. 9.]

TITLE 116.

RANGERS—STATE.

Article.	Article.
Organization	Arms and equipment.....
To consist of four companies.....	Rations and forage.....
Compensation	Clothed with powers of peace officers.....
Quartermaster	In case of arrest to convey prisoner to
Under command of governor.....	county jail.....
Members to serve two years.....	Regulations to be made by governor and
Quartermaster to purchase supplies.....	adjutant general.....
Members to furnish horses, equipment,	
etc.	
	6754
	6755
	6756
	6757
	6758
	6759
	6760
	6761
	6762
	6763
	6764
	6765
	6766
	6767

Article 6754. **Organization.**—The ranger force, authorized to be organized by the governor, is for the purpose of protecting the frontier against marauding or thieving parties, and for the suppression of lawlessness and crime throughout the state. [Acts 1901, p. 41, sec. 1.]

Art. 6755. **To consist of four companies.**—The ranger force shall consist of not to exceed four separate companies of mounted men, each company to consist of not to exceed one captain, one first sergeant and twenty privates, and one quartermaster for the entire force. The captains of companies and the quartermaster shall be appointed by the governor, and shall be removed at his pleasure; unless sooner so removed by the governor, they shall serve for two years and until their successors are appointed and qualified. [Id. sec. 2.]

Art. 6756. **Compensation.**—The pay of officers and men shall be as follows: Captains, one hundred dollars each, per month; sergeants, fifty dollars each, per month; and privates, forty dollars each, per month. The payments shall be made at such times and in such manner as the adjutant general of the state may prescribe. [Id. sec. 3.]

Art. 6757. **Quartermaster.**—The governor shall appoint a quartermaster for this force, who shall discharge the duties of quartermaster, commissary and paymaster, and shall rank and receive the pay of a captain. [Id. sec. 4.]

Art. 6758. **Under command of governor.**—This force shall always be under the command of the governor, to be operated by his direction, in such manner, in such detachments, and in such localities as the governor may direct. [Id. sec. 5.]

Art. 6759. **Members to serve two years.**—The governor is authorized to keep this force, or so much thereof as he may deem necessary, in the field as long as in his judgment there may be necessity for such a force; and men who may volunteer in such service shall do so for such term not to exceed two years, subject to disbandment in whole or in part at any time, and reassemblage or reorganization of the whole force, or such portion thereof as may be deemed necessary by order of the governor. [Id. sec. 6.]

Art. 6760. **Quartermaster to purchase supplies.**—The quartermaster, or, if so directed by the adjutant general, company commanders shall purchase all supplies hereinafter provided for, and shall make a certificate on the voucher of the party or parties from whom the supplies are purchased, to the effect that the account is correct and just, and the articles purchased were at the lowest market price. [Id. sec. 7.]

Art. 6761. **Members to furnish equipment, etc.**—Each officer, non-commissioned officer and private of said force shall furnish himself with a suitable horse, horse equipment, clothing, etc.; provided, that if his horse is killed in action it shall be paid for by the state at a fair market value at the time when killed. [Id. sec. 8.]

Art. 6762. **Arms and equipment.**—The state shall furnish each member of said force with one improved carbine and pistol at cost, the price of which shall be deducted from the first money due such officer or man, and shall furnish said force with rations of subsistence, camp equipage and ammunition for the officers and men, and also forage for horses. [Id. sec. 9.]

Art. 6763. **Rations and forage.**—The amount of rations and forage shall not exceed the following, to wit: For each man's daily allowance, twelve ounces bacon or twenty ounces beef, twenty ounces of flour or corn meal, two and two-fifths ounces of beans or peas, one and three-fifths ounces of rice, three and one-fifth ounces of coffee, three and one-fifth ounces of sugar, one-sixth gill of vinegar or pickles, one-sixth ounce candles, one-third ounce of soap, two-thirds of an ounce of salt, one-twenty-fourth of an ounce of pepper, four and four-fifths ounces of potatoes, sixteen-twenty-fifths of an ounce of baking powder. The forage for each horse shall not exceed twelve pounds of corn or oats, and fourteen pounds of hay per day, and two ounces of salt per week; provided, that, when in case of emergency the members of said force are employed in such duty that it is impracticable to furnish the rations herein provided for, each member of said force so employed shall be allowed for his necessary actual expenses for such subsistence not to exceed one dollar and fifty cents per day; and provided, further, that, when it becomes necessary to move the members of said force from one place to another by railroad, the actual necessary expenses of such transportation shall be paid [by the state]. [Id. sec. 10.]

Art. 6764. **Clothed with powers of peace officers.**—The officers, non-commissioned officers and privates of this force shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases they shall be governed by law regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power, and shall be authorized to make arrests and to execute all process in criminal cases in any county in the state. They shall, before entering on the discharge of these duties, take an oath before some authority legally authorized to administer the same, that each of them will faithfully perform his duties in accordance with law. In order to arrest and bring to justice men who have banded together for the purpose of committing robbery, or other felonies, and to prevent the execution of the laws, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the state for such services. [Id. sec. 11.]

Art. 6765. **In case of arrest to convey prisoner to county jail.**—When said force, or any member or members thereof, shall arrest any person charged with the commission of a criminal offense, they shall forthwith convey said person to the county where he or they stand charged with the commission of an offense, and shall deliver him or them to the proper officer, taking his receipt therefor, and all necessary expenses thus incurred will be paid by the state. [Id. sec. 12.]

Art. 6766. **Regulations to be made by governor and adjutant general.**—The governor, and adjutant general, shall cause to be made such regulations for the government and control of the organization herein provided for, and for the enlistment and employment of non-commissioned officers and privates, as they may deem necessary, to the end that the force so provided shall be as effective as possible. [Id. sec. 13.]

TITLE 117.

RECORDS.

Chapter.

1. Transcribing Old Records.

Chapter.

2. Supplying Lost Records, etc.

CHAPTER ONE.

TRANSCRIBING OLD RECORDS.

Article.	Article.
Old records to be transcribed, when.....6767	Commissioners' court to have records transcribed, when.....6772
Shall conform to the original record and be compared .....6768	How to be transcribed.....6773
Correctness to be certified, and effect of same .....6769	To have effect of judicial proceedings, when .....6774
Original books to be preserved.....6770	Compensation for transcribing.....6775
To what records shall apply.....6771	Translations from the Spanish.....6776
	Effect of such translations.....6777

Article 6767. [4585] **Old records to be transcribed, when and how.**—It shall be the duty of the county commissioners' court of any county, when the records or indexes of such county have become or may become defaced, worn, or in any condition endangering their preservation in a safe and legible form, to procure a good and well-bound book or books, as the case may be, and require the county clerk to transcribe, or have transcribed by a sworn deputy, the records contained in such book or books, in a plain, legible hand and with some standard ink of a permanent black color. [Act Aug. 7, 1876, p. 84, sec. 1.]

Art. 6768. [4586] **Shall conform to the original record and be compared.**—The book or books so transcribed shall conform in all respects to the original record as indexed; and the designation of such transcribed book or books, whether by letter or number, shall not be changed from the original and they shall be carefully compared with the original record by said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy. [Id. secs. 1, 2.]

Art. 6769. [4587] **Correctness to be certified to, and effect of same.**—When said record or records shall have been found to be truly and correctly transcribed, the county clerk, with the sworn deputies so transcribing and verifying the same, shall certify officially, at the conclusion of the record, with the impress of the seal of said court affixed on the same page to the correctness of the same, reciting the number of pages contained in said book, from one to the highest number; after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of the state as the original records. [Id. sec. 2.]

Art. 6770. [4588] **Original books to be preserved.**—The original book or books transcribed according to the provisions of this chapter shall be carefully kept and preserved by such clerk, as other archives of his office. [Id.]

Art. 6771. [4589] **To what records this chapter shall apply.**—The provisions of this chapter shall apply to all records belonging to the district court, county court and commissioners' court, including all records used for registration, except the records of the surveyor's office; but the clerk of the district court shall perform all the duties herein required of the county clerk so far as the same appertains to the records of the said district clerk's office; and the records so transcribed by the district clerk shall have the same force and effect as the original records.

Art. 6772. [4590] **Commissioners' court to have records transcribed, when.**—It shall be the duty of the county commissioners' court of any county in this state which may have been created, either in whole or in part from the territory of any other county or counties in this state, or to which may have been added since its creation the territory of any other county or counties in this state, to secure a well-bound book or books, as the case may be, and require the county clerk to transcribe, or have transcribed, from the record of said other county or counties by a sworn deputy, all the deeds, mortgages, conveyances, incumbrances and muniments of title affecting or in any wise relating to all lands and real property which are or may be embraced in the territory so acquired from another county or counties, and which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in said county or counties from which said territory may have been taken as having been there recorded prior to the transfer of territory as aforesaid; and, when the acquired territory may have been from more than one county, then the clerk shall provide a separate record book for each county, which said book or books shall be indexed and arranged as is now required for record books in case of deeds and mortgages. [Acts of 1879, p. 105.]

Art. 6773. [4591] **How to be transcribed.**—Said records shall be transcribed in a plain, legible hand, and with some standard ink of a permanent black color, and when so transcribed shall be carefully compared with the original record by the said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy. [Id. sec. 2.]

Art. 6774. [4592] **To have effect of judicial proceedings, when.**—When said record or records shall have been found to be truly and correctly transcribed, the county clerk, with the sworn deputies so transcribing and verifying the same, shall certify under their official oath of office at the conclusion of the record with the impress of the seal of said court affixed on the same page the correctness of the same, after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of this state as the original records. [Id. sec. 3.]

Art. 6775. [4593] **Compensation.**—The county clerk, or person making such transcript, shall be entitled to compensation therefor at the rate of fifteen cents for one hundred words, and for comparing and verifying the same, payable out of the county treasury upon warrant issued under order of the commissioners' court. [Id. sec. 4.]

Art. 6776. [4593a] **Translations may be authorized by commissioners' court.**—The county commissioners of any county of this state are authorized and empowered to contract with the clerk of the county courts of their respective counties to cause to be translated into the English language, by themselves or their deputies, the archives and records of their offices, or any part thereof, now in the Spanish language, in their official custody, relating to titles to land, and copy said translations in a well-bound book or books: provided, that they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording. [Acts of 1893, p. 168.]

Art. 6777. [4593b] **Effect of such translations, etc.**—When said archives and records, now in Spanish, are translated and recorded as hereinbefore provided, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be and are hereby made permanent archives and records of the county clerk's office of the counties when so translated and recorded. [Id.]

CHAPTER TWO.

SUPPLYING LOST RECORDS, ETC.

Article. Lost records may be supplied by proof, etc. 6778 Proceedings to establish lost records, etc. 6779 Judgment, etc. 6780 Proceedings in the county court. 6781	Article. Effect of judgment, etc. 6782 Certified copies may be recorded. 6783 Original deeds, etc., recorded again, when 6784 Judgment shall have force of originals. 6785
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Article 6778. [4594] **Lost records may be supplied by proof, etc.**—All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances of any and every description which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, and any and every judgment of a court of record in this state, and which record and minutes of court containing such judgment have been or may hereafter be lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided. [Act July 13, 1876, p. 45, sec. 1.]

Art. 6779. [4595] **Proceedings to establish lost records, etc.**—Any person having any interest in any such deed, instrument in writing, or any judgment, order or decree in the district court, the record or entry of which has been or may hereafter be lost, destroyed, or carried away, may, in addition to any mode now provided by law for establishing the existence of such record and the contents thereof, file with the clerk of the district court of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument of writing, or to the party or parties who were interested adversely to the applicant at the time of the rendition of any such judgment, or who may be now interested, or the heirs and legal representatives of such parties, to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have any such deed, instrument in writing, or judgment substituted and recorded; and service shall be as now provided for process in other cases. [Id. sec. 2.]

Art. 6780. [4596] **Judgment, etc.**—On hearing said application, if the court shall be satisfied from the evidence of the existence of such deed, instrument in writing, record, judgment, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county. [Id.]

Art. 6781. [4597] **Proceedings in the county court.**—Whenever any judgment, order or decree duly entered in the county court of any county has been or may hereafter be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles, so far as applicable.

Art. 6782. [4598] **Effect of judgment, etc.**—Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the origi-

nal of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used in evidence in any of the courts of this state with like effect as the original thereof. [Id.]

Art. 6783. [4599] **Certified copies may be recorded.**—All certified copies from the records of such county, the record of which has been or may hereafter be lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established. [Id. sec. 3.]

Art. 6784. [4600] **Original deeds, etc., recorded again, when.**—When any of the original papers mentioned in the first article of this chapter may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records; and certified copies from any record authorized by the provisions of this title to be made may be received in evidence in any of the courts of this state in the same manner and with like effect as certified copies of the original record. [Id. sec. 4. Acts of 1879, ch. 35, p. 35.]

Art. 6785. [4601] **Judgments shall have force of originals.**—Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals. [Id.]

TITLE 118.

REGISTRATION.

<p>Chapter.</p> <p>1. Recorders and Their Duty.</p> <p>2. Acknowledgment and Proof of Deeds, etc., for Record.</p> <p>3. Instruments Authorized to be Recorded, and the Effect of Recording.</p>	<p>Chapter.</p> <p>4. Registration of Separate Property of Married Women.</p> <p>5. General Provisions.</p>
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CHAPTER ONE.

RECORDERS AND THEIR DUTIES.

[As to chattel mortgages, see title "Liens," title 86, chapter 7.]

<p>County clerks shall be recorders.....</p> <p>What shall be their seal.....</p> <p>Shall provide books, etc.....</p> <p>Shall keep memorandum and give receipt.....</p> <p>Shall record without delay in the order presented.....</p>	<p>Article.</p> <p>6786</p> <p>6787</p> <p>6788</p> <p>6789</p> <p>6790</p>	<p>Record shall take effect, when.....</p> <p>Shall keep alphabetical indexes, etc.....</p> <p>What they shall contain.....</p> <p>Same subject.....</p> <p>Shall give attested copies, when.....</p> <p>Separate record books.....</p>	<p>Article.</p> <p>6791</p> <p>6792</p> <p>6793</p> <p>6794</p> <p>6795</p> <p>6796</p>
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Article 6786. [4602] **County clerks shall be recorders.**—The county clerks of the several counties shall be the recorders for their respective counties; they shall provide and keep in their offices well-bound books in which they shall record in a fair and legible hand all instruments of writing authorized or required to be recorded in the recorder's office of their respective counties, in the manner hereinafter provided. [Act May 12, 1846, sec. 1. P. D. 5001.]

Art. 6787. [4603] **What shall be his seal.**—The seal of the county court shall be the seal of the recorder, and shall be used for the authentication of all his official acts. [Id. sec. 2. P. D. 5002.]

Art. 6788. [4604] **Shall provide books, etc.**—Each recorder shall provide suitable books and presses for his office, and keep regular and faithful accounts of the expenses thereof, and such accounts shall be audited by the commissioners' court and paid out of the county treasury. [Id. sec. 3. P. D. 5003.]

Art. 6789. [4605] **Shall keep a memorandum and give receipts, etc.**—When any instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, if the same shall be acknowledged or proved in the manner prescribed by law for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof. [Id. sec. 12. P. D. 5012.]

Art. 6790. [4606] **Shall record without delay in the order presented.**—Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates written or printed on the same, and all other papers referred to and thereto annexed, in the order and as of the time when the same shall have been deposited for record, by entering them word for word and letter for letter, and noting at the foot of such record all interlineations, erasures and words visibly written on

erasures, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record. [Id. sec. 13. P. D. 5013.]

Art. 6791. [4607] **Record shall take effect from date of deposit.**—Every such instrument of writing shall be considered as recorded from the time it was deposited for record; and the recorder shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto or to his order. [Id. sec. 14. P. D. 5014.]

Art. 6792. [4608] **Shall keep alphabetical indexes.**—Each recorder shall make and enter in a well-bound book an index, in alphabetical order, to all books of records wherein deeds, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded. [Id. sec. 15. P. D. 5015.]

Art. 6793. [4609] **What they shall contain.**—It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case the deed be made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents, and, if by a commissioner, the name of such commissioner and the person whose estate is conveyed. [Id. sec. 16. P. D. 5016.]

Art. 6794. [4610] **Same subject.**—Each recorder shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing in relation to goods and chattels, or movable property of any description, marriage contracts and powers of attorney, and all other instruments of writing authorized or required to be recorded in his office are recorded; and a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded. [Id. sec. 17. P. D. 5017.]

Art. 6795. [4611] **Shall give attested copies, when.**—It shall be the duty of the recorder to give attested copies whenever demanded of all papers recorded in his office; and the recorder shall receive for all such copies, and all other writings required of him by virtue of his office, such fees as may be provided by law. [Act Dec. 20, 1836, sec. 36. P. D. 4979.]

Art. 6796. [4612] **Mortgages, etc., to be recorded in separate book.**—All deeds of trust, mortgages, judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

CHAPTER TWO.

ACKNOWLEDGMENT AND PROOF OF DEEDS, ETC., FOR RECORD.

[As to registration of foreign wills, see title "Wills."]

Article.	Article.
Before whom acknowledgment may be made in this state.....	Handwriting may be proved, when.....
Without this state and within the United States.....	Evidence may prove what.....
Without the United States.....	Proof, how made when grantor has made his mark.....
Acknowledgment, how made.....	Proofs, how made and certified.....
Party must be known or proven.....	Officers are authorized to administer oaths, etc.....
Acknowledgment of married woman, when and how taken.....	Subpoena shall issue, when.....
Certificate of officer.....	May compel attendance and answers of witness.....
Form of certificate of acknowledgment.....	Statement of the acknowledgment, etc., to be recorded.....
Form of acknowledgment by a married woman.....	What statement for record shall contain.....
Proof of instrument by witness.....	Statement shall further recite.....
Witness must be personally known to the officer.....	The book to be a public record.....
Form of certificate of proof by witness.....	Action for damages will lie by person injured.....

Article 6797. [4613] **Before whom acknowledgments may be made in this state.**—The acknowledgment or proof of an instrument of writing for record may be made within this state before either:

1. A clerk of the district court.
2. A judge or clerk of the county court.
3. A notary public. [Act May 6, 1871, sec. 1. P. D. 7418.]

Art. 6798. [4614] **Without this state and within the United States.**—The acknowledgment or proof of an instrument of writing for record may be made without this state, but within the United States or their territories, before either:

1. A clerk of some court of record having a seal.
2. A commissioner of deeds duly appointed under the laws of this state.
3. A notary public. [Id.]

Art. 6799. [4615] **Without the United States.**—The acknowledgment or proof of an instrument of writing for record may be made without the United States before either:

1. A minister, commissioner or charge d' affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.
2. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made.
3. A notary public. [Id.]

Art. 6800. [4616] **Acknowledgment, how made.**—The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. [Act May 12, 1846, sec. 7. P. D. 5007.]

Art. 6801. [4617] **Party must be known or proven.**—No acknowledgment of any instrument of writing shall be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. [Id. sec. 10. P. D. 5010.]

Art. 6802. [4618] **Acknowledgment of married woman, when and how taken.**—No acknowledgment of a married woman to any conveyance or other

instrument purporting to be executed by her shall be taken, unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment, on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. [Act April 30, 1846, sec. 1. P. D. 1003.]

Art. 6803. [4619] **Certificate of officer.**—Any officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

Art. 6804. [4620] **Form of certificate of acknowledgment.**—The form of an ordinary certificate of acknowledgment must be substantially as follows:

“The State of _____,

“County of _____.

“Before me _____ [here insert the name and character of the officer] on this day personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

“Given under my hand and seal of office this _____ day

[Seal] of _____, A. D. ____.

“_____.”

Art. 6805. [4621] **Form of acknowledgment by a married woman.**—The certificate of acknowledgment of a married woman must be substantially in the following form:

“The State of _____,

“County of _____.

“Before me, _____ [here insert the name and character of the officer] on this day personally appeared _____, wife of _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

“Given under my hand and seal of office this _____ day

[Seal] of _____, A. D. ____.

“_____.”

[Id. P. D. 1003.]

Art. 6806. [4622] **Proof of instrument by witness.**—The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument subscribe the same, or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated, and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal. [Act May 12, 1846, sec. 8. P. D. 5008.]

Art. 6807. [4623] **Witness must be personally known to officer.**—The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the in-

strument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate. [Id. sec. 10. P. D. 5010.]

Art. 6808. [4624] **Form of certificate or proof by witness.**—The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

“The State of _____,

“County of _____.

“Before me, _____ [here insert the name and character of the officer], on this day personally appeared _____, known to me (or proved to me on the oath of _____), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw _____, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor [or person who executed the same].

“Given under my hand and seal of office this _____ day
[Seal] of _____, A. D. _____.

“_____.”

Art. 6809. [4625] **Handwriting may be proved, when.**—The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this state.
3. When the place of their residence is unknown to the party desiring the proof, and can not be ascertained.
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are dead or are non-residents of this state, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Art. 6810. [4626] **Evidence must prove what.**—The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness testifying.

Art. 6811. [4627] **Proof, how made when grantor made his mark.**—When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in article 6809 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and

of the place of residence of such witnesses testifying. [Act March 6, 1863, sec. 1. P. D. 5009.]

Art. 6812. [4628] **Proofs, how made and certified.**—The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificate shall be attached to such instrument. [Id. P. D. 5009.]

Art. 6813. [4629] **Officers are authorized to administer oath, etc.**—Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings—

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpoenas.
4. To punish for contempt as hereinafter provided.

Art. 6814. [4630] **Subpoena shall issue when.**—Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument can not be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such instrument. [Act Feb. 9, 1860, sec. 1. P. D. 5020.]

Art. 6815. [4631] **May compel attendance and answers of witness.**—When such witness shall fail to appear in obedience to such subpoena, said officer shall have the same power to enforce his attendance and to compel his answers on oath touching the execution of such instrument as a judge of the district court has to compel the attendance and answers of witnesses; provided, that an attachment shall in no case issue without the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; and provided, further, that no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Art. 6816. [4632] **Statement of acknowledgment, etc., to be recorded.**—All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale, or any other written instrument required or permitted by law to be placed on record shall procure a well-bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially. [Act April 28, 1874, p. 155, sec. 1. P. D. 7418b.]

Art. 6817. [4633] **What the statement for record shall contain.**—Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person. [Id. sec. 1.]

Art. 6818. [4634] **Statement shall further recite.**—Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of

the original grantee shall be mentioned, and the county where the same is situated. [Id. sec. 1.]

Art. 6819. [4635] **The book to be a public record.**—The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times. [Id.]

Art. 6820. [4636] **Action for damages will lie by person injured.**—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal. [Id.]

CHAPTER THREE.

INSTRUMENTS AUTHORIZED TO BE RECORDED, AND THE EFFECT OF RECORDING.

Article.	Article.
Patents and grants may be recorded without proof.....6821	Copies from land office to be recorded.....6831
Copies of archives recorded.....6822	Judgments to be recorded.....6832
What may be recorded.....6823	Transfer of judgments to be recorded.....6833
All sales to be void as to creditors and purchasers unless registered.....6824	Judgments in justices' courts, how recorded, etc.....6834
Located lands have priority over unrecorded title lands, when.....6825	Partition to be recorded.....6835
English language to be used.....6826	Decree may be abbreviated.....6836
Deeds to be recorded where.....6827	Suit for land, notice to be filed.....6837
Deeds valid, etc., against subsequent creditors from, etc.....6828	Record of, how made.....6838
Marriage contract valid, when.....6829	Transfers without notice valid.....6839
Recorder shall record, etc.....6830	Effect of notice.....6840
	Titles to chattels, where recorded.....6841
	Record of any grant, etc., when notice.....6842

Article 6821. [4637] **Patents and grants may be recorded without proof.**—Letters patent from the state of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded without further acknowledgment or proof.

Art. 6822. [4638] **Copies of archives recorded.**—Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies. [Act Jan. 19, 1839, sec. 2. P. D. 4984.]

Art. 6823. [4639] **What may be recorded.**—The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: All deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description. [Act May 12, 1846, sec. 4. P. D. 5004.]

Art. 6824. [4640] **All sales, etc., to be void as to creditors and purchasers, unless registered.**—All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and

deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall nevertheless be valid and binding. [Act Feb. 5, 1840, p. 69, sec. 4. P. D. 4988.]

Art. 6825. [2322] **Located lands have priority over unrecorded titled lands, when.**—Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk of the county where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey. [Acts 1866, p. 32. P. D. 5825.]

Art. 6826. [4640a] **English language to be used.**—No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law. [Act 1897, p. 11.]

Art. 6827. [4641] **Deeds, etc., to be recorded in county where land is situated.**—All deeds, conveyances, mortgages, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well-bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and it shall be the duty of the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, to deliver such book, or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes, when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be. [Acts of 1887, p. 94.]

Art. 6828. [4642] **Deed, etc., valid, against subsequent creditors from, etc.**—Every conveyance, covenant, agreement, deed, deed of trust or mortgage in this chapter mentioned, or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from

the deed or mortgage records of any county in the state where the same has been regularly recorded, although the land mentioned may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only; provided, however, that all certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record; and provided, further, that nothing in this shall be construed to make valid any instrument which was at the time of its execution from any cause invalid. [Acts of 1895, p. 157. P. D. 4994.]

Art. 6829. [4643] **Marriage contract, when valid.**—No covenant or agreement made in consideration of marriage shall be good against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proven and recorded in manner and form as provided by law for deeds and other conveyances. [Acts of 1887, p. 94, sec. 2. P. D. 4987.]

Art. 6830. [4644] **Recorder shall record, etc.**—Each recorder shall also record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved or acknowledged according to law and delivered to him for record. [Act May 12, 1846, p. 236, sec. 5. P. D. 5005.]

Art. 6831. [4645] **Copies from land office to be recorded.**—Each recorder shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office. [Id. sec. 6. P. D. 5006.]

Art. 6832. [4646] **Judgments to be recorded when.**—Each recorder shall also record all judgments and abstracts of judgments rendered by any court of this state presented to him for record; provided, such judgments or abstracts of judgments are attested under the hand and seal of the clerk of the court where such judgment was obtained. [Id. P. D. 5006.]

Art. 6833. [4647] **Transfers of judgment to be recorded, etc.**—The sale of a judgment, or any part thereof, of any court of record within this state, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer; which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit, and when thus filed by the clerk it shall be his duty to make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or, if judgment be not rendered when said transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof; for which services he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor; and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. [Acts of 1889, p. 103.]

Art. 6834. [4648] **Judgment in justice courts, how recorded.**—Whenever land is sold under execution or order for sale issuing out of a justice court in this state, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; which said transcript, or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in all the courts of this state in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered. [Acts of 1889, p. 133.]

Art. 6835. [4649] **Partition to be recorded.**—Every partition of any tract of land or lot, made under any order or decree of any court, and every judgment or decree by which the title of any tract of land or lot is recovered shall be duly recorded in the clerk's office of the county court in which such tract of land or lot or part thereof may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof. [Act Feb. 9, 1860, p. 75, sec. 4. P. D. 5023.]

Art. 6836. [4650] **Decree may be abbreviated.**—It shall not be necessary in the cases mentioned in the preceding article to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be deemed and held to be a sufficient record of such partition, judgment or decree. [Id.]

Art. 6837. **Suit for land; notice to be filed.**—During the pendency of any suit or action, legal or equitable, involving the title to real estate, or seeking to establish any legal or equitable estate, interest or right, present or future, vested or contingent, therein, or to enforce any lien, charge or encumbrance against the same, any party plaintiff, as also any party defendant seeking affirmative relief therein, may file with the county clerk of each county where such real estate, or any part thereof, is situated a notice of the pendency of such suit, to be signed by the party filing the same, or his agent or attorney, setting forth the number and style of the cause, the court in which pending, the names of the party thereto, the kind of suit and a description of the land affected. [Act 1905, p. 316, sec. 1.]

Art. 6838. **Record of, how made.**—The county clerk shall record such notice of pendency in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit. For such performance of duty, the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents. [Id. sec. 2.]

Art. 6839. **Transfers without notice, valid.**—The pendency of such suit or action shall not prevent effective transfers or encumbrances to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit of any such real estate as against a subsequent decree for the adverse party, unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated. [Id. sec. 3.]

Art. 6840. **Effect of notice.**—Such notice of pendency shall not be deemed constructive notice, but merely a memorandum that shall refer all intending purchasers and encumbrancers to an examination of the court records and pleadings to determine whether there is in fact a *lis pendens* concerning the real estate in question, and it shall be effective for such purpose from the time of its filing. [Id. sec. 4.]

Art. 6841. [4651] **Titles to chattels, where recorded.**—Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any part thereof, out of the county in which the same shall be recorded, and shall not, within four months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice; provided, that written contracts for the conditional sale, lease or hire of railroad rolling stock and equipments by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor, until the same has been fully paid, shall be recorded in the office of the secretary of state in a book of records to be kept by him for that purpose; and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor, or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts, and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record. [Act Feb. 5, 1840, p. 12. P. D. 4993. Amended Act 1897, p. 209.]

Art. 6842. [4652] **Record of any grant, etc., when notice.**—The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven up or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

CHAPTER FOUR.

REGISTRATION OF SEPARATE PROPERTY OF MARRIED WOMEN.

	Article.		Article.
Marriage contract to be recorded.....	6843	In what county registration must be	
Registration of property of.....	6844	made	6847
May present and prove schedule for		Conclusive as to subsequent creditors,	
record	6845	etc.	6848
Property acquired after marriage.....	6846		

Article 6843. [4653] **Marriage contract to be recorded.**—When the wife by a marriage contract may reserve to herself any property or rights to property, whether such rights be in esse or expectancy, for such reservation to be valid as to the subsequent purchasers or creditors of her husband, the said contract must be acknowledged by her husband or proved by at least one witness, and recorded in the clerk's office of the county court of the county in which said married parties may reside. [Act Jan. 20, 1840, p. 3, sec. 8. P. D. 4035.]

Art. 6844. [4654] **Property of married women to be registered.**—All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed. [Act April 29, 1846, p. 153, sec. 1. P. D. 4995.]

Art. 6845. [4655] **May present and prove schedule for record.**—Each woman now married, or who may be hereafter married, may present to any officer authorized by law to take acknowledgments or proof of instruments for record, a schedule particularly describing all the property, real and personal, which she now owns and possesses, or which she may own and possess at the time of her marriage, and make her statement under oath before such officer that the property described in the schedule is her separate property; and upon such statement being made, such officer shall annex to the schedule a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same. [Id. sec. 2. P. D. 4996.]

Art. 6846. [4656] **Property acquired after marriage.**—Each married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, shall have the same recorded in the same manner as prescribed in the foregoing article. [Id. sec. 3. P. D. 4997.]

Art. 6847. [4657] **In what county registration must be made.**—The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same, or a part thereof, is situated; if personal property, in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county to which the property is removed within four months after such removal. [Id. sec. 4. P. D. 4998.]

Art. 6848. [4659] **Conclusive as to subsequent creditors, etc.**—The registration of any schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be conclusive as against all subsequent creditors of and purchasers from her husband. [Id. sec. 6. P. D. 5000.]

CHAPTER FIVE.

GENERAL PROVISIONS.

Article.	Article.
Penalty for failing to record.....6849	Effect of such judgment in such action.....6854
Conveyance heretofore made to be gov- erned by existing laws.....6850	Record of certain titles confirmed.....6855
Recording, and as evidence, to be gov- erned by the then existing laws.....6851	Shall be evidence, when.....6856
Party may have action to correct error when certificate is imperfect.....6852	Old registration operative after creating new county.....6857
May obtain judgment proving imperfect instrument .....6853	Attachment proceedings to be recorded, when .....6858

Article 6849. [4660] **Penalty for failing to record, etc.**—If any recorder to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, which shall be delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on the official bond of such recorder, given by him as the clerk of the county court, against such clerk and his sureties. [Act May 12, 1846, p. 236, sec. 18. P. D. 5018.]

Art. 6850. [4661] **Conveyances heretofore made to be governed by the then existing laws.**—The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

Art. 6851. [4662] **Recording, and as evidence, to be governed by the then existing laws.**—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

Art. 6852. [4663] **Party may have action to correct error where certificate is imperfect.**—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Art. 6853. [4664] **May obtain judgment of proof of any instrument.**—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Art. 6854. [4665] **Effect of judgment in such action.**—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record, with like effect as if acknowledged.

Art. 6855. [4666] **Record of certain titles confirmed.**—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late republic or the now state of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. [Act Feb. 9, 1860, sec. 2. P. D. 5021.]

Art. 6856. [4667] **Shall be evidence, when.**—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument of writing as a recorded deed or instrument, except after the ninth day of February, 1860, and in the future. [Id. sec. 3. P. D. 5022.]

Art. 6857. [4668] **Old registration operative after creating new county.**—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made.

Art. 6858. [4669] **Attachments to be recorded, when.**—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. Said clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. The county clerk of every county in this state shall keep a well-

bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner; and certified copies of such records shall be admissible in lieu of the original writ and entries. Clerks of the county court shall receive the same fees for recording the matter herein provided for as they are now allowed by law for recording deeds, to be paid by the plaintiff, and said fees to be taxed as a part of the costs in the case in which the attachment is issued and paid and collected as other costs. Sheriffs shall receive a fee of one dollar for making the copy and return herein provided for, to be taxed and collected as other costs in the suit. [Acts of 1889, p. 80.]

TITLE 119.

ROADS, BRIDGES AND FERRIES.

Chapter.

1. Establishment of Public Roads.
2. Appointment of Overseers.
3. Persons Liable for Work on Roads.
4. Overseers, Appointment, Powers and Duties.
5. Road Commissioners.

Chapter.

6. Road Superintendent.
7. Road Law for Counties Having Forty Thousand Inhabitants or Over.
8. Drainage of Public Roads.
9. Bridges.
10. Ferries.
11. Special Road Tax.

CHAPTER ONE.

ESTABLISHMENT OF PUBLIC ROADS.

Article.	Article.		
What roads declared public.....	6859	May order opening, but damages to be paid first, etc.....	6883
Commissioners' courts to open.....	6860	Established if no objection made.....	6884
Not to be changed unless, etc.....	6861	May change roads, when.....	6885
Roads in towns, etc.....	6862	Duty of clerk as to jury of view.....	6886
First class roads from county site to county site, etc.....	6863	Service of order of appointment.....	6887
Jury of view to be appointed, etc.....	6864	Defaulting juror to be punished.....	6888
Damages, how assessed, etc.....	6865	Roads on line between different owners, etc.....	6889
When damage excessive, etc.....	6866	Ten freeholders may make application for.....	6890
Owner of inclosed lands shall have nine months to remove, etc.....	6867	Requisites of application.....	6891
Compensation, etc.....	6868	Clerk shall issue notice, etc.....	6892
In unorganized counties, etc.....	6869	Service of, etc.....	6893
Such roads to be changed, when.....	6870	May open on line, when.....	6894
General classification of roads.....	6871	Notice served, etc.....	6895
First class roads, etc.....	6872	Not required to be controlled by the public, etc.....	6896
Second class, etc.....	6873	Costs, etc.....	6897
Third class, etc.....	6874	Neighborhood roads discontinued, how.....	6898
Application not until, etc.....	6875	Right to erect gates.....	6899
How made, etc.....	6876	Damages, how assessed.....	6900
How laid out, etc.....	6877	Commissioners as supervisors.....	6901
Oath of jury, etc.....	6878	Not to be discontinued, unless.....	6902
Duty of jury, etc.....	6879	Reports, etc.....	6903
Notice of dower, etc.....	6880	Across public lands, etc.....	6904
Statement of damages, etc.....	6881		
If report approved, to be paid, etc.....	6882		

Article 6859. [4670] **What roads are declared to be public.**—All public roads and highways that have heretofore been laid out and established agreeably to law, except such as have been discontinued, are hereby declared to be public roads. [Act July 29, 1876, p. 64, sec. 6.]

Art. 6860. [4671] **Commissioners' courts to open, etc.**—The commissioners' courts of the several counties shall have full powers and it shall be their duty to order the laying out and opening of public roads when necessary, and to discontinue or alter any road whenever it shall be deemed expedient as hereinafter prescribed. [Acts of 1889, p. 21.]

Art. 6861. [4672] **Shall not be changed, except, etc.**—No public roads shall be altered or changed, except for the purpose of shortening the distance from the point of beginning to the point of destination, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; that said change shall be by unanimous consent of all the commissioners elected. [Id.]

Art. 6862. [4673] **Roads in towns and cities where no incorporation.**—In all cities and incorporated towns in the state of Texas in which from any cause there is not a de facto municipal government in the active discharge of their official duties, the commissioners' court of the county in which such city or incorporated town is situated shall assume and have control of the streets and alleys thereof, and shall have the same worked under the law

and regulations for the working of public roads; and such streets and alleys for the purposes of this article shall be held and denominated public roads; provided, that all residents of any city or town, having no de facto city government, not otherwise exempt from road duty, shall be liable to road service as in other cases. [Acts of 1885, p. 25.]

Art. 6863. [4674] **First class roads from county site to county site.**—The commissioners' courts of the several counties shall see that at least one first class road of the width prescribed by law is laid out and opened from the county seats of their respective counties on the most direct and practicable route to the lines of their county in the direction of the county seats of each adjacent county, where no part of another county intervenes between the county seats of such counties; or, if a border county, to meet the nearest road to the border; and, if any adjacent county is not organized, then in the direction of the center of such county. And the commissioners' court of a county to which one or more unorganized counties are attached for judicial purposes shall lay out and open at least two first class roads sixty feet in width through the extent of each such unorganized county to intersect at right angles as nearly as may be at the center of the county, and to meet at the county lines similar roads of the adjacent counties. In counties now having public roads substantially complying with the preceding requirement as to course, the court shall be required only to give such roads the width of sixty feet and clear them of obstructions; such roads, however, shall not be laid out across orchards, yards, lots or graveyards, or within one hundred feet of a residence, without the consent of the owner; provided, that this law shall not apply to counties where there already exists a sufficiency of public roads. [Acts of 1884, p. 63, sec. 1.]

Art. 6864. [4675] **Jury of view to be appointed.**—It shall be the duty of each commissioners' court on their own motion to appoint a jury of view to lay out the roads required in the preceding article, and to mark and define them, and to report in writing such marks and any prominent natural objects that may aid in defining the route selected. And upon the report of the jury of view such roads shall be declared public highways of the first class; and the court shall order the overseer to open the same, and where the country is open prairie to plow a furrow on each side of the road and establish monuments at convenient intervals. [Id. sec. 2.]

Art. 6865. [4676] **Damages, how assessed.**—If damages are claimed by any owner of land so appropriated for public highways, or by any person where inclosed premises are crossed, a jury to assess such damages shall be appointed as now provided in article 6877 of the Revised Statutes. [Id. sec. 3.]

Art. 6866. [4677] **When damages are excessive, etc.**—If the damages assessed be excessive, the court may appoint another jury to assess them; and upon the second report, if the damages are deemed excessive, the court may change the road so as to avoid the property so greatly damaged; provided, such change will not divert the road more than one-quarter of a mile from a direct line; provided, further, that in all cases where the owner or owners of lands over which such roads shall pass shall have the right of appeal to the district court where the same shall be tried (by first giving a bond in a sufficient amount to cover all costs); and, if a greater amount of damages is there obtained, the county shall pay the excess and the costs, but if no greater damages are obtained the party taking the appeal shall pay all costs; provided, that such appeal shall in no case delay or prevent the immediate opening of such road after the damages assessed as above have been tendered. [Id. sec. 4.]

Art. 6867. [4678] **Owners of inclosed lands shall have nine months, etc.**—Persons through whose inclosed premises such roads are laid out shall have

nine months to remove and adapt their fences to the road. Where the county is unorganized, the owners of fences shall not be required to remove them until such county shall become organized, and not then until fifty residents of such county shall petition the commissioners' court for the removal of such fences; provided, that at all times the owners of such fences shall have at the crossing of such road convenient gates not less than twelve feet wide. [Id. sec. 5.]

Art. 6868. [4679] **Compensation of jurors.**—The juries of view and the juries to assess damages shall, for the organized counties, be allowed such compensation as is now provided by law; and, for the unorganized counties, the sum of two dollars per day for the actual time employed, and five cents per mile for the actual distance traveled to mark and lay out the road or to assess the damages, which amounts, on sworn accounts, shall be paid out of the respective county funds. And any person summoned as a viewer as provided in this chapter who shall fail or refuse to perform the service required of him by law as such viewer shall be fined for contempt by the commissioners' court for every such failure not less than five dollars nor more than ten dollars, to be collected as other fines are collected; provided, that all reasonable excuses shall be heard. [Id. sec. 6.]

Art. 6869. [4680] **In unorganized counties, etc.**—Where there are no persons in the unorganized counties to act or willing to serve on the jury of view or jury to assess damages, the court shall designate citizens of their own county to perform the service. [Id. sec. 7.]

Art. 6870. [4681] **Such roads to be changed, when.**—Nothing in the preceding article shall be construed to prohibit the opening of other roads as is now provided by law. Roads laid out under the provisions of article 6863 shall not be changed, except for the purpose of securing a better and more direct route, and then only after an actual view by a majority of the commissioners' court of that portion of the road sought to be changed. [Id. sec. 8.]

Art. 6871. [4682] **To classify all public roads.**—It shall be the duty of the commissioners' courts to classify all public roads in their counties into first, second and third class roads, and to act as supervisors of roads in their respective precincts, as hereinafter provided, and commissioners' courts may, on their own motion, where it is deemed necessary, open new roads or straighten existing ones. [Acts of 1884, p. 20.]

Art. 6872. [4683] **First class roads.**—First class roads shall be clear of all obstructions, and not less than forty feet nor more than sixty feet wide; all stumps over six inches in diameter to be cut down to six inches of the surface and rounded off, all stumps six inches and under to be cut smooth with the ground, and all causeways made at least sixteen feet wide. [Id. sec. 2.]

Art. 6873. [4684] **Second class roads.**—Second class roads shall be clear of all obstructions and not less than thirty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; and all stumps less than six inches in diameter to be cut smooth with the ground; all causeways to be made at least sixteen feet wide. [Id. sec. 3.]

Art. 6874. [4685] **Third class roads.**—Third class roads shall be clear of all obstructions, and not less than twenty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; all stumps less than six inches in diameter to be cut smooth with the ground, and all causeways made at least twelve feet wide. [Id. sec. 4.]

Art. 6875. [4686] **Application for new road, etc., shall not be granted until notice has been given, etc.**—The commissioners' court shall in no instance grant an order on an application for any new road, or to discontinue an original one, unless the persons making application therefor, or some one

of them, shall have given at least twenty days' notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of the proposed new road, or the road proposed to be discontinued. [Id. sec. 6.]

Art. 6876. [4687] **Application, how made.**—All applications for a new road, and all applications to discontinue an existing one, shall be by petition to the commissioners' court, signed by at least eight freeholders in the precinct or precincts in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road proposed to be opened or discontinued; provided, that where one or more persons live within an inclosure either or all of them may petition the commissioners' court for a third class road or neighborhood road to their nearest trading points, mills, gins, school and church houses and county seats, and the courts shall open such roads, as hereinafter provided in the opening of third class roads; and provided, further, that no part of a public road shall be discontinued unless a new road connecting that part of such road not discontinued shall first be opened; and provided, further, that no part of a first or second class road shall be reduced to a road of a lower class. [Acts of 1884, p. 20.]

Art. 6877. [4688] **How laid out.**—All roads hereafter ordered to be made shall be laid out by a jury of freeholders of the county to be appointed by the commissioners' court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners' court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty; and the field-notes of such survey or description of the road shall be included in the report of the jury; and, if adopted, shall be recorded in the minutes of the commissioners' court. [Id.]

Art. 6878. [4689] **Oath of jury.**—The jurors provided for in the preceding article shall, before proceeding to act as such, take the following oath before some officer authorized to administer oaths, to-wit:

"I, ——, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners' court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God." [Id.]

Art. 6879. [4690] **Duty of jury to perform the work and report.**—It shall be the duty of such jurors, when qualified as provided in the preceding article, to proceed to lay out and mark the road in accordance with the order of the court and the law, and to report their proceedings in writing to the next regular term of the commissioners' court. [Id.]

Art. 6880. [4691] **Notice to owner.**—The jury of freeholders provided for in article 6877 shall issue a notice in writing to the land owners through whose lands such proposed road may run, or to his agent or attorney, of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day therein named. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants as to actions in the district or county court, and the road may be established after four weeks' publication, the cost of publishing to be paid as directed by judgment of the court. [Acts of 1884, p. 21.]

Art. 6881. [4692] **Statement by owner of damages.**—The owner of any such land may, at the time stated in such notice, or previously thereto, present to the jury a statement in writing of the damages claimed by him, if any, incidental to the opening of such road, and thereupon the jury shall

proceed to assess the damages, returning their assessment and the claimant's statement with their report, to the commissioners' court. [Id.]

Art. 6882. [4693] **If report approved, damages to be paid, etc.**—If the commissioners' court shall approve of the report and order such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken, and when paid or secured by deposit with the county treasurer to the credit of such owner they may proceed to have such road opened. If the owner of the land is not satisfied with the assessment by the commissioners' court he may appeal therefrom as in cases of appeal from judgment of justice's court, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. If no claim of damages is filed with such jury after notice as provided in the preceding article the same shall be considered as waived.

Art. 6883. [4694] **Court may order opening of road, but damages assessed must be first paid, etc.**—If, in the judgment of the commissioners' court, from the report of the commissioners named in the two preceding articles, the road should be deemed of sufficient importance, the court may order the survey or opening of the same; but the court shall first order the payment of the damages assessed, if any, by the commissioners of view to be made to the owner of the land out of the county treasury, and the county treasurer shall have paid the same or secured its payment by a special deposit of the amount in his office, subject to the order of such owner, and shall notify such owner by mail or otherwise of such deposit. [Acts of 1876, p. 64.]

Art. 6884. [4695] **Road shall be established, etc., if no objection be made.**—If no objection be filed, upon the report of a jury appointed upon an application to open a new road, the court shall proceed to establish and classify such road and order the opening out of the same, and shall appoint an overseer and apportion hands for the same, as in other cases. [Id. sec. 13.]

Art. 6885. [4696] **May change roads, when.**—The commissioners' court may alter or change the course of any public road, in accordance with article 6861 of this chapter, after notice and upon application in the same manner as provided in this chapter for the discontinuance of a road, except that the application need not be signed by more than one freeholder of the precinct in which such alteration or change is proposed to be made.

Art. 6886. [4697] **Duty of clerk when jury of view is appointed.**—When juries of view are appointed, it shall be the duty of the clerk of the court to make out copies of the order appointing them in duplicate, and to deliver such copies to the sheriff of the county within ten days after such order of appointment was made, indorsing on such copies the date of such order. [Id. sec. 14.]

Art. 6887. [4698] **Service of order of appointment on juror.**—The sheriff receiving such copies shall serve the same upon the jurors by delivering to each of them in person a copy of the order of appointment provided for in the preceding article, or by leaving one of said copies at the usual place of abode of such juror. Service shall be made within twenty days after the sheriff receives said copies, and he shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or if service has not been made, stating the cause of his failure to make the same. [Id.]

Art. 6888. [4699] **Defaulting juror shall be punished, how.**—Any juror of view, summoned as such, who shall fail or refuse to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county, in any court of

competent jurisdiction of the county in which such defaulter may reside. [Id.]

Art. 6889. [4700] **Roads on lines.**—For the further and better providing for public roads, any lines between different persons or owners of land, any section line, or any direct line through an inclosure containing twelve hundred and eighty acres of land or more, may, upon the conditions provided for in the following articles of this chapter, be declared public highways, and left open and free from all obstructions for fifteen feet on either side of said lines, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed or defaced. [Acts of 1884, p. 22.]

Art. 6890. [4701] **Ten freeholders may make an application for.**—Whenever ten freeholders may desire the boundary lines between different persons or owners of land to be declared a public highway, in order to give them a nearer, better or more practicable road to their church, county seat, mill, timber or water, they may apply to the commissioners' court for an order establishing such road. [Acts of 1876, p. 65.]

Art. 6891. [4702] **Requisites of application.**—The application provided for in the preceding article shall be in writing, and shall be signed and sworn to by the applicants. It shall designate the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and shall state the facts which show a necessity for such road. [Id.]

Art. 6892. [4703] **Clerk shall issue notice.**—Upon the filing of such application the clerk shall issue a notice reciting the substance thereof, directed to the sheriff or any constable of the county commanding him to summon the owners of the land, naming them, whose lines are proposed to be left open, to appear at the next regular term of the commissioners' court and show cause why said lines should not be declared public highways. [Id.]

Art. 6893. [4704] **Service of notice and return of same.**—The notice provided for in the preceding article shall be served in the manner and for the length of time provided for the service of citations in civil actions in justices' courts, and shall be returned in like manner as such citation.

Art. 6894. [4705] **May open lines, when.**—At a regular term of the court, after due service of notice as provided in the preceding article, the commissioners' court may, in its discretion, should it deem the road of sufficient public importance, issue an order declaring the lines designated in the application to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen feet on each side of said line. [Acts of 1884, p. 24.]

Art. 6895. [4706] **Notice of the order of the court shall be served upon the owners of the land.**—When an order as provided in the preceding article is made, the clerk shall, without delay, issue a notice reciting said order or its substance, directed to the sheriff or any constable of the county, commanding him to serve the owners of such lines named in such notice with a true copy thereof, and the officer to whom said notice is delivered shall, without delay, serve the same as therein directed and return the same to the clerk, indorsing thereon the manner and date of such service. [Id.]

Art. 6896. [4707] **Such roads not required to be controlled by the public.**—The commissioners' court shall not be required to keep any such road as is mentioned in the last seven articles worked by the road hands as in the case of other public roads. [Id.]

Art. 6897. [4708] **Costs, etc.**—All costs attending the proceedings provided for in relation to opening of neighborhood roads shall be paid by the county if the application be granted. [Acts of 1884, p. 24.]

Art. 6898. [4709] **Neighborhood road may be discontinued, how.**—The commissioners' court may discontinue any neighborhood road which has been established as a public highway in the same manner provided in this chapter for discontinuing other public roads.

Art. 6899. [4710] **Right to erect gates.**—The owners of the land whose lines have been or may be declared public highways, and also any person through whose land a third class road may run, shall have the right to erect a gate or gates across said road or roads when necessary, said gate or gates to be not less than ten feet wide and free of obstructions at the top; provided, that when the right of way for any third class road or neighborhood road has been granted to the county without cost the owner of such land shall have the right to put a gate across such road or roads, but where such right of way has been condemned and paid for according to existing law the county commissioners' court shall have the right to prevent any obstruction of such a road by a gate. [Acts of 1884, p. 24.]

Art. 6900. [4711] **Damages, how assessed.**—The amount of damages to be allowed to the owners of said lands for opening the line of a neighborhood road, as provided in this chapter, shall be assessed as provided for in the case of first, second and third class roads in this chapter. [Id.]

Art. 6901. [4712] **Commissioners as supervisors.**—The county commissioners of the several counties are hereby constituted supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioner's precinct once each year, and shall receive as compensation therefor three dollars per day for the time actually employed in the discharge of his duties, to be paid out of the road and bridge fund of the county; provided, that no commissioner shall receive pay for more than ten days in each year. He shall also make a report to the first regular term of the commissioners' court held in his county during the year, said report to be made under oath, and to state:

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.
4. The number of mile posts and finger boards defaced and torn down.
5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also, the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes to be levied therefor. [Id.]

Art. 6902. [4713] **Not to be discontinued, unless.**—No entire road of the first or second class shall hereafter be discontinued except upon vacation by orders of the commissioners' court or non-use for a period of three years. [Acts of 1884, p. 24.]

Art. 6903. [4714] **Reports, etc.**—The report made by the supervisors of public roads to the commissioners' court, as provided for in article 6901, shall be submitted, together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court hereafter. [Id.]

Art. 6904. [4715] **Across public lands, etc.**—No public road shall be opened across lands owned and used or for actual use by the state, educational, eleemosynary, or other public state institutions for public purposes and not subject to sale under the general laws of the state, without the consent of the trustees of said institution and the approval of the governor of

the state; and the roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the state, upon repayment to the county where the land is situated, with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners' court.

CHAPTER TWO.

APPOINTMENT OF OVERSEERS.

Article.	Article.
County to be laid off into road precincts, etc. ....6905	Term of service of, etc. ....6912
Overseers to be appointed, when.....6906	Persons not compelled to serve, etc....6913
May be made at any time.....6907	Overseer shall notify clerk.....6914
Vacancy, how filled, etc.....6908	County shall appoint another.....6915
Clerk to make copies of appointment...6909	Non-refusal considered as accepting...6916
Order shall show what.....6910	Clerk shall insert what on copies of appointment, etc. ....6917
Service of order, etc.....6911	Clerk shall post list.....6918

Article 6905. [4716] **County shall be laid off into road precincts.**—The commissioners' courts of the several counties shall lay off their respective counties into convenient road precincts, and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof. [Act July 29, 1876, p. 63, sec. 5.]

Art. 6906. [4717] **Overseers to be appointed, when.**—An overseer shall be appointed and hands apportioned by said court for each road precinct at the time of establishing the same; and at the first regular term of court in each year the said court shall appoint an overseer for each road precinct in the county, and shall at the same time designate all the hands liable to work on public roads, and apportion them to the several overseers; provided, that hands shall as nearly as practicable be apportioned to work on the road precinct nearest to their place of abode; and provided further, that the supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this chapter. [Acts of 1884, p. 25.]

Art. 6907. [4718] **Appointment of overseers, etc., may be made at any time.**—If from any cause the said court should fail to perform the duties required of it by the preceding article at its first regular term in each year, it shall be competent and legal for said court to perform said duties at any subsequent term, whether the same be a regular or called term. [Acts of 1876, p. 63.]

Art. 6908. [4719] **Vacancy in overseership, how filled.**—In case of the death, removal or other inability to act, of any road overseer, it shall be the duty of the county judge, immediately upon information of the fact, to appoint an overseer to fill such vacancy, who shall be notified on his appointment as in other cases. [Id.]

Art. 6909. [4720] **Duty of clerk to make out copies of order of appointment, etc.**—It shall be the duty of the clerk of said court to make out copies of all orders appointing overseers of roads in duplicate, and deliver the same to the sheriff of the county within ten days after any such order shall have been made, indorsing on such copies the date of the orders of appointment. [Id. sec. 14.]

Art. 6910. [4721] **Order of appointment of overseer shall show what.**—All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off by the court. [Id.]

Art. 6911. [4722] **Service of order and return.**—The sheriff shall, within twenty days after the reception of the copies of any order appointing an overseer, deliver to or leave at the usual place of abode of such overseer one of such copies, and shall return duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, and if not served the cause of his failure to serve the same. [Id.]

Art. 6912. [4723] **Term of service of overseer.**—The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners' court in the succeeding year. [Id. sec. 5.]

Art. 6913. [4724] **Persons not compelled to serve as overseers, when.**—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. [Id. sec. 23.]

Art. 6914. [4725] **Overseer not liable shall notify clerk of non-acceptance.**—It shall be the duty of every person appointed overseer of a road who is lawfully exempt from road duty to notify the clerk of the county court of his non-acceptance within ten days after his being notified of his appointment. [Id.]

Art. 6915. [4726] **County judge shall thereupon appoint another.**—If any person appointed overseer of a road who is lawfully exempt from road duty shall notify the clerk of his non-acceptance as provided in the preceding article, the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct. [Id.]

Art. 6916. [4727] **Unless overseer give notice of non-acceptance shall be considered as accepting.**—Should any person appointed overseer, and who is lawfully exempted from road duty, fail to notify the clerk of his non-acceptance within ten days after being notified of his appointment, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer. [Id.]

Art. 6917. [4728] **Clerk shall insert what on copies of appointment.**—It shall be the duty of the clerk to insert on the copies of all orders of appointments of overseers issued by him the duties required of overseers in regard to their non-acceptance of such appointment. [Id.]

Art. 6918. [4729] **Clerk shall post list of overseers, etc.**—The clerks of the county courts of the several counties shall post up in their respective court houses, on the first day of each term of the district court held in his county, a list of the names and the road precincts of all the overseers of roads in the county. [Id. sec. 29.]

CHAPTER THREE.

PERSONS LIABLE TO WORK ON ROADS, AND THEIR RIGHTS AND DUTIES.

Article.	Article.
Who are liable to work on roads, and	Substitute may be furnished.....6922
who are exempt.....6919	Payment of money shall be required...6923
Age limitation of workers on public	Hand shall furnish tool.....6924
roads, etc.....6920	Duty of hand to work, etc.....6925
Liability to road service.....6921	Five days' work only can be required...6926

Article 6919. [4730] **Who liable to road duty.**—All male persons between the ages of eighteen and forty-five years shall be liable, and it is hereby made their duty, to work on, repair and clean out the public roads, under provisions and regulations of this title, except ministers of the gospel in the active discharge of their ministerial duties, invalids, members of the Texas national guard organized under provisions of the title "Militia," and the members of all volunteer fire companies in the active discharge of their duties as firemen, who shall be exempt. [Acts of 1885, p. 43.]

Art. 6920. [4730a] **Age limitation of workers on public roads, etc.**—No person in this state under the age of twenty-one years, or over the age of forty-five years, shall be required to work upon the public roads of this state or upon the streets and alleys of any city or town of this state. [Acts of 1895, p. 160.]

Art. 6921. [4731] **Fifteen days' residence fixes liability to work on road.**—No person shall be compelled to work on a road who has not been residing in the county in which he is summoned to work for the space of fifteen days immediately preceding such summons. [Acts of 1876, p. 65.]

Art. 6922. [4732] **Substitute may be furnished.**—Any person liable to road duty, and who has been summoned to do such duty, shall have the privilege to furnish an able-bodied substitute to work in his place, which substitute shall be accepted by the overseer if he is capable of performing a reasonable amount of work; otherwise, he shall not be accepted. [Id.]

Art. 6923. [4733] **Payment of money will exempt.**—Every person liable to work on roads, by paying to his road overseer at any time before the day appointed to work on his road, the sum of one dollar for each day that he is summoned to work, shall be exempt from working for each day paid for, and also exempt from any penalties for failure to work for the time for which he has so paid. [Id. sec. 26.]

Art. 6924. [4734] **Hand shall take working tool with him.**—Each person summoned to work on a road shall take with him an ax, hoe, pick, spade or such tool as may be desired and directed by the overseer, or if he have no such tool as he is desired and directed by the overseer to take with him, he shall take such other suitable tool as he may have. [Id. sec. 17.]

Art. 6925. [4735] **Duty of hand, etc.**—It shall be the duty of each road hand to perform his duties as such in accordance with the directions of his overseer, and a day's work, within the meaning of this law, shall be eight hours' efficient service, when said service is voluntarily performed. [Acts of 1889, p. 21.]

Art. 6926. [4736] **Five days' work only.**—No person shall be compelled to work on any public road or roads more than five days in each year. [Acts of 1883, p. 22.]

CHAPTER FOUR.

POWERS AND DUTIES OF OVERSEERS.

Article.	Article.
Roads shall be worked twice each year.....6927	Measuring roads and mile posts.....6937
Power to call out hands.....6928	Index boards shall be placed where.....6938
Hands not designated shall be summoned.....6929	Mile posts and index boards shall be replaced when removed, etc.....6939
Mode of summoning hands.....6930	Overseer may exchange labor for index boards and mile posts.....6940
Summons in writing, service of.....6931	Overseer shall apply money, how.....6941
Overseer may appoint some one to summon hands.....6932	Overseer shall report to commissioners' court when.....6942
Overseer shall report defaulting road hands.....6933	Compensation, etc., of overseers.....6943
Timber for causeways and bridges.....6934	Money shall be expended how.....6944
Construction of causeways.....6935	May dismiss hands, when.....6945
Overseer may exchange labor for wagons, etc.....6936	

Article 6927. [4737] **Roads shall be worked twice each year.**—Every overseer shall cause the roads through his precinct to be worked twice in each year. [Act July 29, 1876, p. 68, sec. 16.]

Art. 6928. [4738] **Power to call out hands.**—Overseers of roads shall have the power to call out all persons liable to work upon public roads at any time such overseer may deem it necessary, or when ordered by the commissioners' court or other competent authority, and such hands may be called out in detail, or the whole force at any one time, as may be deemed best, or as they may be directed, for the better improvement of the public roads. [Acts of 1889, p. 21.]

Art. 6929. [4739] **Hands not designated shall be summoned.**—In case any person liable to work on roads shall not have been designated and apportioned by the commissioners' court, the overseer of the road nearest to which such person lives shall summon such person to work on such road the same as if such person had been designated and apportioned to such overseer. [Id. sec. 5.]

Art. 6930. [4740] **Mode of summoning hands.**—It shall be the duty of the overseer to give three days' previous notice, by summons in person or in writing, to each person within his road precinct liable to road duty in said precinct, of the time and place when and where such person is required to appear to work on the road, and the number of days such person will be required to work. [Id. sec. 17.]

Art. 6931. [4741] **Summons in writing may be served how.**—If the summons be in writing it may be served by leaving the same at the usual place of abode of the person summoned, with some person residing at such place who is not less than ten years of age, or if no person ten years of age or over can be found at such place of abode, the overseer may serve the same by posting it on the door of such place of abode.

Art. 6932. [4742] **Overseer may appoint some one to summon hands.**—The overseer shall have the power to appoint some one to summon the hands to work on the road, and such person shall be exempt from working on the roads as many days as he was actually engaged in summoning the hands. [Id.]

Art. 6933. [4743] **To file complaints, where, etc.**—It shall be the duty of the overseer, within ten days after he has had his road worked, to file with the county attorney of his county, or the justice of the peace of his precinct, a complaint in writing and under oath against each person who has been summoned to work and who has failed to work and failed to furnish a substitute, and has failed to pay one dollar for each day he has so failed to work or furnish a substitute, and also against each person so summoned who has refused to do a reasonable amount of work on the road or who

has refused to perform the reasonable directions of the overseer. [Acts of 1884, p. 26, sec. 3.]

Art. 6934. [4744] **Timber for causeways and bridges.**—When to the overseers it may appear expedient to make causeways and build bridges, or to gravel any public road, the timber, gravel, earth, stone or other necessary material most convenient therefor may be used, but in such case the owner of such timber, or gravel, earth, stone or other necessary material shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners' court upon the application of such owner. [Acts of 1876, p. 68. Amended act 1897, p. 84.]

Art. 6935. [4745] **Construction of causeways. Ditches may be cut on land of adjacent owners, when.**—The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side of such causeway. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard to the natural water flow, and with as little injury as possible to the adjacent land owner; provided, that in such cases the commissioners' court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement between the commissioners' court and such owner, the same may be settled by suit as in other cases. [Id. Acts of 1884, p. 27.]

Art. 6936. [4746] **Overseer may exchange labor for wagons, etc.**—When it may be necessary to use a wagon for any purpose in working a road, or a plow or scraper, the overseer of such road is authorized to exchange the labor of any hand or hands bound to work on such road, for the use of a wagon or wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid. [Acts of 1876, p. 68.]

Art. 6937. [4747] **Road shall be measured and mile posts set up.**—It shall be the duty of all overseers of roads to measure such parts of roads as are in their respective precincts in continuation, and set up posts of good lasting timber or stone at the end of each mile leading from the court house or some other noted place, and to mark on said posts in legible and enduring figures the distance in miles to said court house or other noted place. [Id. sec. 22.]

Art. 6938. [4748] **Index boards shall be placed where.**—It shall also be the duty of overseers to place conspicuously and permanently at the forks of all public roads in their respective precincts, and at all roads crossing or leading away from such public roads, index boards, with directions plainly marked thereon, stating the most noted place to which each of said roads leads. [Id.]

Art. 6939. [4749] **Mile posts and index boards to be replaced when removed.**—When a mile post or index board shall be removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another, marked as the original one. [Id.]

Art. 6940. [4750] **Overseer may exchange labor for index boards and mile posts.**—The overseer is authorized to exchange the labor of any hand or hands bound to work on his road, for the making of index boards or mile posts, or either. [Id. sec. 21.]

Art. 6941. [4751] **Overseer shall apply money how.**—Overseers of roads shall apply all money coming into their hands as such overseers to the improvement of their roads in an impartial manner, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best. [Id. sec. 27.]

Art. 6942. [4752] **Overseer shall report to commissioners' court, when, etc.**—It shall be the duty of each overseer to report in writing and under oath to the commissioners' court of his county, at the first regular term thereof in

each year, giving the number of the hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of the funds received by him for his road; from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds, if any, that remain in his hands; and he shall at the same time pay over to said court any such funds which may remain in his hands. [Id. sec. 28.]

Art. 6943. [4753] **Compensation, etc., of overseers.**—Overseers shall retain out of money that may come to their hands as such overseers ten per cent thereof as compensation for their services, and during their term of service they shall be exempt from serving upon juries. [Id. sec. 31.]

Art. 6944. [4754] **Money shall be expended under order of court, etc.**—All moneys appropriated by law, or by order of the commissioners' court, for working public roads or building bridges, shall be expended under the order of the commissioners' court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. [Const., art. 16, sec. 24.]

Art. 6945. [4755] **Overseers to dismiss hands, when.**—Overseers shall dismiss from the road any hand or hands, whether working for themselves or as substitutes for others, who shall fail to do good and efficient work, or who shall hinder other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall proceed against such hand or hands so dismissed in the same manner as if they had refused to obey the summons to work upon the road. [Acts of 1889, p. 22.]

CHAPTER FIVE.

ROAD COMMISSIONERS.

Commissioners' court may employ four road commissioners, etc.....	Article. 6946	Court to see to expenditures.....	Article. 6949
Powers and duties, etc.....	6947	May make rules, etc., for working roads, etc.....	6950
Expenditures of money by, etc.....	6948	May accept donations, etc.....	6951
		Law cumulative, etc.....	6952

Article 6946. [4756] **Commissioners' court may employ four road commissioners.**—Each county commissioners' court of this state may employ not exceeding four road commissioners for their respective counties, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court; such road commissioners when employed shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner when employed, before he enters upon his duties, shall execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for a faithful performance of his duties. [Acts of 1889, p. 134.]

Art. 6947. [4757] **Powers and duties.**—A road commissioner when employed shall have control over all overseers, hands, tools, machinery and

teams to be used upon the roads in his district; and shall have the power to require overseers to order out his hands in any number he may designate for the purpose of opening, working or repairing the roads or building or repairing bridges or culverts of his district; and it shall be the duty of such road commissioner to see that all the roads and bridges of his district are kept in good repair, and he shall, under the direction and control of the commissioners' court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners' court; and he shall be responsible for the safe keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court. [Id. sec. 2.]

Art. 6948. [4758] **Expenditure of money by, etc.**—He shall expend such money as may be placed in his hands by the commissioners' court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners' court; he shall work the convicts and such other labor as may be furnished him by the commissioners' court; and when the road commissioner shall have funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer or overseers in his district to work more than five days during any one year upon the public roads, he may employ such overseers to continue their duties as such for such a length of time as may be necessary, and pay them for their services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads; and said road commissioner shall report to the commissioners' court at each regular term under oath, showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire. [Id. secs. 3 and 4.]

Art. 6949. [4759] **Commissioners' court to see to expenditure of road fund.**—The commissioners' court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners' precinct in proportion to the amount collected in such precinct; and in expending money in building permanent roads the money shall first be used only on first or second class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable to obtain and having the greatest bonus offered by the citizens of money, labor or other property. [Id. sec. 6.]

Art. 6950. [4760] **May make rules and regulations for working roads.**—The commissioners' courts are authorized to make all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this state, and enforce such rules and orders; and they are further authorized to purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor now required of citizens to build or repair the roads. [Id. sec. 7.]

Art. 6951. [4761] **May accept donations of money, etc.**—Commissioners' courts or road commissioners may accept donations of money, lands, labor

of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner. [Id. sec. 8.]

Art. 6952. [4762] **Law cumulative.**—This chapter shall not be construed to repeal any existing law, but it is cumulative and in aid of existing law; provided, that when road commissioners are employed the county commissioners are not required to supervise the roads as required by article 6901 of the Revised Statutes; provided, nothing in this law shall be construed so as to require more than five days' service in one year of any citizen. [Id. sec. 9.]

CHAPTER SIX.

ROAD SUPERINTENDENTS.

Article.	Article.
Commissioners' court shall appoint road superintendents	Commissioners' court may let contract for work; advertisement for bids; bond of contractor; appropriation
6953	6966
Commissioners' court to determine what superintendents shall be appointed	Convict labor
6954	6967
Oath and bond of superintendent; recovery on bond	Donations for road purposes; drains
6955	6968
Superintendent, qualifications, term, penalties, etc.	System of working hands under road overseers may be retained
6956	6969
Salary of road superintendent	Method of work in counties where special road tax is levied
6957	6970
Duties and liability of	Accounts of superintendent, and payment of moneys collected by him
6958	6971
Other duties of road superintendent	Penalty for injury to any bridge, culvert, drain, etc.
6959	6972
Superintendent to divide county into road districts; keep record, etc.	Delinquent poll tax payers subject to road duty; requirement is cumulative; penalty
6960	6973
May summon hands, appoint deputy, and contract for use of teams	Terms "road," "work," and "working" defined
6961	6974
Reports of road superintendent	This law cumulative of general laws
6962	6975
Commissioners' court, powers of	Counties exempt
6963	6976
Superintendent shall do what under direction of commissioners' court	
6964	
Superintendent to certify payments, etc.; his certificate and liability	
6965	

Article 6953. [4763] **Commissioners' court may employ superintendent for county.**—The commissioners' court of any county in this state may appoint one road superintendent for such county, or one superintendent in each commissioners' precinct, and such courts are authorized by an order made at any regular term thereof to determine whether there shall be one road superintendent for the county or one for each of the commissioner's precincts therein. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this chapter shall be sufficient; provided, no county shall be under the operation of this law whose commissioners' court does not appoint a road superintendent or superintendents as herein provided. [Acts of 1891, p. 149, sec. 1.]

Art. 6954. [4764] **May determine number to be appointed.**—In case such commissioners' court shall determine that there shall be one road superintendent, as provided in the preceding article, such court shall appoint a competent road superintendent for such county, and in case it is determined that there shall be four superintendents, then such court shall appoint a competent person as road superintendent for each commissioner's precinct in such county. [Id. sec. 2.]

Art. 6955. [4765] **Oath and bond of superintendent.**—Each road superintendent, whether county or precinct, shall within twenty days after his appointment take and subscribe the oath required by the constitution, and enter into bond payable to the county judge and his successors in office, with good and sufficient sureties, to be approved by the county judge, in such sum as may be fixed by the commissioners' court, conditioned that he will faithfully do and perform all the duties required of him by law or the commissioners' court and that he will pay out and disburse the funds subject to his control as the law provides, or the commissioners' court may direct, which bond shall be filed and recorded as other official bonds and shall not be void for the first recovery, but may be sued on from time to time until the full amount is exhausted. [Id. sec. 3.]

Art. 6956. [4766] **Qualifications.**—Every road superintendent shall be a qualified voter in the county or precinct, as the case may be, for which he is appointed, and shall hold his office for two years or until his successor is appointed and qualified, but in all cases where the condition of the roads does not demand the continued services of the superintendent, his salary may in the discretion of the commissioners' court be suspended. The commissioners' court may for good cause remove any road superintendent, and in case of vacancy from any cause may appoint a successor, who shall hold his office for the unexpired term. [Id. sec. 4.]

Art. 6957. [4767] **Salary.**—Each road superintendent shall receive such salary as may be fixed by the commissioners' court, to be paid on the order of said court at stated intervals, but the salary of the county superintendent, in counties of less than fifteen thousand inhabitants, shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants, it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants it shall never exceed four hundred dollars per annum. [Id. sec. 5.]

Art. 6958. [4768] **Shall have supervision, etc., over roads subject to commissioners' court.**—The road superintendent, subject to the orders and directions of the commissioners' court, shall have the general supervision over all the public roads and highways of his county or precinct, as the case may be, and shall superintend the laying out of new roads, the making and changing of roads therein, the building of bridges therein (except where otherwise contracted), the working of the roads therein and all repairs to be made on the same, and over all county convicts worked on such roads, but this shall not prevent the commissioners' court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of all tools, machinery, implements and teams placed under his control by the commissioners' court, and execute his receipt therefor, which shall be filed with the county clerk, and he shall be responsible for the safe keeping of all such machinery, tools, implements and teams, and the proper expenditure and paying out of all money belonging to the road fund that may come into his hands, and shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery, unless such loss occurred without his fault, and for the wrongful or improper expenditure of any such money, and upon the expiration of his term of office, or in case of his resignation or removal, he shall deliver all such money and property to his successor or such other person as the commissioners' court may direct. [Id. sec. 6.]

Art. 6959. [4769] **Roads and bridges to be kept in repair; his duty, etc.**—It shall be the duty of each road superintendent to see that all of the roads and bridges in his county or precinct, as the case may be, are kept in good

repair, and he shall, under the direction of the commissioners' court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct, and shall see that every person subject to road duty in his county or precinct performs the work to which he is liable under the law. He shall act as supervisor of the roads in his county or precinct, as the case may be, and perform all the duties of supervisor that now devolve on the county commissioners under the existing laws in counties not adopting this law, and he shall do and perform such other service as may be required of him by the commissioners' court. [Id. sec. 7.]

Art. 6960. [4770] **County shall be divided into precincts or districts.**—Each road superintendent in counties where the commissioners' court so directs, as soon as practicable, shall divide his county or precinct, as the case may be, into road districts of convenient size, to be approved by the commissioners' court, and define the boundaries thereof and designate the same by number, which boundaries shall be recorded in the road minutes of the commissioners' court; and he shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners' court. [Id. sec. 8.]

Art. 6961. [4771] **Shall call out all persons liable to work, etc.**—Every road superintendent shall have power, and it shall be his duty, to call out all persons liable to work on the public roads at any time and in such numbers as he may deem necessary to work the roads in their respective districts, and he shall utilize all such labor to the best advantage in connection with other labor on the roads. The call shall be summons served in the manner and for the length of time prescribed by the law regulating the calling out of hands by overseers, but no person shall be compelled to work outside of his road district. The road superintendent may appoint any person subject to road duty in any district to summon the hands to work the roads therein, and such person shall be exempt from road service as many days as he was actually engaged in summoning the hands, and in case of emergency he may appoint a deputy to supervise any particular work. He may also contract with any person subject to road duty for the use of teams, and permit such person to discharge his road duty by the use of such double team, but he shall never allow more than two dollars a day for any team, nor more than three dollars for any hand and double team. [Id. sec. 9.]

Art. 6962. [4772] **Shall make reports.**—Each road superintendent shall make a report, under oath, to the commissioners' court at each regular term thereof, showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in his county or precinct, as the case may be, and such other matters as the court may desire information upon, and shall make such other report at such times as such court may require. [Id. sec. 10.]

Art. 6963. [4773] **Commissioners' court may hire or purchase all machinery, etc., for working roads.**—The commissioners' court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. But no change in any road shall be made that lengthens the same without it is to the benefit of the traveling public or for the protection of private property, and then only upon the unanimous consent of the commissioners' court. [Id. sec. 11.]

Art. 6964. [4774] **May employ sufficient force, etc.**—Each road superintendent shall employ sufficient force to enable him to do the necessary work

in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners' court may direct, and he shall work such roads in such manner as the commissioner may direct, and such work shall at all times be subject to the general supervision of the commissioners' court. [Id. sec. 12.]

Art. 6965. [4775] **Shall make the best contracts, etc.**—Each road superintendent shall make the best contract possible for all labor, tools, implements or machinery that he is authorized to hire or purchase, and in payment therefor he shall issue to the person entitled thereto his certificate, showing the amount due and the purpose for which it was given, and upon approval by the commissioners' court a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof. [Id. sec. 13.]

Art. 6966. [4776] **May improve roads and bridges by contract.**—The commissioners' court of any such county may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract. In such case said court or the county judge may advertise, in such manner as said court may determine, for bids to do such work and the contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties for the faithful compliance with such contract, but said court shall have the right to reject any and all bids. At the time of making any such contract the said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund for that purpose, and the treasurer shall keep a separate account of such fund; and the same shall not be used for any other purpose, and can only be paid out on the order of said court. [Id. sec. 14.]

Art. 6967. [4777] **May require county convicts to work on roads.**—The commissioners' court may require all county convicts not otherwise employed to labor upon the public roads under such regulations as may be most expedient. Each county convict worked on the public roads in satisfaction of any fine and costs shall receive a credit thereon of fifty cents for each day he may labor. And the commissioners' court may order that the county pay to the officers of court as much as one-half of the costs due them and adjudged against such convict, and upon such order such payment shall be made. But no such costs nor any part thereof shall ever be paid until such convict has worked out the entire amount of such fine and costs as provided by law, and then only upon a certificate from such county or precinct superintendent to the effect that such costs have been so worked out. The commissioners' court may grant a reasonable commutation of time for which a convict would be compelled to work to pay his fine and costs, or for which he is committed, as a reward for faithful services and good behavior, and such court shall make proper rules and regulations under which such commutations may be granted. [Id. sec. 15.]

Art. 6968. [4778] **May accept donations, etc.**—The commissioners' court may accept donations of money, land, teams, tools or labor, or any other kind of property or material, to aid in building or keeping up roads in the county, and said court or any road superintendent, by and with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent, or such other person as said court may direct. [Id. sec. 16.]

Art. 6969. [4779] **May retain old system of working roads.**—The commissioners' court of any county may retain the system of working hands under road overseers as provided by general laws, and place such overseers under control of a county or precinct superintendent, under such lawful regulations as said court may prescribe, or may work with overseers without any superintendent, as may be deemed best. [Id. sec. 17.]

Art. 6970. [4780] **May, in counties levying special tax, exempt persons from working roads.**—The commissioners' court of any county in any county in which a special tax for the maintenance of the public roads is levied and collected, as provided for in section 9 of article 8 of the constitution, shall not be compelled to require persons subject to road duty to work on the roads, as prescribed in existing general laws, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. In any such county such court may reduce the number of days that persons liable to road duty may be required to work on the roads, but can never increase the number above five days in any one year. [Id. sec. 18.]

Art. 6971. [4781] **Superintendent to keep accounts.**—Each road superintendent shall keep an accurate account of all moneys received by him on account of the road or bridge fund, and pay the same over to the county treasurer within ten days after its collection, taking his receipt for the same. [Id. sec. 19.]

Art. 6972. [4782] **Parties misplacing bridge shall be liable, etc.**—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard, mile post or tile, or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby. [Id. sec. 22.]

Art. 6973. [4783] **Delinquent poll tax payers to be subject to three days' road duty.**—The county superintendent or the precinct superintendent, as the case may be, shall obtain from the tax collector of their counties as soon after the first day of January of each year as practicable, and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and the persons so appearing on said list and who are such delinquent poll tax payers shall be subject to road duty for the period of three days during such year, and they shall be summoned, as in other cases, to work the roads in the road district or precinct in which such person may reside; and the performance of the road service provided for in this article shall not exonerate the persons from any other road duty to which the persons performing the same may be subject, but this shall be taken as cumulative. The persons required to do road duty under the provisions of this article shall be subject to prosecution as provided in this chapter or other law of this state, and subject to the same liabilities and punishments provided for in other cases for failing to appear or do good work, when summoned so to do, as provided for by this chapter or other law of this state, and all such laws shall apply to parties required to work under the provisions of this article. And when they are convicted for so failing to work the roads, shall satisfy the fine and costs as in other misdemeanor convictions. But any person summoned to work on the road under the provisions of this article may satisfy such summons and be relieved from such duty by paying to the county road or precinct superintendent, as the case may be, three dollars; one-third of which sum shall go to the free school fund, and the balance to the road and bridge fund. [Id. sec. 23.]

Art. 6974. [4784] **"Roads," "work" and "working" defined.**—The term, "road," as used in this chapter, includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and the terms, "work" and

“working” include the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road. [Id. sec. 24.]

Art. 6975. [4785] **Law cumulative.**—This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern. [Id. sec. 25.]

Art. 6976. [4785a] **Counties exempt.**—The counties of Grayson, Travis, Houston, Dallas, Limestone, Fayette, Galveston, Cherokee, Gonzales, Wood, Rains, Harrison, Shelby, San Augustine, Sabine, Newton, Jasper, Tyler, Morris, Marion, Victoria, Goliad, Refugio, Aransas, Calhoun, Jackson, DeWitt, Hopkins, Comal, Upshur, Blanco, Camp, Gillespie, Lavaca, Parker, Panola, Milam, Lamar, Hill, Smith, Gregg, McLennan, Harris, Washington, Titus, Cass, Franklin, Delta, Angelina, Nacogdoches, Bowie, Montgomery, Walker, Trinity, Red River, Henderson, Van Zandt and Tarrant counties are exempted from the provisions of this chapter; provided, that the county commissioners’ courts of Dallas and Collin counties may accept and adopt the provisions of this chapter in lieu of the special acts of Dallas, Collin, Grayson and other counties, if in their judgment its provisions are better suited to Dallas and Collin counties than the said special laws. [Acts of 1891, ch. 97; Sen. Jour., 1895, p. 483. Amended act 1909, p. 82.]

CHAPTER SEVEN.

ROAD LAW FOR COUNTIES HAVING FORTY THOUSAND INHABITANTS OR OVER.

Article.	Article.
Members of commissioners’ court to be ex officio road commissioners; their duties; bonds.....6977 Their powers.....6978 May work convicts.....6979 Shall have control over overseers.....6980 Shall direct work in progress.....6981 May cause road hands to be called out, when; credit allowed for use of teams; penalty for non-compliance with instructions .....6982	Persons exempted from road duty, how.6983 May take material for road work; compensation; condemnation proceedings.6984 County not to give bond; compensation of commissioners appointed to condemn .....6985 Penalty for failure to comply with call for road duty.....6986 Compensation of commissioners.....6987 This chapter cumulative.....6988 Certain counties excepted.....6989

Article 6977. **Members of commissioners’ courts to be ex officio road commissioners; their duties; bond.**—In all counties of this state, as shown by the United States official national census of 1900 to contain as many as forty thousand inhabitants, the members of the commissioners’ court shall be ex officio road commissioners of their respective precincts; and under the direction of the commissioners’ court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court; and it shall be their duty, under such rules and regulations as the commissioners’ court may prescribe, to superintend the laying out of new roads, the making or changing of roads and the building of bridges. Each of the county commissioners shall, before entering upon the duties of road commissioner, execute a bond of one thousand dollars, with two or more good and sufficient sureties, payable to the county judge, and his successors in office and to be approved by the county judge for the use and benefit of the road

and bridge fund, conditioned that he will perform all the duties required of him by law, or by the commissioners' court, and that he will account for all money or other property belonging to the county that may come into his possession. [Act 1901, p. 277, sec. 1.]

Art. 6978. **Their powers.**—The commissioners' court shall have full power and authority, and it shall be their duty, to adopt such system for working, laying out, draining and repairing the public roads as they may deem best, and, from time to time, said court may change their plan or system of working. The commissioners' court shall have the power to purchase such teams, tools and machinery as may be necessary for the working of public roads. Said court shall have the power to construct, grade, or otherwise improve any road or bridge by contract. In such cases, said court or county judge may advertise in such manner as said court may determine for bids to do the work; and the contract shall be awarded to the lowest responsible bidder, who shall enter into a bond, payable to the county judge and his successors in office, for the use and benefit of the road and bridge fund, with two or more good and sufficient sureties, to be approved by the commissioners' court, and in such sum as said court may determine, for the faithful performance of the terms of said contract, but said court shall have the right to reject any or all bids. At the time of making any such contract the court shall direct the county treasurer to pass the amount of said contract to a particular fund for that purpose; and the treasurer shall keep a separate account of said fund, and the same shall not be used for any other purpose, and can only be paid out on the order of said court; and the said court shall have authority to employ any hands and teams on the public roads under such regulations and for such prices as they may deem best. [Id. sec. 2.]

Art. 6979. **May work convicts.**—The commissioners' court shall require all male county convicts, not otherwise employed, to labor on the public roads, under such regulations as they may prescribe, and each convict so worked shall receive a credit of fifty cents on his fine first, and then on the costs, for each day he may labor. The commissioners' court shall at each term allow the officers and witnesses such amount of their costs as have been satisfied in full by labor of such convicts, for the arrest and conviction of said convicts as it may deem best, not to exceed one-half of such costs; which amount shall be paid to the officers and witnesses out of the road and bridge fund on the warrant of the county judge; provided, that this shall not be so construed as to relieve any convict from the payment of all costs for which he may be liable under the laws of this state. The commissioners' court may grant a reasonable commutation of time for which a convict is committed as a reward for faithful service and good behavior; provided, that such commutation shall in no case exceed one-tenth of the whole time. The commissioners' court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of the convicts. The commissioners' court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and to provide a reward not to exceed ten dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict, to be paid to any person other than the guard or person in charge of such convict at the time of his escape. [Id. sec. 3.]

Art. 6980. **Shall have control of overseers.**—Each road commissioner shall have control of all road overseers in his precinct, and shall deliver to each of them such teams, tools and machinery necessary in working the roads in the precinct of said overseer, so far as he has been supplied therewith by the commissioners' court, taking a receipt therefor, specifying each item and giving its value, which receipt shall be a full answer for the lia-

bility of the road commissioner, and shall fix the liability of the road overseer; and the road commissioner or road overseer, who shall have been intrusted with any teams, tools or machinery belonging to the county, shall be liable for all damages that may occur to the same while in his possession caused by his negligence or want of due care of same. It shall be the duty of the road overseer, when he has finished work on his road, to return to said road commissioner all teams, tools and machinery received from him and take up the receipt given therefor. [Id. sec. 4.]

Art. 6981. **Shall direct work.**—It shall be the duty of each county commissioner, when acting as road commissioner, to inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct. [Id. sec. 5.]

Art. 6982. **May cause road hands to be called out, when; credit allowed for use of teams; penalty for non-compliance with instructions.**—The road commissioner may require each road overseer in his precinct to call out the hands in such numbers as may be sufficient to perform the work, but no road hand shall be required to work exceeding five days in any one year, unless the term of service as now provided by law shall be extended beyond that time; and provided, that all road hands in a particular road precinct shall as far as practicable be worked a uniform time. Each road overseer shall have full control of all road hands in his precinct, and shall see that each hand, when called out, shall perform a good day's work; and, if any hand when so called out shall fail or refuse to do a good day's work, or to work in the manner the overseer may direct, he shall be liable to the same penalty as if he had failed to appear in obedience to the summons. And the road overseer may, when he deems expedient or when so directed to do by the road commissioner of said commissioner's precinct, and at the time of notifying any hand to work upon the road, also summon such hand as may be the owner of a team suitable for road work, to bring such team with him to be used in working upon the public roads during such time as the hand may be notified to work upon the public roads; and, after such notice given, if such hand shall fail or refuse to bring his team with him as notified to do, he shall be liable to the same penalty as if he had failed to appear in obedience to the summons; provided, that any hand for so doing shall be credited with and allowed two and one-half days upon his time for which he is liable for road duty for each day he may work in connection with and while furnishing such team, and one and one-half days for his team without such hand. [Id. sec. 6.]

Art. 6983. **Persons exempted from road duty, how.**—A person liable for road duty, who shall, on or before the first day of February of any year, pay to the county treasurer the sum of three dollars, shall be exempt from road duty for such year, beginning on the first day of February. The county treasurer shall receive and receipt for all money so paid him and place the same to the credit of the road and bridge fund, and he shall keep a separate account for each precinct from which it is received. The county treasurer shall, on the third day of February, or as soon thereafter as practicable, furnish to each road commissioner a list of all persons in their respective precincts that have paid said sums, as provided in this article. [Id. sec. 7.]

Art. 6984. **May take material for road work; compensation; condemnation proceedings.**—When to the commissioners' court it may appear expedient to build, repair or maintain any public road in their county, the timber, earth, stone, gravel, or other necessary material, most convenient therefor may be used; but in such case the owner thereof shall be paid out of the road and bridge fund of such county a fair compensation for the same as

may be agreed upon by the owner thereof, or his agent, and the commissioners' court; provided, however, that should said owner, or his agent, and the said commissioners' court fail to agree upon the compensation to be paid therefor, then the county, upon the order of said court, shall proceed to condemn the same in the same manner that a railroad company can condemn lands for right of way; and the same proceedings shall be had as would exist if the proceedings were by a railroad company, except as hereinafter provided. [Id. sec. 8.]

Art. 6985. County not to give bond; compensation of commissioners appointed to condemn.—The county shall not be required, in proceedings to determine the compensation to be paid for material to build, repair or maintain public roads, in any case to give bond for costs, and the commissioners appointed to condemn such property necessary as aforesaid shall receive for their services two dollars for each and every day that they may be necessarily engaged in the performance of their duties as such commissioners, to be paid out of the road and bridge fund on the order of the commissioners' court, and the compensation awarded by said commissioners for the necessary material shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner of such material, or said county, is not satisfied with the compensation awarded said owner, he or said county may appeal therefrom as in cases of appeal in proceedings by railroad companies to condemn right of way. [Id. sec. 9.]

Art. 6986. Penalty for failure to comply with road duty.—If any person liable to work upon the public roads, after being legally summoned, shall fail or refuse to attend, either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or to pay to such road overseer the sum of one dollar for each day he may have been notified to work on the public roads, or to pay to such overseer the sum of one dollar and fifty cents for each day he may have been notified to furnish his team for road work, or having attended shall fail or refuse to perform good service, or any other duty required of him by law, or the person under whom he may work, or if any one shall fail to comply with any duty required of him as provided by law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, punished as provided in the Penal Code. [Id. sec. 10.]

Art. 6987. Compensation of commissioners.—Each county commissioner, as compensation for his services as ex officio road commissioner of his precinct, shall be entitled to such sum as may be prescribed by the commissioners' court of his county, not to exceed four dollars per day for the services actually performed; provided, that he shall not receive more than fifty dollars per month; which amount shall be paid monthly out of the road and bridge fund, when the account shall have been allowed by the commissioners' court; and said court shall not approve said account unless the road commissioner presenting it shall sign an oath that the account is just, true and unpaid, and specifying the number of days' work actually performed by him, nor shall he be entitled to any other or further compensation for supervising public roads, except what is allowed by this act. [Id. sec. 11.]

Art. 6988. This chapter cumulative.—The provisions of this chapter shall be held and construed to be cumulative of all general laws of this state on the subject of roads, when not in conflict therewith, but in case of such conflict this chapter to control; and provided, this chapter shall not be in operation in any county of this state, unless the commissioners' court thereof in their judgment may deem it advisable, and then only by an order of the

commissioners' court when all the members are present, made at some regular term thereof, accepting the provisions of this chapter. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance with the provisions thereof shall be sufficient. [Id. sec. 12.]

Art. 6989. **Certain counties excepted.**—The provisions of this chapter shall not apply to the counties of Fannin, Lamar, Grayson, Collin, Hunt, Dallas and Bell. [Id. sec. 13.]

CHAPTER EIGHT.

DRAINAGE OF PUBLIC ROADS.

Article.	Article.
What roads are public; commissioners to cause drains to be constructed.....	Appeals
6990	7002
Shall not change natural course of streams	Trial on appeal.....
6991	7003
Petition	Appropriation; construction.....
6992	7004
Notices	Special overseer employed, when; duties, powers and compensation.....
6993	7005
Protests, hearing	List of assessments; certificates to issue.....
6994	7006
Surveyor employed	County treasurer to collect on certificates
6995	7007
Survey made; report.....	Enforcement by suit.....
6996	7008
Jury of viewers; duties; report.....	Operates a lien.....
6997	7009
Oath of viewers.....	Compensation of viewers and surveyor.....
6998	7010
Assessment of abutting owners.....	Abutting owners may construct lateral ditches
6999	7011
Action of commissioners' court on protests final.....	This act cumulative.....
7000	7012
Objections and claims submitted in writing to viewers; failure to submit same a waiver of claim.....	
7001	

Article 6990. **What roads are public; commissioners to cause drains to be constructed.**—For the purpose of this chapter, all public roads and highways that have been heretofore, or that may hereafter be, laid out and established agreeable to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners' court of any county in this state, at any regular session thereof, may, in the manner hereinafter provided, and the said court shall have power to cause to be constructed and maintained, as herein-after provided, ditches, drains and watercourses on and within the exterior lines of all public roads situated within any of the said counties, sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch, drain, or watercourse from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such drain or watercourse any side, lateral, spur or branch ditch or watercourse necessary to the accomplishment of the purposes of this act; provided, however, that no ditch, drain, or watercourse shall be constructed along any public road without there being constructed, at the same time, a ditch, drain, or watercourse as an outlet to a natural waterway, sufficient in capacity to carry off all water that may collect therein; provided, further, that the word, "ditch," in this chapter hereafter shall be construed to embrace any ditch, drain, or watercourse that may be constructed under the provisions of this act. [Acts 1897, p. 66, secs. 1 and 2.]

Art. 6991. **Shall not change natural course of stream.**—No road overseer, or any court, shall, on petition or otherwise, have the power to change the natural course of any branch, creek or water stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel. [Id. sec. 21.]

Art. 6992. **Petition.**—Before the commissioners' court of such county shall have the power to order the construction or establishment of any ditch, drain, or watercourse, provided for in this chapter, there shall be filed with the county clerk of the county court of said county a petition signed by at least one hundred taxpayers and voters of said county, which petition shall set forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable, the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall, also, separately state the name and location of each of the natural waterways of such county crossed by each of the first-class public roads of the said county, and the distance of said natural waterways, one from the other, along said road; said petition shall also state the names and residences, if known, of the owners of the lands adjacent to each of said first class public roads, and within one mile thereof, and, if unknown, the same shall be stated therein. [Id. sec. 3.]

Art. 6993. **Notices.**—Upon the filing of said petition with the clerk of the county court, he shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners' court of such county and contest the same. One of said notices shall be posted at the court house door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners' court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of the county court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive a fee of three dollars, and the clerk shall receive a fee of one dollar and fifty cents. [Id. sec. 4.]

Art. 6994. **Protests, hearing.**—At the next regular term after the filing of the petition and issuance of notices, the commissioners' court shall hear and determine the same in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable, or for the public benefit, or for the best interest of the county, the said court shall so order, and the order shall be entered at length upon the minutes of the court, and become a part of the record thereof, and the same shall recite the time, character, and manner of service of notice; and, if it appears therefrom that notice has been given as provided for herein, the said order shall be final, and thereafter no question shall be raised as to the power of the court to hear and determine said application. [Id. sec. 5.]

Art. 6995. **Surveyor employed.**—At the same or any succeeding term of the commissioners' court after the entry of the order adopting the drainage system provided for herein, the commissioners' court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point, together with the frontage of each tract of land abutting on said road, and also the distance from said

road of any adjacent natural waterway, with line of levels thereto; provided, that the said survey and the drainage system herein provided for shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class; and provided, further, that nothing herein shall be construed to prohibit the said court from constructing one or more ditches at the same time, as the financial condition of the county will permit. [Id. sec. 6.]

Art. 6996. **Survey made; report.**—The surveyor shall, as soon as practicable after his employment, proceed to make an accurate survey and system of levels as provided for in the preceding article, and shall cause stakes or monuments to be placed along said line at intervals of one hundred feet, together with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish, by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; said surveyor shall also measure and establish, by suitable marks, the frontage of each tract of land abutting on said road; and, if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch, which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail, and bottom of tie, foot of embankment, bottom of borrow pits of all railroads. And said map, or the explanation accompanying the same, shall, in tabular form, give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch, drain or watercourse. Said map, or the explanation accompanying the same, shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural waterways crossed by said road, together with an estimate of total cost of the whole work. The surveyor shall, as soon as the survey is completed, prepare and file, together with his report and map as herein provided for, specifications in detail for the execution of the same; and, whenever in the opinion of the surveyor it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. The survey, report, map, explanation and estimate herein provided for shall be made and filed with the county clerk of the county by the surveyor as soon after his employment as may be practicable, having in view an accurate and complete report upon the physical conditions to be met in the construction of said ditch or ditches. [Id. sec. 7.]

Art. 6997. **Jury of viewers, duties; report.**—At any regular or called session of the commissioners' court after the filing of the report, map, ex-

planation, specifications and estimate of the surveyor, provided for in the preceding article, the court shall appoint a jury of five freeholders of the county not interested directly in the construction of the proposed work as a land owner adjacent to or abutting on said ditch or ditches, and not of kin to any of the parties so directly interested therein, who shall constitute a jury of viewers who shall meet at a time and place to be specified by the said court in the order appointing them; and it shall be the duty of the county clerk thereupon to issue to the said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause should not be adopted, the court may, at any succeeding term, appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. The jury of viewers shall proceed at the time and place specified in the order of the court appointing them, after having given notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch, and after hearing all protests, claims and remonstrances offered, they shall take the several partial estimates, and the estimate of the total cost of the work as made by the surveyor as a basis, and they shall set apart and apportion to each parcel of land abutting on said road and ditch, or within one mile of the same, and to each person, firm or corporation owning the same, the proportionate share chargeable to such tract of the one-half of the total cost of the said ditch, drain and watercourse, taking into consideration the relative amount of benefit derived by said land from the construction thereof; and they shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch, or lateral ditch, is or may be constructed under the order of appointment, which sum shall be paid by the county before the opening of such ditch is begun; provided, that said jury of viewers shall have lines run parallel to the line of said ditch at a distance of one mile upon either side of the same; and no lands lying outside of said lines shall be assessed with any portion of the cost of such ditch and drain, but all lands and tracts of land lying within said lines may be assessed their proportionate share of said one-half of the total cost, taking into consideration the amount or value of benefits derived by said lands, or tracts of land, from the construction of such ditch. The jury of view shall make a report to the commissioners' court, under oath, as soon as practicable after their meeting, signed by at least three of said jury, and duly verified under oath, and shall return with their report a description, as accurate and complete as may be, of each tract or parcel of land assessed by them, together with the number of acres and the name of the owner or owners thereof, and the amount by them assessed against each tract, and the owner thereof. The jury of viewers shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such, and the court shall act upon said report at the next regular or called term, and approve or reject the same; provided, that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or of advantage to the public. [Id. sec. 8.]

Art. 6998. Oath of viewers.—The said jury of viewers, before proceeding to act as such, shall take the following oath before an officer authorized to administer the same, to-wit: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any

person who is so interested. I further swear that I have no bias or prejudice towards any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God." [Id. sec. 9.]

Art. 6999. **Assessment of abutting owners.**—The said jury of view, as provided for in this chapter, shall issue a notice in writing to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his or their agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; said notice may be served by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district courts; and said notice shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view; and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners' court. [Id. sec. 10.]

Art. 7000. **Action of commissioners court on protests final.**—Any person who may be affected by such ditch, drain, or water course, or any citizen of the county, shall have the right to appear before the commissioners' court on the hearing of the petition for the establishment of the drainage system, and shall have the right to be heard upon their protest, remonstrances and objections thereto; but the action of the court thereon shall be final; and, in case the court shall refuse to adopt the drainage system provided for herein, no application therefor shall be filed or heard by said court for one year thereafter. [Id. sec. 11.]

Art. 7001. **Objections and claims submitted in writing to viewers; failure to submit same a waiver of claim.**—Any person whose land may be affected by such ditch, drain or water course shall have the right to appear before said viewers and freely express their opinions on all matters pertaining to the assessment of expense against them; and the owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a statement in writing of any objections to, or dissatisfaction therewith, and any claim for damages which he may have sustained by reason of the making of said ditch or drain; and a failure to make such objection or claim for damages or compensation in writing as herein specified shall be deemed a waiver of all claim or right thereto, all of which said claim or objection shall be returned to the commissioners' court in connection with the report of the viewers; provided, that any adjacent land owner shall have the right to appear before and be heard by the commissioners' court on his protest or remonstrance or claim against the action of the jury of viewers. [Id. sec. 12.]

Art. 7002. **Appeals.**—Any person, firm, or corporation, aggrieved by the assessment of expense for construction of any ditch or ditches by the jury of view, or any person, firm, or corporation, aggrieved by the assessment of damages or compensation allowed by the jury for land taken or applied to the construction of any lateral spur, or branch ditch, may appeal from the final order of the commissioners' court approving the report of said jury to

any court within the county having jurisdiction of the amount of such assessment, by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing, within ten days thereafter, a transcript of the proceedings had in the commissioners' court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court; and, if the appeal is taken from an assessment of expense levied by the jury of viewers against the appellant, the said appeal shall be heard upon the following issue, to-wit: Whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. And if the appeal is taken from an assessment of compensation made by the jury of viewers in favor of appellant for land taken and applied to the construction of such ditch, or any portion of the same, the said appeal shall be heard upon the following issue, to-wit: Whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land. [Id. sec. 13.]

Art. 7003. **Trial on appeal.**—In the trial of all cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant, as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party; and, if the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners' court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners' court as the judgment of said court, and thereafter the appellant shall be holden for, or claim, as the case may be, the amount specified in said judgment. [Id. sec. 14.]

Art. 70040. **Appropriation; construction.**—The commissioners' court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the entry of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund, if any, as may be necessary for the construction of the ditch or ditches described in the report of the jury of viewers, and shall also enter an order to the overseer or overseers of the road adjoining said ditch or ditches, or to the supervisor of the road, or to the road commissioner, commanding him to construct such ditch or ditches in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch or ditches; and the court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor, or commissioner, for the completion thereof; and shall authorize such overseer, supervisor, or commissioner, to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners' court, and

the said order shall further show the amount of compensation to be allowed to the said overseer, supervisor, or road commissioner for his services. [Id. sec. 15.]

Art. 7005. **Special overseer employed, when; duties, powers and compensation.**—The commissioners' court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties, and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services. [Id. sec. 16.]

Art. 7006. **List of assessments; certificates to issue.**—At the same or at any succeeding term after the entry of the order for the construction of the ditches and roadway, as provided in article 7004 of this chapter, the commissioners' court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees, number of acres covered by each assessment of expense, as made and reported by the jury of viewers, and as approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of such assessment, and for what ditch or road the same was issued, and the tract of land on which said amount was assessed; which certificate shall be signed by the county judge in open court, and attested under the hand and seal of the said county clerk, which fact shall be noted upon the minutes of said court. [Id. sec. 17.]

Art. 7007. **County treasurer to collect on certificates.**—The county judge shall deliver the certificate to the county treasurer, taking his receipt therefor, which shall be filed with the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. [Id. sec. 18.]

Art. 7008. **Enforcement by suit.**—In case any person against whom any such certificate may be issued shall fail or refuse to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land, herein provided for, foreclosed, or for a personal judgment, as may be lawful. [Id. sec. 19.]

Art. 7009. **Operates a lien.**—All assessments, sums, and charges by the said viewers, or order of court, assessed against any lands or land and the owner or owners thereof, shall be a lien thereon, unless prohibited by the constitution of this state, and the same shall be collected in the manner provided in the preceding article; and any damages for compensation awarded by said jury of viewers to any land owner, on the order of the court, shall be paid out of the county treasury on the order of said court, from the fund set aside for the construction of such ditch or ditches. [Id. sec. 20.]

Art. 7010. **Compensation of viewers and surveyor.**—The said jury of viewers shall each receive the sum of three dollars per day as compensation for their services for each day so actually engaged; and said surveyor and engineer shall receive as compensation such sum as may be allowed by the commissioners' court. [Id. sec. 21.]

Art. 7011. **Lateral ditches.**—Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this chapter, provided the same be done at his own cost. [Id. sec. 22.]

Art. 7012. **This chapter cumulative.**—The provisions of this chapter shall be cumulative to all other provisions of law, and shall not be held to repeal any existing law upon the subject of drainage. [Id. sec. 23.]

CHAPTER NINE.

BRIDGES.

[For taxes for bridge purposes, see title “County Finances,” Title 29, Chapter 1.]

Overseers shall have bridges built, when, etc.	7013	Article.	When stream forms line of counties, expense of bridge to be joint.	7017	Article.
Commissioners' court, power to have bridges built	7014		Tolls assessed to pay bonds.	7018	
May contract for building of toll bridges	7015		Coast counties may lease, etc., causeways, etc.	7019	
Shall take security from contractors to keep bridges in repair, etc.	7016		Funds available for the purpose.	7020	

Article 7013. [4791] **Overseer shall have bridges built, when, etc.**—Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished. [Act July 29, 1876, p. 67, sec. 20.]

Art. 7014. [4792] **Commissioners' court, power to have bridges built, etc.**—The commissioners' court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make appropriations of money of the county therefor, when necessary. [Act July 22, 1876, p. 51, sec. 4.]

Art. 7015. [4793] **May contract for building of toll bridges.**—The commissioners' courts through whose county large creeks or water courses shall pass, over which it may be too burdensome for the the overseers, with the hands apportioned to them to work on roads, to build bridges, may contract with a proper person or persons to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, carriages, etc., passing over the same, to be granted to the undertaker for such a number of years as the said court may think proper, not to exceed ten years; and the builder or builders and their successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. [Act Dec. 20, 1836; P. D. 5244.]

Art. 7016. [4794] **Shall take security from contractor to keep bridges in repair, etc.**—The commissioners' court, before granting a license to any person to build a toll bridge, shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the undertaker or undertakers shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon between the undertaker or undertakers and the court; and, if any person or persons shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person or persons so damaged may bring an action of debt

against the owner or keeper of such toll bridge, on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. [Id. P. D. 5245.]

Art. 7017. [4795] **When streams form dividing line of counties expense of bridge to be joint, etc.**—Whenever any stream is the division line between counties, or when two or more counties are jointly interested in bridges, it shall be lawful for the counties so divided or interested to jointly erect bridges over said dividing stream, upon such equitable terms as the commissioners' court of each county interested may agree upon. [Act Nov. '28, 1871, p. 42; P. D. 5883.]

Art. 7018. [4796] **Tolls assessed to pay bonds, etc.**—Whenever any county bonds have been or may hereafter be issued for the purpose of building bridges, it shall be lawful for the commissioners' courts of the county or counties interested to assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules and regulations as the commissioners' courts of the counties interested may prescribe. [Id. P. D. 5884.]

Art. 7019. **Coast counties may buy and lease causeways and bridges.**—The commissioners' court of any county bordering on the Gulf of Mexico that has within its limits an island that is separated from the mainland by a bay or arm of the sea, that is over one mile in width, shall have the right and authority to purchase a roadway upon and along any causeway and bridge that may be constructed across any such bay or arm of the sea, and to operate and maintain the same as a public highway; and said commissioners' court shall also have the right and authority to lease for a period not to exceed thirty years, a roadway upon and along any such causeway and bridge for a public highway, and to make such terms and conditions, and to pay such amounts of money as may be agreed upon with the company owning or operating such causeway and bridge. [Acts 1905, p. 424, sec. 1.]

Art. 7020. **Funds available for the purpose.**—For the purpose of paying for the purchase or lease of a roadway, as provided for in the preceding article, the commissioners' court shall have the right to levy and collect such taxes as are now or may hereafter be authorized by law, and also to appropriate out of county revenue funds, levied and collected for county revenue purposes, such additional amounts as may be necessary, from time to time, to pay the obligations that may be incurred under the provisions of this chapter. [Id. sec. 2.]

CHAPTER TEN.

FERRIES.

Article.	Article.
Who are entitled to license to keep.....7021	Where ferryman delays or refuses, etc., to pass persons.....7032
Can not be kept for hire without license.7022	Duties of ferryman.....7033
When stream is part of state boundary.7023	Where ferryman charges more than, etc.7034
License, how obtained.....7024	Penalty for keeping, etc., without li- cense.....7035
Rates of ferriage shall be established.7025	Proceedings against sureties.....7036
Change of rates.....7026	Suit on bond.....7037
When owner refuses to keep ferry at es- tablished rates.....7027	Temporary license.....7038
License and bond to be renewed annu- ally.....7028	License tax.....7039
License not to issue until.....7029	Where stream is part of county bound- ary.....7040
Rates of, to be delivered to person ob- taining license.....7030	Charge on cattle, etc., swimming stream.7041
Rates of, to be posted at the ferry.....7031	

Article 7021. [4797] **Who are entitled to license to keep.**—Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across such water course, stream, lake or bay; if he owns the lands on both sides or banks, he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore; if such consent can not be obtained, he may apply to the commissioners' court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases. [Act Jan. 23, 1850; P. D. 3841.]

Art. 7022. [4798] **Shall not be for hire without license.**—No person shall keep any ferry over or across any water course, navigable stream, lake or bay, so as to charge any compensation for crossing the same, without first procuring a license from the commissioners' court of the county in which such ferry is situated. [Id. P. D. 3842.]

Art. 7023. [4799] **Where stream is part of state boundary.**—When a water course, navigable stream, lake or bay makes a part of the boundary line of this state, if any tax or charge shall be assessed or collected by any such adjoining state for the privilege of a ferry landing on the shore or bank of such state from this state, then the same tax or charge may be assessed and collected by the commissioners' court for the like privilege of landing on the bank or shore of this state. [Id. P. D. 3842.]

Art. 7024. [4800] **License, how obtained.**—Any person wishing to establish a ferry across any water course, navigable stream, lake or bay in this state, shall apply to the commissioners' court of the county in which such ferry site may be; and, on the applicant showing that he is the lawful owner of such land as the ferry is sought to be established on, and also satisfying the court that the public convenience will be promoted thereby, such court shall grant such license. [Id. P. D. 3844.]

Art. 7025. [4801] **Rates of ferriage shall be established, etc.**—When a commissioners' court shall establish a ferry, they shall state in their record the rates of toll or ferriage which may be demanded for ferrying passengers, carriages, wagons, carts, beasts and such other property as is usually transported by ferries; and the said courts may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries that have been or may be established in their county. [Act Jan. 5, 1854; P. D. 3845.]

Art. 7026. [4802] **Change of rates.**—All changes of the rates of ferriage shall be entered of record and notice thereof furnished by the county clerks

to the owners of ferries affected by such change; provided, no change of rate shall take effect until the expiration of thirty days from the day on which said change may be made. [Id.]

Art. 7027. [4803] **When owner refuses to keep ferry at the established rates.**—Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners' court, said court may issue a license to any one who will do so; but in all such cases the party receiving such license shall be bound to take the ferry-boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it. [Id.]

Art. 7028. [4804] **License and bond to be renewed annually.**—The owners of all ferries shall annually obtain a renewal of their license, and shall annually enter into bond, payable to the county judge of their county, in such sum as the commissioners' court shall direct, not less than one thousand dollars, with two or more good and sufficient sureties, to be approved by such county judge, conditioned that the owner of such ferry will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with all the requisitions of the law relating to or governing ferries, which bond shall be filed and recorded in the office of the clerk of the county court. [Act Jan. 23, 1850. P. D. 3846-7.]

Art. 7029. [4805] **License not to issue until, etc.**—Upon producing the receipt of the county treasurer for the payment of the tax assessed by the commissioners' court for the privilege of such ferry, and executing the bond required by the preceding article, such commissioners' court shall grant a license to such applicant for the term of one year from the date of such license; and no license for any ferry that has been or may hereafter be established shall be granted until such payment shall be made and bond executed. [Id. P. D. 3848.]

Art. 7030. [4806] **Rates of, to be delivered to person obtaining license.**—In all cases where any person shall obtain a license for a ferry, the clerk of the court shall make out and deliver to such person a copy of the rates of toll or ferriage established by the court for such ferry, which shall be under his hand and official seal. [Id. P. D. 3849.]

Art. 7031. [4807] **Rates of, to be posted at the ferry.**—Every owner of a ferry licensed shall keep a list of the rates of toll or ferriage established for his ferry posted up, either at the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor; and every week that he shall so fail or neglect shall be deemed a separate offense, for which he shall be liable as aforesaid. [Id. P. D. 3850.]

Art. 7032. [4808] **Where ferryman delays or refuses, etc., to cross person.**—If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect, without any reasonable cause, to cross any person, his horse or other property usually transported by such ferry, every such ferryman shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace for the county in which the ferry is situated, with costs of suit; and the oath of the party shall be received in evidence of the fact. [Id. P. D. 3851.]

Art. 7033. [4809] **Duties of ferryman.**—Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled

that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons and other property. [Id. P. D. 3852.]

Art. 7034. [4810] **Where ferryman charges more than, etc.**—If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners' court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit; and the oath of the complainant shall be received in evidence. [Id. P. D. 3853.]

Art. 7035. [4811] **Penalty for keeping, etc., without license.**—If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this chapter in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of prosecution; and shall, moreover, forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer. [Id. P. D. 3854.]

Art. 7036. [4812] **Proceedings against sureties of ferryman.**—In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown judgment shall be so entered and execution shall issue therefor. [Id. P. D. 3855.]

Art. 7037. [4813] **Suit on bond.**—Any person injured by breach of the bond of any ferryman shall have the right to sue thereon in his own name; and no such bond shall be void on the first recovery, but may be sued on from time to time until the whole penalty is recovered. [Id. P. D. 3856.]

Art. 7038. [4814] **Temporary license.**—Any person wishing to establish a public ferry between the regular terms of the commissioners' court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners' court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay. [Id. P. D. 3857.]

Art. 7039. [4815] **License tax.**—The commissioners' courts of the several counties shall have power to assess and collect an annual tax for the privilege of each and every ferry in their county, which tax shall not exceed one hundred dollars per annum. [Id. P. D. 3858.]

Art. 7040. [4816] **Where stream is part of county boundary.**—If any water course, navigable stream, lake or bay shall form a portion of the boundary of any county, so that one bank shall be in one county and the other in a different county, at the place where it is proposed to establish a ferry, or where a ferry has been established, the application for a license shall be made to the commissioners' court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person or persons so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this chapter for the owners or keepers of ferries operated ex-

clusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners' court than the one granting the license therefor. [Id. P. D. 3859.]

Art. 7041. [4817] **Charges on cattle, etc., swimming stream.**—The commissioners' court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock. [Act Jan. 9, 1862; P. D. 3862.]

CHAPTER ELEVEN.

SPECIAL ROAD TAX.

[See "Bonds, County and Municipal," Title 18, Chapter 2.]

	Article.		Article.
Election for road tax, how ordered.....	7042	Duty of commissioners' court upon ob-	
Same subject.....	7043	taining result of election, etc.....	7045
Who qualified to vote, etc.....	7044	No bonds to issue.....	7044

Article 7042. [4786] **Election for road tax, how ordered, etc.**—The commissioners' court of any county shall, upon presentation to it at any regular session, of a petition signed by two hundred qualified voters, they being property taxpayers of the county, to order an election to determine whether there shall be levied upon the property within said county by said commissioners' court a road tax not to exceed fifteen cents on the one hundred dollars worth of property under the provisions of the amendment of 1889, to the constitution of the state of Texas, adopted in 1890, order said election as hereinafter provided. It shall not be necessary to give any notice of such petition before the court can act on the same, but the court may act thereon without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. [Acts of 1891, p. 51, sec. 1.]

Art. 7043. [4787] **Same.**—It shall not be necessary to give any formal notice of such election, except the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county as fully as practicable, and tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The expenses of the election shall be paid for by the county. If an election be ordered within ninety days of a general election, it shall be held on the day of the general election and as elections on other questions are held, but otherwise the commissioners' court shall order a special election to determine whether said tax shall be levied, which shall be conducted as other elections, and the officers to conduct the same shall be appointed as in other cases. [Id., sec. 2.]

Art. 7044. [4788] **Who are qualified to vote; manner of voting.**—Only qualified voters who pay a property tax in the county shall be permitted to vote at such election. The tickets printed and to be voted shall have written or printed on them the words: "For the tax," and, "Against the tax," and those who favor the tax shall vote the ticket, "For the tax," and those who oppose the tax shall vote the ticket, "Against the tax." [Id. sec. 3.]

Art. 7045. [4789] **Duty of commissioners' court upon obtaining result of election.**—If at any such election the majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes as in other cases, and officially announce the result, and the commissioners' court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied, in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out and settlement effected. If, at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But, if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners' court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners' court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall not be granted. [Id. sec. 4.]

Art. 7046. [4790] **No bonds to issue.**—No bonds shall ever be issued under the provisions of this chapter. [Id. sec. 5.]

TITLE 120.

SALARIES.

Chapter.

1. Executive Officers.
2. Legislative Officers.
3. Judicial Officers.

Chapter.

4. Miscellaneous Officers.
5. General Provisions.

CHAPTER ONE.

EXECUTIVE OFFICERS.

	Article.		Article
Salary of governor.....	7047	Superintendent of public instruction....	7050
Secretary of state.....	7048	Commissioner of agriculture.....	7051
Attorney general.....	7048a	Commissioner of insurance and banking.....	7052
Comptroller, treasurer and commissioner of the general land office.....	7049	Railroad commissioners	7053
		Adjutant general	7054

Article 7047. [4818] **Governor.**—The governor shall at stated times receive as compensation for his services an annual salary of four thousand dollars, and no more, and shall have the use and occupation of the governor's mansion, fixtures and furniture. [Const., art. 4, sec. 5.]

Art. 7048. [4821] **Secretary of state.**—The secretary of state shall receive for his services an annual salary of two thousand dollars, and no more. [Id. sec. 21.]

Art. 7048a. [4822] **Attorney General.**—The attorney general shall receive an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law, not to exceed two thousand dollars annually. [Const., art. 5, sec. 22.]

Art. 7049. [4820] **Comptroller, treasurer and commissioner of general land office.**—The comptroller of public accounts, treasurer of the state, and the commissioner of the general land office shall each receive for their services an annual salary of two thousand and five hundred dollars, and no more. [Id. sec. 23.]

Art. 7050. [4827] **Superintendent of public instruction.**—The superintendent of public instruction shall receive an annual salary of twenty-five hundred dollars. [Acts of 1884, p. 41.]

Art. 7051. **Commissioner of agriculture.**—The commissioner of agriculture shall receive an annual salary of twenty-five hundred dollars, and necessary expenses, not to exceed six hundred dollars. He shall file with the governor, on or before the first day of November of each year, an itemized sworn statement of such expenses during the fiscal year preceding, which statement shall be transmitted by the governor to the legislature. [Acts 1909, p. 127, sec. 6.]

Art. 7052. **Commissioner of insurance and banking.**—The commissioner of insurance and banking shall receive an annual salary as commissioner of insurance and banking of two thousand dollars, and as ex officio superintendent of banking five hundred dollars, and as a member of the state insurance board, five hundred dollars. [Art. 4832, Code of 1895. Acts 1905, p. 489, sec. 38. Acts 1909, p. 311, sec. 3.]

Art. 7053. [4829] **Railroad commissioners.**—The railroad commissioners shall each receive an annual salary of four thousand dollars. [Acts of 1891, p. 55.]

Art. 7054. [4834] **Adjutant general.**—The adjutant general shall receive an annual salary of two thousand dollars, and no more. [Act June 24, 1870; P. D. 7143.]

CHAPTER TWO.

LEGISLATIVE OFFICERS.

Salary of lieutenant governor.....	Article. 7055	Senators and representatives, mileage and per diem.....	Article. 7056
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Article 7055. [4819] **Lieutenant governor.**—The lieutenant governor shall, while he acts as president of the senate, receive for his services the same compensation and mileage which shall be allowed to members of the senate, and no more; and during the time he administers the government, as governor, the same compensation which the governor would have received had he been employed in the duties of his office, and no more.

Art. 7056. **Senators and representatives, mileage and per diem.**—Members of the legislature shall receive as compensation for their services and attendance upon any regular or called session of the legislature, five dollars per day for the first sixty days of each session, and after that, the sum of two dollars per day for the remainder of the session. Members of the legislature shall receive as mileage for attendance upon any regular or called session of the legislature five dollars for every twenty-five miles in going to and returning from the seat of government, to be computed by the nearest and most direct route of travel by land, regardless of railways or water-routes; and the comptroller of public accounts shall prepare and preserve a table of distances to each county seat, now or hereafter to be established, and by such table the mileage of each member of the legislature shall be computed and paid, the calculation to be based in each instance upon the distance to the county seat of the county in which such member resides; provided, that no member shall be entitled to mileage for any extra session of the legislature that may be called within one day after the adjournment of any regular or called session. [Const., art. 3, sec. 24. Acts 1907, p. 10.]

CHAPTER THREE.

JUDICIAL OFFICERS.

Article.	Article.
Salaries of justices of the supreme court	Special judges, etc.....7061
and court of criminal appeals.....7057	Special judges elected by, etc.....7062
Judges of courts of civil appeals.....7058	Of special judge, how ascertained.....7063
District judges.....7059	Pay of special judge commissioned.....7064
Assistant attorney general.....7060	Pay of special judge elected.....7065

Article 7057. [4835] **Justices of supreme court and court of criminal appeals.**—The chief justices of the supreme court and court of criminal appeals, and the several associate justices of said courts, shall each receive an annual salary of four thousand dollars. [Acts of 1892, S. S., p. 19 et seq.]

Art. 7058. [4838] **Civil courts of appeals.**—The judges of the courts of civil appeals shall each receive an annual salary of thirty-five hundred dollars, and no more. [Id.]

Art. 7059. [4839] **District judges.**—The judges of the district courts of this state shall each receive a salary of three thousand dollars a year, and no more. [Acts 1905, p. 399.]

Art. 7060. [4843] **Assistant attorney general.**—The assistant attorney general shall receive an annual salary of two thousand dollars, and also for mileage and traveling expenses one thousand dollars per annum, and no more. [Acts March 13, 1879, p. 90, sec. 3; Aug. 23, 1876, p. 285, sec. 3.]

Art. 7061. [4841] **Special judges commissioned by the governor.**—Special judges, commissioned by the governor, in obedience to section 11, article 5, of the constitution, shall receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court, as well as the time they are actually engaged in holding court. [Act July 12, 1876, p. 45, sec. 1.]

Art. 7062. [4842] **Special judge elected by attorneys.**—A special judge elected by the practicing lawyers, or agreed upon by the parties as provided by law, shall receive the same pay as the district judge for every day that he may be occupied in performing the duties of judge. [Act Aug. 15, 1878, p. 140, sec. 4.]

Art. 7063. [4855] **Salary of special judge, how ascertained.**—The amount of salary due any special judge shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by such special judge. [Act July 12, 1876, p. 45, sec. 2.]

Art. 7064. [4856] **How special judge commissioned by the governor shall obtain pay.**—A special judge commissioned by the governor, in order to obtain his salary, shall present to the comptroller an account therefor, showing the number of days that such special judge was necessarily occupied in going to and returning from the place or places where such special judge presided under said appointment, which account shall be verified by the affidavit of such special judge, and certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed, and shall be accompanied by evidence that he was duly commissioned as such special judge by the governor. [Id. sec. 3.]

Art. 7065. [4857] **Special judge elected, etc., how he may obtain his pay.**—A special judge elected by practicing lawyers, or agreed upon by the parties, as provided by law, shall be paid for his services out of the state treasury on the certificate of the clerk of the court in which such services were rendered, to the comptroller, of the record of such election or appointment and services, accompanied by the account of such special judge, verified by his affidavit, showing the number of days actually served by him as such special judge. [Act Aug. 15, 1876, p. 140, sec. 4.]

CHAPTER FOUR.

MISCELLANEOUS OFFICERS.

	Article.		Article.
Salaries of superintendents of certain		State revenue agent.....	7074
asylums	7066	Superintendent of public buildings.....	7075
Same	7067	Commissioner of pensions.....	7076
State purchasing agent for eleemosynary		Commissioner of labor statistics.....	7077
institutions	7068	State health officer.....	7078
Superintendents of orphans home and		Dairy and food commissioner.....	7079
confederate home.....	7069	State mining inspector.....	7080
Superintendent home for lepers.....	7070	State librarian.....	7081
Superintendent of state institution for		Pardon advisers.....	7082
juveniles	7071	Game, fish and oyster commissioner.....	7083
Prison commissioners.....	7072	Tax commissioner	7084
Prison auditor.....	7073	State insurance board.....	7085

Article 7066. [4824] **Salaries of superintendents of certain asylums.**—The superintendents of the blind institute, the deaf and dumb institute, the epileptic colony, the state lunatic asylum, the southwestern insane asylum, and the north Texas hospital for the insane, shall each receive an annual salary of two thousand dollars; provided, they shall each receive provisions not to exceed in value five hundred dollars a year, and fuel, lights, water and housing for himself and family.

Art. 7067. **Same.**—The superintendent of the deaf, dumb and blind asylum for negroes shall receive a salary of one thousand five hundred dollars per year.

Art. 7068. **State purchasing agent.**—The state purchasing agent for eleemosynary institutions shall receive a salary of two thousand dollars per year. [Acts 1899, p. 138.]

Art. 7069. **Superintendents of orphans and Confederate homes.**—The superintendents of the state orphans home, and the Confederate home, shall each receive a salary of one thousand five hundred dollars a year, with provisions not to exceed five hundred dollars in value per year, and fuel, lights, water and housing for himself and family. [Acts 1909, pp. 495, 496. Acts 1899, p. 303.]

Art. 7070. **Superintendent home for lepers.**—The superintendent of the home for lepers shall receive an annual salary of three thousand dollars. [Acts 1909, p. 344, sec. 5.]

Art. 7071. **Superintendent juvenile institution.**—The superintendent of the state institution for the training of juveniles shall receive a salary of one thousand eight hundred dollars per annum, with provisions not to exceed in value five hundred dollars per year, and fuel, lights, water and housing for himself and family. [Acts 1909, p. 103.]

Art. 7072. **Prison commissioners.**—Each member of the board of prison commissioners shall receive as compensation for his services the sum of three hundred dollars per month, to be paid at the end of each month; and, in addition thereto, he shall be allowed all reasonable and necessary traveling expenses actually incurred when traveling on business of the prison system; said salary and expenses to be paid out of the funds of the prison system. Each prison commissioner shall be permitted to occupy, free of rent, one of the residence houses belonging to the state at Huntsville.

Art. 7073. **Prison auditor.**—The auditor of the prison system shall receive a salary of two hundred dollars per month, to be paid at the end of each month, together with all actual and necessary traveling expenses; said salary and expenses to be paid out of the funds belonging to the prison system.

Art. 7074. [4830] **State revenue agent.**—The state revenue agent shall receive an annual salary of two thousand dollars. [Acts of 1891, p. 88.]

Art. 7075. [4833] **Superintendent of public buildings.**—The superintendent of public buildings shall receive an annual salary of not to exceed one thousand five hundred dollars. [Acts of 1889, p. 22.]

Art. 7076. **Commissioner of pensions.**—The commissioner of pensions shall receive a salary of two thousand dollars per annum. [Acts 1909, p. 23, sec. 5.]

Art. 7077. **Commissioner of labor statistics.**—The commissioner of labor statistics shall receive a salary of two thousand dollars per annum. [Acts 1909, p. 59, sec. 12.]

Art. 7078. **State health officer.**—The state health officer and ex officio president of the state board of health shall receive a salary of two thousand five hundred dollars per annum. [Acts 1909, p. 340, sec. 2.]

Art. 7079. **Dairy and food commissioner.**—The dairy and food commissioner shall receive a salary of two thousand dollars per annum. [Acts 1909, p. 166.]

Art. 7080. **State mining inspector.**—The state mining inspector shall receive a salary of two thousand dollars per annum, and necessary traveling expenses not to exceed one thousand dollars per annum. [Acts 1909, p. 163, sec. 21.]

Art. 7081. **State librarian.**—The state librarian shall receive a salary of one thousand five hundred dollars per annum. [Acts 1909, p. 122, sec. 2.]

Art. 7082. **Pardon advisers.**—Members of the state board of pardon advisers shall receive a salary of two thousand dollars per annum. [Acts 1905, p. 68.]

Art. 7083. **Game, fish and oyster commissioner.**—The game, fish and oyster commissioner shall receive, in addition to his regular salary of one thousand eight hundred dollars per annum, the additional sum of seven hundred dollars per annum, and necessary expenses incurred in the discharge of his duties, the same to be paid under such limitations and out of such funds as is provided by law. [Acts 1899, p. 312, art. 2517. Acts 1907, p. 254, sec. 6.]

Art. 7084. **Tax commissioner.**—The tax commissioner shall receive a salary of two thousand five hundred dollars per annum. [Acts 1907, p. 469.]

Art. 7085. **State insurance board.**—Each member of the state insurance board, except the commissioner of insurance and banking, shall receive as compensation an annual salary of two thousand five hundred dollars. The commissioner of insurance and banking shall receive an annual salary of five hundred dollars as compensation for his services as a member of said board. [Acts 1910, 3 S. S., p. 125.]

CHAPTER FIVE.

GENERAL PROVISIONS.

	Article.		Article.
Salaries not to be changed during term of office.....	7086	Salary to be paid to whom.....	7089
Payable monthly.....	7087	Who entitled to compensation.....	7090
May be compelled to produce evidence of qualification, when.....	7088	Enumeration of officers and salaries in this title does not repeal provisions found elsewhere.....	7091

Article 7086. [4853] **Salaries shall not be changed during term of office.**—The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Art. 7087. [4854] **Salaries payable monthly.**—Officers entitled to salaries may demand monthly payment of the same; and upon filing with the comptroller of public accounts proper vouchers, the comptroller shall issue his warrant upon the treasurer for the amount of salary due to the officer applying therefor; and the treasurer shall pay such warrant out of the fund appropriated for the payment of the same.

Art. 7088. [4858] **Required to produce evidence of qualifications to comptroller, when.**—The comptroller of public accounts, the state treasurer; county commissioners' courts, county treasurers, and any and all other officers of this state, or of any municipal division thereof, whether herein enumerated or not, who are authorized or required by law to audit, or pay, or order to be paid, claims due from the state, or any county or municipal division thereof, to any person or persons, as a salary, or as fees, compensation, perquisites or emoluments for official services rendered by such person, as an officer thereof, shall, upon the demand of any citizen of this state, before auditing, paying, or ordering to be paid, any such claims as aforesaid, require such person presenting such claim to produce the certificate of his election or appointment to such office directed by the laws of this state to be issued to such officer; or, if his claim be founded upon the judgment or decree of a court of this state, authorized by the laws of this state to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof. [Acts of 1881, p. 7, sec. 1.]

Art. 7089. [4859] **Salary to be paid only, when.**—It shall not be lawful for any officer or court of this state, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments, or services, as an officer of the state, or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this state, and whose election has been ascertained and certified or declared in the manner required by the laws of this state, or who has been appointed such officer by the lawful appointing power under the constitution and laws of this state, or who has been adjudged entitled thereto by a state court of competent jurisdiction of this state, and has qualified as such officer in accordance with the requirements of the laws of this state. [Id. sec. 2.]

Art. 7090. [4860] **Who entitled to compensation.**—No person shall be held by the laws of this state entitled to pay for services as an officer thereof, or of any county, or municipal division thereof, or to exercise any of the powers of jurisdiction of an officer thereof, unless he shall have been elected, appointed or adjudged entitled thereto, as specified in article 7089; and the official acts of any person claiming a right to exercise such power or jurisdiction, contrary to the provisions of this law, are and shall be held to be null and void. [Id. sec. 3.]

Art. 7091. **Enumeration in this title not to affect provisions found elsewhere.**—The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found elsewhere in the statutes, or any appropriation bills permitting or authorizing the existence, or prescribing the compensation of other officers.

TITLE 121.

SEALS AND SCROLLS.

	Article.		Article.
Private seals and scrolls dispensed with.	7092	Unsealed instruments held to import consideration	7093

Article 7092. [4862] **Private seals and scrolls dispensed with.**—No private seal or scroll shall be necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, or any other instrument of writing, whether official, judicial or private, except such as are made by corporations, nor shall the addition or omission of a seal or scroll in any way affect the force and effect of the same. [Acts April 28, 1873; Feb. 2, 1858. P. D. 5087.]

Art. 7093. [4863] **Unsealed instruments held to import consideration, etc.**—Every contract in writing hereafter made shall be held to import a consideration in the same manner and as fully as sealed instruments have heretofore done. [26 Tex., p. 338.]

TITLE 122.

SEQUESTRATION.

[For venue in damage cases growing out of sequestration, see Article 1830.]

Article.	Article.
Writ of, may be issued by whom and for what causes.....	How judgment may be discharged.....
7094	When the property has been injured.....
Affidavit, and what it shall state.....	7108
7095	Execution shall issue when.....
Petition must be filed, when.....	7109
7096	Replevy by plaintiff; bond.....
Bond for the writ.....	7110
7097	Bond shall be returned, and the proceeding thereon if forfeited.....
Writ may issue when claim is not due, when, etc.....	7111
7098	Defendant not required to account for hire, etc., when.....
Writ of, and its requisites.....	7112
7099	Property likely to waste, etc., may be sold, when.....
Duty of officer while he retains custody of property.....	7113
7100	Order of sale in such cases.....
Compensation of officer.....	7114
7101	Return of order of sale.....
Officer expending money may retain property until, etc.....	7115
7102	When debt is not due, property may be sold, when.....
Defendant may replevy by giving bond.....	7116
7103	Purchaser shall give bond, etc.....
Bond in case of personal property.....	7117
7104	Bond shall be returned and judgment, etc., thereon, when.....
In case of real estate.....	7118
7105	
Return of bond and judgment thereon.....	
7106	

Article 7094. [4864] **In what cases to be issued.**—Judges and clerks of the district and county courts, and justices of the peace, shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant, or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to any such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant, or either of them in the event there be more than one defendant, is a non-resident of this state. [Acts of 1887, p. 30.]

Art. 7095. [4865] **Affidavit, and what it shall state.**—No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating:

1. That he is the owner of the property sued for, or some interest therein, specifying such interest, and is entitled to the possession thereof; or,

2. If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

3. The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

4. It shall set forth one or more of the causes named in the preceding article entitling him to the writ. [Acts of 1866, p. 120. P. D. 5095a.]

Art. 7096. [4866] **Petition must be filed, when.**—If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts. [Id. p. 122, sec. 4.]

Art. 7097. [4867] **Bond for the writ.**—Nor shall a writ of sequestration issue in any case until the party applying therefor has filed with the judge, clerk or justice of the peace to whom he applies, a bond payable to the defendant for a sum of money not less than double the value of the property to be sequestered, as stated in his affidavit, with two or more good and sufficient sureties, to be approved by such judge, clerk, or justice of the peace, as the case may be, conditioned that the plaintiff or person suing out such writ will pay to the defendant all such damages as may be awarded against him, and all costs in case it shall be decided that such sequestration was wrongfully issued. [Act March 15, 1848. P. D. 5096-7.]

Art. 7098. [4868] **Writ may issue when claim is not due, when, etc.**—When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required in the two preceding articles, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued; and the same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until the right of action on such mortgage or lien shall have accrued. [Id. P. D. 5098.]

Art. 7099. [4869] **Writ and its requisites.**—The writ of sequestration may be directed to the sheriff or any constable of any county wherein the property is alleged to be situated, which allegation may be made either in the original or in a supplemental affidavit. It shall command the sheriff or any constable to take into his possession the property, describing the same as it is described in the affidavit, if to be found in the county, and keep the same subject to the future order of the judge, court or justice of the peace who issued the writ, unless the same is replevied according to law. [Act Nov. 9, 1866. Id. p. 124, sec. 4.]

Art. 7100. [4870] **Duty of officer while he retains custody of property.**—The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property. [Act Nov. 9, 1866. p. 121, sec. 3.]

Art. 7101. [4871] **Compensation of officer.**—The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a

just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case. [Id.]

Art. 7102. [4872] **Officer expending money may retain property until, etc.**—If the officer be compelled to expend any sum of money in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney. [Id.]

Art. 7103. [4873] **Defendant may replevy by giving bond.**—When property has been sequestered, the defendant shall have the right to retain possession of the same by delivering to the officer executing the writ his bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, for an amount of money not less than double the value of the property to be replevied. [Act Feb. 8, 1860. P. D. 5100.]

Art. 7104. [4874] **Bond in case of personal property.**—If the property to be replevied, as provided in the preceding article, be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy or sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, hire or revenue of the same in case he shall be condemned so to do. [Id.]

Art. 7105. [4875] **In case of real estate.**—If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do. [Id.]

Art. 7106. [4876] **Return of bond and judgment thereon.**—The bond provided for in the three preceding articles shall be returned with the writ to the court from whence the writ issued, and in case the suit is decided against the defendant final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied, and the value of the fruits, hire, revenue or rent thereof, as the case may be. [Id.]

Art. 7107. [4877] **Defendant may discharge judgment by return of property, etc.**—The defendant shall have the right, at any time within ten days after the rendition of the judgment provided for in the preceding article, to deliver to the sheriff or constable of the court in which such judgment is rendered, the property, or any portion thereof, which he has bound himself to have forthcoming to abide the decision of the court, and the sheriff or constable to whom such possession is tendered shall receive such property, if the same has not been injured or damaged since the replevy, and receipt to the defendant therefor, and shall immediately deliver such property to the plaintiff; and the defendant in such judgment shall, upon filing with the papers in the cause the receipt of the sheriff or constable, be credited by the clerk or justice of the peace upon such judgment with the value of the property so returned.

Art. 7108. [4878] **When the property has been injured, etc.**—If the property tendered back by the defendant has been injured or damaged while in his possession under such bond, the sheriff or constable to whom the same is tendered shall not receive the same, unless the defendant at the same time tenders the reasonable amount of such injury or damage, to be judged of by such sheriff or constable.

Art. 7109. [4879] **Execution shall issue, when.**—If the property be not returned and received, as provided in the two preceding articles, execution shall issue upon said judgment for the amount due thereon, as in other cases

Art. 7110. [4880] **Plaintiff may replevy, when, and his bond.**—When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney, is present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall deliver the same to the plaintiff upon his giving bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties to be approved by such officer, conditioned for the forthcoming of such property, together with the fruits, hire, revenue and rent of the same, to abide the decision of the court. [Act Nov. 9, 1866, p. 122, sec. 3. P. D. 5101a.]

Art. 7111. [4881] **Bond shall be returned, and the proceedings thereon if forfeited.**—The bond provided for in the preceding article shall be returned with the writ, and, in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond jointly and severally, for the value of the property replevied, and for the value of the fruits, hire, revenue or rent thereof, as the case may be, and the same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond, as hereinbefore provided, shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

Art. 7112. [4882] **Defendant not required to account for hire, etc., when.**—In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property. [P. D. 5100.]

Art. 7113. [4883] **Property likely to waste, etc., may be sold, when.**—If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed, or greatly depreciated in value, by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or in vacation, to order the sale of said property, or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale. [Id. P. D. 5099a.]

Art. 7114. [4884] **Order of sale in such case.**—The judge or justice granting the order provided for in the preceding article shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution. [Id.]

Art. 7115. [4885] **Return of order of sale.**—The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale. [Id.]

Art. 7116. [4886] **Where debt is not due, property may be sold, when, etc.**—If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due. [Act March 15, 1884. P. D. 5098.]

Art. 7117. [4887] **Purchaser shall give bond, etc.**—In the case of a sale, as provided for in the preceding article, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved

by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given. [Id.]

Art. 7118. [4888] **Bond shall be returned and judgment, etc., thereon, when.**—The bond provided for in the preceding article shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause; and, in case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause. [Id.]

TITLE 123.

SHERIFFS AND CONSTABLES.

[See Code of Criminal Procedure.]

Chapter.

1. Duties of Sheriffs.

Chapter.

2. Duties of Constables.

CHAPTER ONE.

OF SHERIFFS.

Article.		Article.	
7119	Election and term of office.....	7129	To attend upon open courts.....
7120	Vacancies, how filled.....	7130	Shall execute all legal process.....
7121	Oath and bond.....	7131	And all legislative process.....
7122	May act without commission.....	7132	To discharge all duties imposed by law.....
7123	Neglect to qualify in twenty days.....	7133	List of fugitives to be sent to adjutant general.....
7124	Failure to give new bond when required.....	7134	Shall indorse all process.....
7125	May appoint deputies, etc.....	7135	May summon posse comitatus.....
7126	Responsible for their acts.....	7135	Unfinished business.....
7127	May employ guards.....		
7128	Shall receive prisoners from, etc.....		

ELECTION AND QUALIFICATION.

Article 7119. [4890] **Election and term of office.**—There shall be elected by the qualified voters of each county one sheriff, who shall hold his office for two years, and until his successor shall be elected and qualified. [Const., art. 5, sec. 23. Act May 12, 1846, p. 265, sec. 1. P. D. 5108.]

Art. 7120. [4891] **Vacancies, how filled.**—Should a vacancy occur in the office of sheriff, the commissioners' court of the county shall fill such vacancy by appointment; and the person appointed, after qualifying in the manner prescribed by law for persons elected to said office, shall discharge the duties of sheriff for the unexpired term and until the election and qualification of his successor. [Id.]

Art. 7121. [4892] **Oath and bond.**—Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, for such sum as may be directed by such court, not less than five nor more than thirty thousand dollars, payable to the governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by law to receive the same all fines, forfeitures and penalties that he may collect for the use of the state or any county, and that he will well and truly execute and due return make of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precept to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by law, and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same, which bond and oath shall be recorded in the office of the clerk of the county court and deposited in said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. [Act May 12, 1846, p. 265, sec. 2. P. D. 5109.]

Art. 7122. [4893] **May act without a commission.**—When any person elected or appointed sheriff, in accordance with the preceding article, shall

have given bond and taken the oath of office he may enter at once upon the discharge of his duties, and his acts shall be as valid in law before receiving his commission from the governor as afterward. [Act Dec. 20, 1836, p. 179, sec. 2. P. D. 5102.]

Art. 7123. [4894] **Neglect to qualify.**—When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the oath of office within twenty days after notice of his election, the office shall be deemed vacant; and the county commissioners' court shall proceed to appoint a sheriff to fill the vacancy, who shall hold his office for the unexpired term. [Acts of 1885, p. 89.]

Art. 7124. [4895] **Failure to give new bond when required.**—Whenever any of the sureties of a sheriff shall die, remove permanently from the state, become insolvent, or be released from liability in accordance with law, or whenever the commissioners' court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Acts of 1836, p. 178. P. D. 5110.]

POWERS, DUTIES AND LIABILITIES

Art. 7125. [4896] **May appoint deputies, etc.**—Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the oath of office prescribed by the constitution, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office; provided, that the number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the justice precinct in which is located the county site of such county; and a list of these appointments shall be posted up in a conspicuous place in the clerk's office so that all can see them; provided, further, that no person shall be appointed a deputy sheriff who stands convicted for a felony; and an indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff; provided, that any sheriff may appoint one deputy in addition to the above enumerated for each justice precinct in addition to the precinct where the county site is situated; and all sheriffs having more deputies than are provided for in this law shall make the number of his deputies conform to the provisions of the same. [Acts of 1889, p. 23.]

Art. 7126. [4897] **Responsible for their acts.**—Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties. [Acts of 1846, p. 265. P. D. 5113.]

Art. 7127. [4898] **May employ guards.**—Whenever in any county it may become necessary to employ guards for the safe keeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioners' court, or in case of emergency, with the approval of the county judge, employ such number of guards as may be necessary; and his account there-

for, duly itemized and sworn to, shall be allowed by said commissioners court and paid out of the county treasury. [Id.]

Art. 7128. [4899] **Shall receive prisoners from constables, etc.**—It shall be the duty of sheriffs to receive from constables and other officers all persons who shall be apprehended by such constables or other officers for offenses against the state, and them safely keep, subject to the order of the proper court. [Act Dec. 20, 1836, p. 179, sec. 14. P. D. 5104.]

Art. 7129. [4900] **To attend upon courts.**—Each sheriff shall attend upon all district, county and commissioners' courts for his county; and, in counties where the supreme court and court of appeals shall hold their sessions, the sheriffs of such counties shall attend upon such court. [Act May 12, 1846, p. 265, sec. 13. P. D. 51.]

Art. 7130. [4901] **Shall execute all legal process.**—Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars, at the discretion of the court; which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain. [Id. sec. 8. P. D. 5115.]

Art. 7131. [4902] **And all legislative process.**—Sheriffs are required also to execute all subpoenas and other process issued by the speaker of the house of representatives, or the president of the senate, or chairman of a committee of either house of the legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process. [Act March 28, 1873, p. 19. P. D. 7102a et seq.]

Art. 7132. [4903] **To discharge all duties imposed by law.**—Sheriffs shall also do and perform all such duties as may be imposed upon them by the Penal Code and Code of Criminal Procedure, or other laws.

Art. 7133. [4904] **List of fugitives to be sent to adjutant general.**—It shall be the duty of each sheriff in this state, upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant general of this state a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarities in person, speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged. The adjutant general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks upon which are to be made the lists herein required. [Acts of 1887, p. 44, sec. 1; amend. 1895, Sen. Jour. No. 97, p. 484.]

Art. 7134. [4905] **Shall indorse all process.**—Every sheriff and deputy sheriff or constable shall indorse on all process and precepts coming to their hands the day and hour on which they received them, the manner in which they executed them, and state at what time and place the process was served, as well as the distance actually traveled in serving such process, and shall sign their returns officially. [Act May 12, 1846, p. 265, sec. 14; P. D. 5121; amend. Act 1903, p. 81.]

Art. 7135. [4906] **May summon posse comitatus.**—Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county; and any person

who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined in a sum not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy, and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused, and in addition thereto may be punished criminally as prescribed in the Penal Code. [Id. sec. 10; P. D. 5117.]

Art. 7136. [4907] **Unfinished business.**—When any sheriff shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. [Act May 12, 1846, p. 265, sec. 15. P. D. 5122.]

CHAPTER TWO.

OF CONSTABLES.

Article.	Article.
1. Election, qualification, etc. Election and term of office.....7137 Only one deputy.....7138 Appointed, how, in unorganized counties.....7139 Vacancies, how filled.....7140 Bond and oath.....7141 May act without commission.....7142 Neglect to qualify.....7143	Failure to give new bond.....7144 2. Powers, duties and liabilities. Duties in general.....7145 May summon posse comitatus.....7146 Failure to execute or return process.....7147 Failure to pay over collections.....7148 May execute process, where.....7149 Unfinished business.....7150

1. ELECTION, QUALIFICATION, ETC.

Article 7137. [4908] **Term of office.**—There shall be elected at each general election by the qualified voters of each justice's precinct a constable for such precinct, who shall hold his office for the term of two years, and until his successor is elected and qualified; provided, that, when in any such justice's precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies, who shall qualify as required of deputy sheriffs. [Acts of 1885, p. 17; amend. Act 1897, p. 194.]

Art. 7138. **Only one deputy.**—Be it further provided, that, in cities and towns of twenty-five hundred or more inhabitants, said constable may appoint no more than one deputy, who shall qualify in such manner as is required by law. [Id.]

Art. 7139. [4909] **Appointed, how, in unorganized counties.**—The commissioners' courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each of the unorganized counties attached to said counties for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointment in organized counties. [Acts 1879, p. 89.]

Art. 7140. [4910] **Vacancies, how filled.**—Vacancies in the office of constable shall be filled by the commissioners' court until the next succeeding general election.

Art. 7141. [4911] **Bond and oath.**—Every person who may be elected to the office of constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties, to be approved by the

commissioners' court of his county, for such sum as may be directed by said court, not less than five nor more than fifteen hundred dollars, payable to the governor and his successors in office, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the clerk of the county court, and deposited in said office; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the party injured until the whole amount thereof is recovered. [Act May 12, 1874, p. 251, sec. 2. P. D. 981.]

Art. 7142. [4912] **May act without commission.**—Whenever any person is elected or appointed to the office of constable and has given bond and taken the oath prescribed in the preceding article, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Art. 7143. [4913] **Neglect to qualify.**—Whenever any person elected constable shall neglect or refuse to give bond and take the oath of office as required in the preceding articles within twenty days after notice of his election, the office shall be deemed vacant; and the commissioners' court of the county shall fill the same as in other cases of vacancy. [Act May 12, 1846, p. 251, sec. 4. P. D. 983.]

Art. 7144. [4914] **Failure to give new bond.**—Whenever any of the sureties of a constable shall die, remove permanently from the state, or become insolvent, or are released from liability in accordance with law, or whenever the commissioners' court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security; and, if such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Id. sec. 3. P. D. 982.]

2. POWERS, DUTIES AND LIABILITIES.

Art. 7145. [4915] **Duties in general.**—Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, and shall attend upon all justices' courts held in his precinct, and shall perform all such other duties as may be required of him by law. [Id. sec. 8. P. D. 987.]

Art. 7146. [4916] **May summon posse comitatus.**—When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused, and may also be punished criminally as prescribed in the Penal Code. [Id. sec. 7. P. D. 986.]

Art. 7147. [4917] **Failure to execute or return process.**—If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, in any sum not less than ten dollars nor more than one hundred, with costs; which fine shall be for the benefit of the

party injured; and said constable shall have ten days' notice of such motion. [Id. sec. 11. P. D. 990.]

Art. 7148. [4918] **Failure to pay over collections.**—If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over. [Id. sec. 12. P. D. 991.]

Art. 7149. [4919] **May execute process, where.**—Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law. [Id. sec. 14. P. D. 993.]

Art. 7150. [4920] **Unfinished business.**—Whenever any constable shall vacate his office, all unfinished business remaining in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. [Id. sec. 13. P. D. 992.]

TITLE 124.

STOCK LAWS.

Chapter.

1. Of Marks and Brands.
2. Protection of Live Stock.
3. Of the Sale, Slaughter and Shipment of Animals.
4. Of Estrays.
5. Of the Mode of Preventing Hogs and Certain Other Animals Running at Large in Particular Counties Named.

Chapter.

6. Of the Mode of Preventing Horses and Certain Other Animals Running at Large in Particular Counties Named.
7. Regulations for the Protection of Stock Raisers in Certain Localities.
8. Live Stock Sanitary Commission.

CHAPTER ONE.

OF MARKS AND BRANDS.

	Article.
Owners of stock to have mark and brand.....	7151
Each county to have brand.....	7152
Owner may place brand on his stock.....	7153
May counterbrand, when.....	7154
Duty of secretary of state.....	7155

	Article.
Brands of minors.....	7156
When stock to be branded.....	7157
Disputes, how settled.....	7158
Marks and brands to be recorded.....	7159
Unrecorded brands no evidence.....	7160

Article 7151. [4921] **Owners of stock to have mark and brand.**—Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be; and no person shall use more than one brand, but may record his brand in as many counties as he may think necessary. [Act March 20, 1848, p. 156, sec. 1. P. D. 4655.]

Art. 7152. [4922] **County brands.**—The several counties in this state shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county in the state shall be as follows:

Anderson	A. A.	Briscoe	B. H.
Andrews	A. N.	Brown	B. W.
Angelina	A. L.	Burleson	B. U.
Aransas	A. R.	Burnet	B. T.
Archer	A. H.	Caldwell	C. A.
Armstrong	A. M.	Calhoun	C. H.
Atascosa	A. T.	Callahan	C. L.
Austin	A. U.	Cameron	C. M.
Bandera	B. A.	Camp	C. P.
Bastrop	B. S.	Carson	C. R.
Bailey	B. I.	Cass	C. S.
Baylor	B. R.	Castro	C. T.
Bee	B. E.	Chambers	C. B.
Bell	B. L.	Cherokee	C. K.
Bexar	B. X.	Childress	C. D.
Blanco	B. N.	Clay	C. Y.
Borden	B. D.	Cochran	C. C.
Bosque	B.	Coleman	C. E.
Bowie	B. O.	Collin	C. I.
Brazoria	B. D.	Collingsworth	C. W.
Brazos	B. Z.	Colorado	C. N.

Comal	C. O.	Hays	H. Y.
Comanche	C. J.	Hemphill	H. M.
Concho	C. V.	Henderson	H. E.
Cooke	C. U.	Hidalgo	H. G.
Coryell	C. X.	Hill	H. L.
Cottle	C. 2.	Hockley	H. K.
Crockett	C. 3.	Hood	H. O.
Crosby	C. 4.	Hopkins	H. P.
Dallas	D. A.	Howard	H. R.
Dallam	D. L.	Houston	H. 4.
Dawson	D. N.	Hunt	H. U.
Deaf Smith	D. S.	Hutchinson	H. H.
Delta	D. T.	Jack	J.
Denton	D. O.	Jackson	J. A.
DeWitt	D. E.	Jasper	J. P.
Dickens	D. I.	Jefferson	J. E.
Dimmit	D. M.	Johnson	J. H.
Donley	D. N.	Jones	J. O.
Duval	D. D.	Karnes	K.
Eastland	E. A.	Kaufman	K. A.
Edwards	E. D.	Kendall	K. E.
Ellis	E. L.	Kent	K. T.
El Paso	E. P.	Kerr	K. R.
Encinal	E. N.	Kimble	K. I.
Erath	E. R.	King	K. N.
Falls	F. A.	Kinney	K. O.
Fannin	F. N.	Knox	K. X.
Fayette	F. E.	Lamar	L. A.
Fisher	F. I.	Lamb	L. M.
Floyd	F. L.	Lampasas	L. P.
Fort Bend	F. B.	La Salle	L. S.
Franklin	F. K.	Lavaca	L. C.
Freestone	F. R.	Lee	L. E.
Frio	F. O.	Leon	L. 4.
Galveston	G. A.	Liberty	L. I.
Gaines	G. I.	Limestone	L. T.
Garza	G. R.	Lipscomb	L. B.
Gillespie	G. L.	Live Oak	L. O.
Goliad	G. D.	Llano	L.
Gonzales	G. O.	Lubbock	L. K.
Gray	G. Y.	Lynn	L. N.
Grayson	G. N.	Madison	M. 1.
Greer	G.	Marion	M. 2.
Gregg	G. G.	Martin	M. 4.
Grimes	G. M.	Mason	M. N.
Guadalupe	G. E.	Matagorda	M. R.
Hale	H.	Maverick	M. K.
Hall	H. A.	McCulloch	M. C.
Hamilton	H. I.	McLennan	M. L.
Hansford	H. F.	McMullen	M.
Hardeman	H. N.	Medina	M. A.
Hardin	H. D.	Menard	M. D.
Harris	H. S.	Milam	M. I.
Harrison	H. X.	Mitchell	M. H.
Hartley	H. T.	Montague	M. E.
Haskell	H. 6.	Montgomery	M. M.

Moore	M. O.	Sherman	S. N.
Morris	M. S.	Smith	S. T.
Motley	M. T.	Somervell	S. O.
Nacogdoches	N. S.	Starr	S. R.
Navarro	N. A.	Stephens	S. E.
Newton	N.	Stonewall	S. L.
Nolan	N. O.	Swisher	S. I.
Nueces	N. E.	Tarrant	T. A.
Ochiltree	O. H.	Taylor	T.
Oldham	O. O.	Terry	T. E.
Orange	O.	Throckmorton	T. H.
Palo Pinto	P. P.	Titus	T. I.
Panola	P. A.	Tom Green	T. G.
Parmer	P. R.	Travis	T. S.
Parker	P. K.	Trinity	T. R.
Pecos	P.	Tyler	T. L.
Polk	P. K.	Upshur	U. P.
Potter	P. O.	Uvalde	U.
Presidio	P. R.	Van Zandt	V.
Rains	R.	Victoria	V. I.
Randall	R. A.	Walker	W. K.
Red River	R. R.	Waller	W.
Refugio	R. E.	Washington	W. N.
Roberts	R. S.	Webb	W. E.
Robertson	R. O.	Wharton	W. T.
Rockwall	R. L.	Wheeler	W. H.
Runnels	R. N.	Wichita	W. A.
Rusk	R. K.	Wilbarger	W. R.
Sabine	S. B.	Williamson	W. I.
San Augustine	S. A.	Wilson	W. L.
San Jacinto	S. J.	Wise	W. S.
San Patricio	S. P.	Wood	W. O.
San Saba	S. S.	Yoakum	Y.
Scurry	S.	Young	Y. O.
Shackelford	S. D.	Zapata	X.
Shelby	S. H.	Zavala	X. X.

[Acts 1883, p. 76.]

Art. 7153. [4923] Owner may put county brand on his stock.—The owners of all horses and cattle, in addition to their private brand, may place said county brand on all horses and cattle owned by them, and shall be placed upon the neck of all animals so branded. [Id. sec. 3.]

Art. 7154. [4924] When stock removed from county may be counterbranded.—Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "county brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock. [Id. sec. 4.]

Art. 7155. [4925] Secretary of state to furnish lists of brands.—It shall be the duty of the secretary of state to furnish a printed list of the county brands to the county clerks of this state, who shall securely post the same in their office. [Id. sec. 7.]

Art. 7156. [4926] Brands of minors.—Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper

use of such mark and brand of any such minor. [Acts of 1848, p. 156. P. D. 4660.]

Art. 7157. [4927] **When stock to be branded.**—Cattle shall be marked with the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep and goats shall be marked with the ear mark of the owner on or before they are six months old. [Id. sec. 2. P. D. 4656.]

Art. 7158. [4928] **Disputes, how settled.**—If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court, and the ear mark and brand of the oldest date shall have the preference. [Id. sec. 3. P. D. 4657.]

Art. 7159. [4929] **Marks and brands to be recorded.**—It shall be the duty of the clerks of the county courts in their respective counties to keep a well-bound book, in which they shall record the marks or brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded; which record shall be subject to the examination of every citizen of the county at all reasonable office hours, free of charge for such examination. [Id. sec. 4. P. D. 4658.]

Art. 7160. [4930] **Unrecorded brands no evidence.**—No brands except such as are recorded by the officers named in this chapter shall be recognized in law as any evidence of ownership of the cattle, horses or mules upon which the same may be used. [Id. sec. 5. P. D. 4659.]

CHAPTER TWO.

PROTECTION OF LIVE STOCK.

	Article.		Article.
Inspection for glanders, etc.....	7161	Law cumulative.....	7165
Report to county judge, duty of in-	7162	Compensation for killing wolves, etc.....	7166
spector	7162	Proof, how made, etc.....	7167
Condemned animals to be killed.....	7163	Same	7168
Payment for animals killed, fee, etc.....	7164	Exemptions	7169

Article 7161. [4931] **County judge to order inspection when glanders, etc., exist.**—If at any time it shall come to the knowledge of any county judge of any county in this state, by affidavit of any credible citizen of his county, stating that affiant has reason to believe and does believe that glanders or farcy exists among any horses, mules, jacks or jennets in said county, naming owner or owners of such animal or animals so infected, if known, if unknown, so stating, it shall be the duty of such county judge, upon the filing of said affidavit, to immediately appoint three disinterested and intelligent citizens of said county, whose duty it shall be to carefully and minutely examine said animal or animals so reported to be diseased with glanders or farcy; said three citizens, before entering upon the duties required of them by this chapter, shall take an oath before some officer legally qualified to administer oaths that they will discharge their duties as prescribed by this chapter in a fair and impartial manner. [Acts of 1892, S. S., p. 11, sec. 1.]

Art. 7162. [4932] **Report of county judge; duty of inspector.**—If, after carefully and minutely examining the animal or animals so reported to be affected with glanders or farcy, said three citizens shall be of the opinion that the animal or animals so examined by them are diseased with glanders

or farcy, they shall condemn the same; and it shall be their duty to appraise such animal or animals at their just and full value at the time of such examination and condemnation, and shall forthwith report their action in writing to the county judge, giving in said report the number of animals condemned, if any, the owner or owners of same if known, and if unknown so stating it, with the appraised value of same. But if the said citizens have any reasonable doubt as to the diseased animals being affected with glanders or farcy, before condemning as above provided for, they shall require the owner or owners to have said diseased animals separated from contact with all other animals subject to contagion, for a reasonable time; and, when they are fully satisfied that the disease is glanders or farcy, then they shall proceed to condemn and destroy said animals as provided for in this article. [Id. sec. 2.]

Art. 7163. [4933] **Condemned animals killed.**—The county judge, upon the receipt of the report named in the preceding article, shall issue his order to the sheriff or any constable of his county, commanding him to seize said diseased animal or animals and take same to some secluded place and kill them and bury or burn the carcass. [Id. sec. 3.]

Art. 7164. [4934] **Payment for animals killed; fee, etc.**—After said animal or animals are killed, as provided in the preceding article, the party owning such animal or animals so killed may present his claim to the commissioners' court of the county where said animal or animals were killed, for the value of such animal or animals at the time the same were killed (if such animal or animals had any value); and the amount of such claim, or so much thereof as may be allowed by said court, shall be paid out of the general revenue of the county, as other claims against such county. The sheriff or constable killing, burying or burning said animal or animals shall be paid by the county such sum as the commissioners' court thereof may determine the service worth. [Id. sec. 4. Amended act 1899, p. 303.]

Art. 7165. [4935] **Law cumulative.**—This law is cumulative of all other laws now in force for the prevention of glanders and farcy. [Act 1892, S. S., p. 11, sec. 6.]

Art. 7166. [4936] **Compensation for killing wolves, etc.**—When any person in this state shall kill any wolf, panther, Mexican lion, tiger, leopard, wildcat, or catamount, he shall be paid in the county in which he kills such animal, or animals, the sum of fifty cents for each coyote wolf, wildcat, or catamount, and the sum of five dollars each for any other kind of wolves, and the sum of five dollars for each Mexican lion, tiger, leopard or panther. [Act 1903, p. 113, sec. 1.]

Art. 7167. [4937] **Proof, how made, etc.**—The commissioners' court of each county in this state shall order to be paid to the person or persons having killed any of said animals in their respective counties, as fixed in the preceding article, upon their exhibiting the scalp or scalps of the animals so killed by him or them to the commissioners' court of said county, accompanied by the written affidavit of such person or persons, stating when and where such animal or animals were killed, the kind of each, and that affiant or affiants and no other killed said animal or animals. [Id. sec. 2.]

Art. 7168. [4938] **Same.**—The scalps named in the preceding article shall consist of a sufficient portion of the hide of the animal killed, including the ears thereof, to enable the court to determine the kind of animal killed; and said court shall, in all cases where it is not satisfied of the truth of the matter set forth in said affidavit, reject any and all claims. The said court shall split each ear of the scalp as received, and destroy the same as soon as warrants shall have been issued for the payment of said scalp, but shall cause the affidavits mentioned herein to be filed by the clerk of said court for inspection of the public for two years from the date of filing, after which time said affidavits may be destroyed. [Id. sec. 3.]

Art. 7169. **Exemptions.**—The provisions of the three foregoing articles of this chapter shall not apply to the following counties: Armstrong, Archer, Angelina, Anderson, Austin, Atascosa, Bee, Briscoe, Bailey, Baylor, Bowie, Brazos, Burleson, Brazoria, Bastrop, Bexar, Bell, Carson, Collingsworth, Castro, Childress, Cottle, Cass, Camp, Cherokee, Chambers, Colorado, Caldwell, Coryell, Cooke, Comanche, Comal, Cameron, Collin, Dallas, Deaf Smith, Donley, Dickens, Delta, Denton, DeWitt, Dimmit, Ellis, Erath, Eastland, Floyd, Foard, Franklin, Fayette, Falls, Frio, Fannin, Freestone, Galveston, Grayson, Grimes, Gonzales, Guadalupe, Go-liad, Gray, Gregg, Hill, Hood, Hamilton, Hays, Hidalgo, Hansford, Hartley, Hutchinson, Hemphill, Hale, Haskell, Hardeman, Hall, Hopkins, Harrison, Hardin, Harris, Houston, Henderson, Hunt, Jasper, Jefferson, Johnson, Jack, Jones, Knox, King, Kaufman, Karnes, Lipscomb, Lamb, Lamar, Liberty, Limestone, Leon, Lee, Lavaca, La Salle, Live Oak, Moore, Motley, Matagorda, Milam, McLennan, Montague, McMullen, Morris, Marion, Madison, Montgomery, Mason, Nacogdoches, Navarro, Newton, Nueces, Orange, Ochil-tree, Oldham, Parmer, Panola, Polk, Parker, Palo Pinto, Red River, Rockwall, Rains, Robertson, Roberts, Randall, Rusk, Sherman, Swisher, Stonewall, Smith, Shelby, San Jacinto, San Patricio, San Augustine, Sabine, Somervell, Stephens, Shackelford, Starr, Tarrant, Titus, Tyler, Travis, Throckmorton, Upshur, Van Zandt, Wood, Walker, Washington, Wichita, Wilbarger, Wharton, Wise, Wil-son, Webb, Wheeler, Young and Zapata. [Id. sec. 4. Amended act 1909, p. 118.]

CHAPTER THREE.

OF THE SALE, SLAUGHTER AND SHIPMENT OF ANIMALS.

Article.	Article.		
Bill of sale to be taken.....	7170	County clerk to make a copy.....	7178
Possession, prima facie illegal, without.....	7171	Butchers' bond, etc.....	7179
Stock animals sold by marks, etc.....	7172	To keep a record, etc.....	7180
Butchers to report, etc.....	7173	Shall be open for inspection.....	7181
Butchers to register with county clerk.....	7174	May be sued upon bond, when.....	7182
Bill of sale, etc., to be recorded, etc.....	7175	Inspector to keep a record, etc.....	7183
Owners to file sworn lists.....	7176	Exempted counties.....	7184
Register of cattle.....	7177		

Article 7170. [4940] **Bill of sale to be always taken.**—Upon the sale, alienation or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this state, the actual delivery of such animals shall be accompanied by a written transfer from the vendor, or party selling, to the purchaser, giving the number, marks and brands of each animal sold and delivered. [Act Nov. 13, 1866, p. 223, sec. 1. P. D. 7445.]

Art. 7171. [4941] **Possession prima facie illegal, without.**—Upon the trial of the right of property of any animal, such as is mentioned in the preceding article, in any court of this state, the possession of such animal without the written transfer therein specified shall be deemed prima facie illegal. [Id.]

Art. 7172. [4942] **Stock animals sold by mark and brand, etc.**—Persons may dispose of stock animals of the kind mentioned in article 7170, as they run in the range, by the sale and delivery of the brands and marks; but in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall

be noted on the record of original marks and brands in the name of the vendee or purchaser. [Id.]

Art. 7173. [4943] **Butchers to report to commissioners' court.**—Every person in this state engaged in the slaughter and sale of animals for market shall make a regular report, under oath, to the county commissioners' court of the county, giving the number, color, age, marks and brands of every animal slaughtered, which report shall be made to each regular meeting of the court, and be filed with and kept on file by the county clerk for the inspection of any one interested. Each report shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter, and, if any of the animals slaughtered have been raised by himself, it shall be so stated in the report. Said butcher's report so made to the commissioners' court may be destroyed within the discretion of the county clerk after a period of five years. [Id. p. 224, sec. 3. P. D. 6557. Amended act 1907, p. 239.]

Art. 7174. **Butchers to register with county clerk.**—Before engaging in the business of slaughter and sale of animals for market, every person, firm, or corporation desiring to so engage, must first register his name, or their names, with the county clerk, indicating their purpose to engage in such business; and upon failure to so first register their names they may be punished as provided for in the Penal Code for this offense; provided, nothing in this law shall be construed to apply to slaughter houses in this state slaughtering as many as three hundred cattle per day. [Acts 1907, p. 239.]

Art. 7175. [4944] **Bill of sale and description to be recorded before driving.**—Any person who shall purchase animals of any class named in article 7170, for the purpose of driving to market out of the county where purchased, or out of the state, shall, before moving the animals out of the county where purchased, deposit with the clerk of the county court, for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by the vendor or vendors, which, together with the postoffice or place of abode of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record, under seal attached, shall be returned to the purchaser upon payment of the recording fees. [Id. pp. 223-4, sec. 2. P. D. 6556.]

Art. 7176. [4945] **Owners to file sworn descriptive lists.**—Persons intending to drive stock raised by themselves to market out of the county where raised, or out of the state, shall, before driving, deposit with the clerk of the county court for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list the county clerk shall record and certify, as in other cases of registration, and return to the owner. [Id. p. 224, sec. 2.]

Art. 7177. [4946] **Register of cattle shipped or slaughtered to be kept.**—The commanders or agents of all vessels, and the agents of all railroads on which cattle are exported from the state, and the proprietors or agents of all establishments for the slaughter of cattle within the state, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. [Act Sept. 5, 1850, p. 27, sec. 1. P. D. 460.]

Art. 7178. [4947] **County clerk to make a copy.**—Such register shall be deposited with the clerk of the county court of the county where the cattle were shipped or slaughtered on the first day of each month; and such clerk shall at once copy the same in a well-bound book to be kept for that purpose, and return the original to the party depositing it. The record kept by the county clerk shall be open at all times to public inspection without charge. [Id. sec. 2. P. D. 461.]

Art. 7179. [4948] **Butchers' bond, etc.**—Every person, before he shall set up and carry on the trade of a butcher or slaughterer of cattle in the state of Texas, shall file a bond, to be approved by the county judge of the county in which he desires to carry on the business, in a sum of not less than five hundred dollars nor more than five thousand dollars, payable to the state of Texas, conditioned that he shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, weight, and from whom purchased, and the date thereof; that he will have the hide and ears of such animal inspected by the inspector or some magistrate of the county within five days after it is slaughtered; and that he will not purchase any cattle that has been slaughtered by another, unless the hide and ears of such slaughtered animal accompanies said animal offered for sale; and that he will not purchase any animal that has been slaughtered by another when the ear marks or brands on the hide accompanying such animal when offered for sale have been changed, mutilated or destroyed. [Acts of 1889, p. 84.]

Art. 7180. [4949] **Shall keep a record, etc.**—Every person who shall carry on the business of butcher or slaughterer of cattle shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including mark, brand, age, weight and from whom purchased and the date thereof, and shall have the hide and ears of such animal or animals inspected by the inspector or some magistrate of the county within five days after such animal is slaughtered. [Id. sec. 3.]

Art. 7181. [4950] **Shall be open to inspection.**—The record provided for in the preceding article shall be open to inspection of all persons. [Id. sec. 5.]

Art. 7182. [4951] **May be sued upon bond.**—Any butcher or slaughterer of cattle who shall violate any of the conditions of the bond referred to in article 7179 may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given, and all sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county. [Id. sec. 7.]

Art. 7183. [4952] **Inspector to keep a record, etc.**—It shall be the duty of the inspector or magistrate who inspects such hides as are mentioned in this chapter to keep a record of the marks, brands, color and a general description of such hide, and for whom inspected, with the date of such inspection, and return the same to the clerk of the county court within ten days after such inspection, and shall be entitled to receive the sum of twenty-five cents for each hide so inspected, to be paid by the party having the hide inspected. [Id. sec. 8.]

Art. 7184. [4953] **Exempted counties.**—The provisions of the five preceding articles shall in no wise apply to the following counties: Anderson, Bell, Clay, Gonzales, Coryell, Hamilton, Mills, Brown, Comanche, Lavaca, Llano, San Saba, Concho, Runnels, Coleman, Travis, Grayson, Cooke, Montague, Colorado, Bexar, Jasper, Newton, Orange, Jefferson, Polk, San Jacinto, Tyler, Chambers, Hardin, Liberty, Harrison, Smith, Upshur, Gregg, Wood, Rains, Bowie, Cass, Morris, Titus, Lee, Bastrop, Fayette, Hill, Johnson, Ellis, McLennan, Falls, Robertson, Milam, Brazos, Galveston, Brazoria, Matagorda, San Patricio, Guadalupe, Caldwell, Hays, Blanco, Comal, Tarrant, Wise, Parker, Jack, Dallas, Nacogdoches, San Augustine, Sabine, Shelby, Panola, Rusk, Hunt, Hopkins, Delta, Franklin, Camp, Angelina, Houston, Leon, Grimes, Madison, Kaufman, Rockwall, Fannin, Lamar, Red River, Van Zandt, Henderson, Cherokee, Bosque, Hood, Erath, Somervell, Collin, Denton, Trinity, Walker, Montgomery, Harris, Austin, Washington, Wharton, Fort Bend, Waller, Burleson, Limestone, Freestone, Navarro, Young, Karnes, Mason, Medina, Kim-

ble, Kerr, Kendall, Bandera, Sutton, Gillespie, Williamson, Lampasas, Burnet, El Paso, Presidio, Brewster, Midland, Reeves and Marion. [Amend. Act 1909, p. 74.]

CHAPTER FOUR.

OF ESTRAYS.

<p>Who may take up stray animals.....7185 Oath, appraisalment and bond.....7186 Ownership, how proved.....7187 Proof of respectability, when.....7188 When taker up not entitled to compensation7189 Estrays not to be used until.....7190 When county commissioners to return.....7191 County clerk to record papers, etc.....7192 Two or more animals to be in one entry.....7193 Clerk to advertise.....7194 Property in estrays, etc.....7195 Return of sale.....7196</p>	<p>Article. Article. Sale, when to be made.....7197 Hogs, sheep, etc., how estrayed.....7198 Not to be estrayed until.....7199 Names of bidders to be given.....7200 Taker-up liable for damage.....7201 Taker-up may use, when.....7202 Death, etc., of estrays to be reported.....7203 Proceeds of sale, how disposed of.....7204 If taker up refuses to deliver, liable for damages7205 When owner may reclaim money.....7206 Notice to be sent by county clerk, when.....7207 Penalty for failure to send such notices.....7208</p>
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Article 7185. [4954] **Who may take up stray animal, etc.**—Hereafter when any stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox shall be found on the plantation or land of any citizen or his lessee for one year or more, such citizen or lessee may forthwith advertise the same (describing the animal's color and specifying the marks and brands, if any, also, giving the age and flesh marks of every kind) at three public places in the county in which such citizen resides, one of which notices shall be at the court house door, for at least twenty days, and shall also deliver to the clerk of the county court a copy of said notice, which shall be by him securely posted up in his office: after the expiration of which time, if no owner apply, it shall be the duty of the taker-up of said animal or animals to appear before some justice of the peace in said county and estray the same. [Act Oct. 26, 1866, p. 54. P. D. 6810.]

Art. 7186. [4955] **Oath, appraisalment and bond.**—Any citizen entitled to stray any animal, as provided in the preceding article, shall make oath that the animal which he proposes to stray was taken upon his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; which affidavit shall be sworn to and subscribed by the person estraying, and attested by the justice and filed; whereupon the said justice shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify the valuation, together with a particular description of the animal, including stature, marks, brands, color and age, under oath, which shall be attested by said justice, who shall thereupon require of the taker-up a bond, with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county and his successors in office, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisalment shall be transmitted by such justice to the clerk of the county court within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. [Act Oct. 26, 1866. P. D. 6811.]

Art. 7187. [4956] **Ownership, how proven, etc.**—At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any stray animal enumerated in the first article of this chapter to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, stature, color and age of the same, which certificate may be sworn to and subscribed before any officer authorized by law to administer oaths in the county where such animal may have been estrayed, which certificate shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such certificate and the payment of all costs incurred in posting such stray or estrays, to the taker-up, such owner shall be entitled to demand and receive the animal. [Id. P. D. 6812.]

Art. 7188. [4957] **Proof of respectability, when required.**—When the respectability of the witness named in the preceding article is not known to the officer administering the oath, the party claiming the stray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides. [Id.]

Art. 7189. [4958] **When taker-up not entitled to compensation.**—If the owner of any animal which has been estrayed in accordance with the provisions of this chapter be a resident citizen of the county in which such animal has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal. [Id.]

Art. 7190. [4959] **Estray not to be used until, etc.**—Any animal taken up as an stray according to the provisions of the preceding articles shall not be used for any purpose whatsoever until the party taking up such animal shall have given bond as required by article 7186. [Id. P. D. 6810.]

Art. 7191. [4960] **When county commissioner to return estrays.**—If any stray of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, it shall be the duty of the county commissioners, or any of them, to return the same, with a full description thereof, to the county clerk of their respective counties, who shall advertise the same in the manner specified in this chapter, and if such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animal and report the sale thereof to the clerk of the county court, and after paying the clerk's fee and retaining twenty per cent of the proceeds of such sale, he shall pay the remaining sum into the county treasury. [Id. P. D. 6813.]

Art. 7192. [4961] **County clerk to record papers.**—It shall be the duty of the clerk of the county court to record the papers transmitted to him, as provided in article 4571 [7186] in a separate book, to be kept by him for that purpose, for which he shall be entitled to demand and receive the same fees that are allowed by law for similar services, to be paid in all cases by the taker-up. [Id. P. D. 6814.]

Art. 7193. [4962] **Two or more animals to be in one entry.**—When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and no more fees (including fees for posting and advertising hereinafter mentioned) shall be charged than is allowed by law for one such animal. [Id.]

Art. 7194. [4963] **Clerk to advertise, etc.**—The clerk of the county court shall cause a statement of the appraisement and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if there

be no newspaper published in the county, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the court house door thereof; and the printer of such notice shall furnish the said clerk with a copy of the paper containing said notice, and it shall be the duty of the said clerk to file and preserve the same in his office for the inspection of all persons who may be interested; and for such publication the printer shall be entitled to receive from the party estraying the same the sum of two dollars, to be collected by the county clerk and paid to the order of the printer. [Id.]

Art. 7195. [4964] **Property in estrays, etc., sales, etc.**—The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisalment shall be deemed vested in the county wherein such stray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the court house door of the county, after giving notice of the same as required in the case of sheriffs' sales; and within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use and benefit. [Id. P. D. 6815.]

Art 7196. [4965] **Return of sale.**—Whenever a sale of an estray shall be made according to the provisions of the preceding article, the taker-up shall make a return of such sale, duly sworn to by him, to the clerk of the county court of the county in which the sale was made, who shall file the same in his office. [Id.]

Art. 7197. [4966] **Sales made on first Monday.**—All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day. [Id.]

Art. 7198. [4967] **Hogs, sheep, etc., how estrayed, etc.**—Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisalment, shall proceed to give notice as in the case of sheriffs' or constables' sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. [Id. P. D. 6816.]

Art. 7199. [4968] **Not to be estrayed until after four months.**—No animal enumerated in article 7198, except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an estray for at least four months previous to the time of estraying the same. [Id. Amended Act 1899, p. 234.]

Art 7200. [4969] **Names of bidders to be given.**—In making the returns of sales under this title, when the sale has been made at the residence of the taker-up or other place than at the court house door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family. [Acts 1866, p. 54. P. D. 6817.]

Art. 7201. [4970] **Taker-up liable for damages, when.**—If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured. [Id. P. D. 6818.]

Art. 7202. [4971] **Taker-up may use, when.**—The taker-up of an estray may use the same in moderation, after having executed bond as provided in article 7186, but should he abuse or injure the same he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Art. 7203. [4972] **Death, etc., of estray to be reported.**—Whenever an estray animal shall be found dead, or shall escape, the taker-up shall, without delay, make report thereof, in writing, to the clerk of the county court, under oath; which report shall be recorded by said clerk in a book to be kept by him for that purpose; and any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed; and shall also be liable to be indicted and punished as for perjury. [Id. P. D. 6819. P. C. 188.]

Art. 7204. [4973] **Proceeds of sale, how disposed of.**—All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county. [Id. P. D. 6820.]

Art. 7205. [4974] **If taker-up refuse to deliver, liable for damages.**—If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the requisitions of this chapter, such owner shall be entitled to his action therefor with damages. [Id. P. D. 6821.]

Art. 7206. [4975] **Owner may reclaim money in twelve months.**—At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto. [Id. P. D. 6822.]

Art. 7207. [4976] **County clerk to send notice of estray, etc.**—Whenever any person shall stray any animal on which any county brand may be found, it shall be the duty of the county clerk of the county in which said estray may be to immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and it shall be the duty of the county clerk of said county brand to record said notice in a book kept for that purpose, and post the same on the court house door; and it shall further be his duty to ascertain from his record of brands to whom said animal may belong, and to notify said owner by letter or otherwise; and for such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. [Acts of 1883, p. 76, sec. 5.]

Art. 7208. [4977] **Liability for failure.**—Any county clerk who shall fail to send a notice as required in article 7207 of this chapter, the county clerk so failing shall become liable to the original owner of said estray in an amount equal to the value of said estray. [Id. sec. 6.]

CHAPTER FIVE.

OF THE MODE OF PREVENTING HOGS AND CERTAIN OTHER ANIMALS FROM RUNNING AT LARGE IN COUNTIES AND SUBDIVISIONS.

Article.	Article.		
Commissioners' court to order election.....	7209	Fees and damages.....	7224
May be ordered in subdivisions, when.....	7210	Stock may be sold, when.....	7225
Requisites of petition.....	7211	Again may be sold, how.....	7226
Election, how ordered, etc.....	7212	Lawful fence.....	7227
Notice, how given, etc.....	7213	Subsequent election, when.....	7228
Requisites of order, etc.....	7214	May be impounded when fence law in	
Voting places.....	7215	force, when.....	7229
Managers to be appointed, when.....	7216	Stock not to be injured, etc.....	7230
Freeholders only to vote, etc.....	7217	Lawful fence may be determined by elec-	
Manner of voting, etc.....	7218	tion, etc.....	7231
Returns of election.....	7219	No election until lapse of two years.....	7232
Returns, how opened.....	7220	Proclamations to be issued.....	7233
Proclamation of result, etc.....	7221	In cases where there are less than fifty	
Stock may be impounded, when.....	7222	freeholders.....	7234
Not to be impounded, when.....	7223		

Article 7209. [4978] **Commissioners' court to order election.**—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners' court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision. [Const., art 16, sec. 22. Act Aug. 15, 1876, p. 150, sec. 1. Amended act 1909, p. 164.]

Art. 7210. [4979] **Election may be ordered in subdivisions, when.**—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held as provided by law in other cases relating to the adoption of the stock law. [Acts of 1881, p. 110.]

Art. 7211. [4980] **Requisites of petition.**—Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Acts of 1876, p. 150.]

Art. 7212. [4981] **Election, how ordered and conducted.**—Upon the filing of such petition, the commissioners' court, at its next regular term thereafter, shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 7213. [4982] **Notice, how given.**—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county, then by posting copies of such order at the court house door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. [Id.]

Art. 7214. [4983] **Requisites of the order.**—The order of the county judge shall specify:

1. The petition and the action of the commissioners' court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 7215. [4984] **Voting places.**—If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but, if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened. [Id. sec. 3.]

Art. 7216. [4985] **Managers to be appointed, when.**—If the election be for a division of the county, the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks. [Id. pp. 150-1, sec. 4.]

Art. 7217. [4986] **Freeholders only to vote.**—No person shall vote at any election under the provisions of this chapter, unless he be a freeholder and is also a qualified voter under the constitution and laws. [Const., art. 16, sec. 23. Id. p. 150, sec. 2.]

Art. 7218. [4987] **Manner of voting.**—All votes at any election in pursuance of this chapter shall be by ballot; and voters desiring to prevent the animal designated in the order from running at large shall place upon their ballots the words, "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the stock law." [Id. sec. 3.]

Art. 7219. [4988] **Returns of election.**—On or before the tenth day after any election under the provisions of this chapter, the persons holding such election shall make due return of all the votes cast at their respective voting places for and against said proposition to the county judge of the county, who shall tabulate and count said returns and ascertain the result of said election. [Id. p. 151, sec. 4.]

Art. 7220. [4989] **Returns, how opened.**—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or two respectable freeholders of the county. [Id. sec. 4.]

Art. 7221. [4990] **Proclamation of the result, and its effect.**—If a majority of the votes cast at such election shall be, "For the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation. [Id.]

Art. 7222. [4991] **Stock may be impounded, when.**—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land of any person other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. [Acts of 1887, p. 56.]

Art. 7223. [4992] **Not to be impounded, when.**—No animals shall be impounded, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another; and when-

ever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Id.]

Art. 7224. [4993] **Fees and damages.**—Any owner, lessee, or person in lawful possession of enclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day for sheep. The damages done by such stock, if any, and the fees due to the taker-up of stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the court house of the county; and provided, further, that nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this chapter. [Amend. 1895, p. 84.]

Art. 7225. [4994] **Stock may be sold, when.**—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases. [Id.]

Art. 7226. [4995] **May be sold, when and how.**—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court, and pay the same over to the county treasurer, to be received and disbursed by him as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, stray such stock, according to the laws regulating estrays in this state. [Id.]

Art. 7227. [4996] **Lawful fence.**—After the adoption of the stock law in any county or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter; and no person within such county or subdivision shall be required to fence against stock not permitted to run at large. [Acts of 1876, p. 150, sec. 5.]

Art. 7228. [4997] **Subsequent elections in case of defeat.**—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Id. sec. 5.]

Art. 7229. [4998] **May be impounded when fence law in force; lawful fence.**—Should any stock not permitted to run at large enter any enclosure of any owner or lessee of land, entitled to the benefit of this chapter, without his or their consent, it shall be lawful for the owner or lessee of said enclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his or her stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them, or pickets four feet high and not more than six inches apart, shall constitute a lawful fence. If boards or rails are used, then three boards to be not less than five inches wide and one inch thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provisions of this chapter shall be four feet high. [Acts of 1879, p. 66, sec. 6. Amended, act 1901, p. 290.]

Art. 7230. [4999] **Stock not to be injured, etc.**—If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise, maim, wound or kill any cattle or any horse, mule, jack, or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, it shall be lawful for such person to complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages he has sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the

trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this chapter to charge the following rates for impounding such stock as referred to in this chapter, to-wit, twenty-five cents per day per head. [Id. sec. 9.]

Art. 7231. [5000] **Lawful fence may be determined by election.**—Nothing in this chapter shall prevent the freeholders of any county, or subdivision of a county, where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board or plank shall constitute a lawful fence in such county or subdivision of same; the election for such purpose to be conducted in the same manner and under the same rules and regulations as elections provided for in the act authorizing the passage of stock and fence laws, approved August 15, 1876.

Art. 7232. [5001a] **No election until lapse of two years.**—After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that time the commissioners' court of each county in the state, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders, who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders, who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in such county, or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this title for a first election. [Act 1899, p. 80.]

Art. 7233. [5001b] **Proclamation to be issued.**—If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be "Against the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be "For the stock law," he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election. [Id.]

Art. 7234. [5001c] **In cases where there are less than fifty freeholders.**—Whenever there is territory between two subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, and in such territory there are less than fifty freeholders, an election shall be ordered on a petition of a majority of the freeholders residing in such territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. And in cases where there are no freeholders on such intervening or adjoining territory, then, on the petition of the owner or owners of the land to the commissioners' court, the said commissioners' court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own enclosed lands adjoining any other lands which have been added to

territory in which a stock law prevails, shall have the same right; and on petition of the owner or owners of such land to the commissioners' court, the said commissioners' court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivisions. [Id. Amended act 1907, p. 150.]

CHAPTER SIX.

OF THE MODE OF PREVENTING HORSES AND CERTAIN OTHER ANIMALS RUNNING AT LARGE IN PARTICULAR COUNTIES NAMED.

Article.		Article.
7235	Election to put law into operation.....	7246
7236	Election to repeal law.....	7247
7237	Intervening territory, election in.....	7248
7238	Petition shall state what.....	7249
7239	Order for election by commissioners' court.....	7250
7240	County judge to issue order and notice.....	7251
7241	Recitals in order.....	7252
7242	Election places.....	7253
7243	Officers of election.....	7254
7244	Qualifications of electors.....	7255
7245	Election by ballot, form of.....	7248
		7249
		7250
		7251
		7252
		7253
		7254
		7255

Article 7235. **Election to put law in operation.**—Upon the written petition of one hundred freeholders of any of the following counties: Anderson, Austin, Bastrop, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brown, Caldwell, Calhoun, Callahan, Camp, Cass, Cherokee, Clay, Coleman, Collin, Colorado, Cooke, Comal, Comanche, Coryell, Crosby, Cochran, Crane, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fayette, Franklin, Frio, Fisher, Gaines, Guadalupe, Garza, Glasscock, Gillespie, Grayson, Harrison, Haskell, Hays, Hill, Hood, Hopkins, Howard, Hockley, Hunt, Jack, Jackson, Jones, Johnson, Kaufman, Knox, Lamar, Lavaca, Limestone, Lynn, Llano, Lubbock, Mason, McLennan, Martin, Midland, Milam, Mitchell, Montague, Morris, Navarro, Nolan, Nueces, Parker, Rains, Matagorda, Red River, Rockwall, Rusk, San Patricio, Scurry, Smith, Somervell, Tarrant, Taylor, Terry, Titus, Travis, Upshur, Victoria, Van Zandt, Washington, Williamson, Wilson, Wise, Ward, Wood, Winkler, Wilbarger, Freestone, Hidalgo, San Saba, Starr, Swisher, Donley, Childress, Foard, Wharton, Clay, DeWitt, Robertson, Hamilton, Mills, Burnet, Atascosa, Medina, and Waller, or upon the written petition of fifty freeholders of any such subdivision of a county as may be described in the petition and defined by the commissioners' court of any of the above named counties, the commissioners' court of said county shall order an election to be held in such county, or such subdivision of a county, as may be described in the petition and defined by the commissioners' court, on the day named in the order, for the purpose of enabling the freeholders of such county, or such subdivision of a county as may be described in the petition and defined by the commissioners' court to determine whether horses, mules, jacks, jennets and cattle shall be permitted to run at large in such county, or such subdivision of a county, as may be described in the petition and defined by the commissioners' court; provided, that, where there is an application for an election to include an entire county, there shall not be less than twelve freeholders from

each justice precinct of said county as signers to the petition for such election. [Acts 1909, p. 121, sec. 1.]

Art. 7236. Election to repeal law.—Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners' court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, that such petition be not filed within less than two years from the date this law goes into effect; and provided, further, that such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, except by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter. [Id. sec. 2.]

Art. 7237. Intervening territory; election in.—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. [Act 1899, p. 220, sec. 2.]

Art. 7238. Petition shall state what.—Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Id. sec. 3.]

Art. 7239. Order for election by commissioners' court.—Upon the filing of such petition, the commissioners' court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id. sec. 4.]

Art. 7240. County judge to issue order and notice.—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the court house door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. [Id. sec. 5.]

Art. 7241. Recitals in order.—The order of the county judge shall specify:

1. The petition and the action of the commissioners' court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id. sec. 6.]

Art. 7242. Election places.—If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but, if the election is ordered for any particular subdivision, the

county judge shall designate the particular places in such subdivision at which the polls shall be opened. [Id. sec. 7.]

Art. 7243. **Officers of election.**—If the election be for a subdivision of the county, the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks. [Id. sec. 8.]

Art. 7244. **Qualifications of electors.**—No person shall vote at any election under the provisions of this chapter, unless he be a freeholder and is a qualified voter under the constitution and laws. [Id. sec. 9.]

Art. 7245. **Election by ballot, form of.**—All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words, "For the Stock Law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the Stock Law." [Id. sec. 10.]

Art. 7246. **Election returns.**—On or before the tenth day after any election under the provisions of this chapter, the persons holding such election shall make due return on all votes cast at their respective voting places for and against said proposition to the county judge of the county, who shall tabulate and count said returns and ascertain the results of said election. [Id. sec. 11.]

Art. 7247. **Same, effect of.**—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or by [of] two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners' court in the said county. And the order showing the result of said election thus determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law. [Act 1907, p. 123, sec. 12.]

Art. 7248. **Proclamation and time law goes into effect.**—If a majority of the votes cast at such election shall be "For the Stock Law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the court house door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation. [Act 1899, p. 220, sec. 13.]

Art. 7249. **Impounding stock.**—If any stock forbidden to run at large shall enter the enclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in the preceding article, the owner, lessee or person in lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him. [Id. sec. 14.]

Art. 7250. **Same.**—No animals shall be impounded, unless they have entered upon the enclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Id. sec. 15.]

Art. 7251. **Fees for impounding.**—Any owner, lessee or person in lawful possession of enclosed lands shall be entitled to the following fees for impounding stock, to-wit: Twenty-five cents per day per head for horses and mules, fifteen cents per day per head for cattle, and ten cents per day per head for jacks and jennets. The damages done by such stock, if any, and the fees due to the taker-up of stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders to the effect that said assessment is just, and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the court house of the county; and provided, further, that nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce, by suit in a court of competent jurisdiction, any claim he may have for such fees and damages, and to subject the stock so taken up for the payment of the same under the provisions of this chapter. [Id. sec. 16.]

Art. 7252. **Sale of impounded stock; fees.**—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Id. sec. 17.]

Art. 7253. **Unknown owner.**—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case when the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court, and pay the same over to the county treasurer, to be received and disbursed by him as in case of sales of estrays; or the taker-up may, at his option, after the expiration of five days, stray such stock according to the laws regulating estrays in this state. [Id. sec. 18.]

Art. 7254. **Lawful fence, what constitutes.**—After the adoption of the stock law in any county, or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter. [Id. sec. 19.]

Art. 7255. **Second election when proposition is defeated.**—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Id. sec. 20.]

CHAPTER SEVEN.

REGULATIONS FOR THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES.

Article.	Article.		
Inspector may be elected, etc.....	7256	Fees of inspector in such cases.....	7288
Governor to appoint, when.....	7257	Hides to be delivered to.....	7289
Term of office, etc.....	7258	Revised list of marks and brands.....	7290
Vacancies, how filled.....	7259	Same brands not to be recorded twice,	
Bond and oath.....	7260	where.....	7291
Appointees to give bond.....	7261	In the county where cattle range.....	7292
Seal of office.....	7262	Only one mark, etc., to be used.....	7293
Deputies may be appointed, when.....	7263	Counterbranding, etc.....	7294
Appointment to be recorded.....	7264	Authority to gather, etc.....	7295
Meaning of terms.....	7265	Inspections to be personal.....	7296
May authenticate instruments.....	7266	Certificates of inspection.....	7297
Inspections and records thereof.....	7267	Inspection before exporting.....	7298
Monthly returns to county clerk.....	7268	Certificate, where filed.....	7299
Exemptions from inspection.....	7269	Seizure of cattle not inspected originally.....	7300
Unbranded animals not to be certified.....	7270	Sequestration if necessary.....	7301
May seize certain animals.....	7271	Proceeds paid, where, and subject to	
Also unbranded hides, etc.....	7272	claims.....	7302
Procedure in case of seizure.....	7273	Description of cattle filed.....	7303
Bill of sale to be taken.....	7274	Change of destination.....	7304
Also in sale of hides.....	7275	Exempted counties.....	7305
Certificate of inspection to be given.....	7276		
Same.....	7277	Local Option as to Hide and Animal In-	
Road brand.....	7278	spection.	
Exportation of cattle to Mexico.....	7279		
Herds in transit may be inspected.....	7280	Commissioners' court to order election,	
Fees, how paid.....	7281	when.....	7306
Hides imported from Mexico.....	7282	Result to be declared, etc.....	7307
Horses and mules.....	7283	Ballots.....	7308
Suspicious hides to be seized.....	7284	In case election is carried.....	7309
Procedure upon seizure.....	7285	Fees of inspector.....	7310
Inspector to recover on proof.....	7286	Elections not to be held oftener than.....	7311
Hides to be sold if not proven away.....	7287		

Article 7256. [5002] **Inspector to be elected.**—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals," shall be elected by the qualified voters of such county in the same manner as other county officers are elected. [Const., art. 16, sec. 23. Act Aug. 23, 1876, p. 265, sec. 1.]

Art. 7257. [5003] **Governor may appoint in unorganized county.**—The governor is authorized to appoint a hide inspector for each unorganized county in this state [Acts of 1879, p. 89.]

Art. 7258. [5004] **Term of office.**—Inspectors of hides and animals shall hold their offices for the term of two years and until the election and qualification of their successors in office. [Act Aug. 23, 1876, p. 295, sec. 2.]

Art. 7259. [5005] **Vacancies, how filled.**—In case of a vacancy in such office, the commissioners' court shall fill the same by appointment for the

unexpired term; and until such vacancy is filled by such appointment the sheriff of the county shall discharge the duties of the office. [Act Aug. 19, 1876, p. 217, sec. 1.]

Art. 7260. [5006] **Bond and oath.**—Every person elected to the office of inspector of hides and animals, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the county commissioners' court of the county constituting his district, which bond shall be in a sum to be fixed by said court, not less than one thousand dollars, nor more than ten thousand dollars, payable to the county judge, conditioned that he shall well and truly perform the duties of his office, in accordance with the provisions of this chapter; and he shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on or attached to said bond, together with the certificate of the officer administering the same, which bond and oath shall be deposited and recorded in the office of the clerk of the county court of the county. The bond herein provided for shall not be void for want of form or on the first recovery, but may be sued on from time to time, in the name of any person injured by a breach thereof, until the whole penalty shall have been recovered. [Id. sec. 3.]

Art. 7261. [5007] **Appointees also to give bond.**—Persons appointed to fill vacancies in the office of inspector shall give bond and take the oath in like manner as prescribed in the preceding article, and shall not enter upon the duties of the office until such bond is given and approved and such oath is taken; but a sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond, but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector ad interim. [Act Aug. 19, 1876, p. 217, sec. 1.]

Art. 7262. [5008] **Seal of office.**—The county commissioners' court of each county shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of Hides and Animals, ——— county, Texas" [the blank to be filled with the name of the county], and each inspector and his deputy shall certify their official acts with the impress of such seal. Upon his retirement from office, the inspector shall deliver such seal, together with the books, papers and records of his office, to his successor. [Act Aug. 23, 1876, p. 296, sec. 6.]

Art. 7263. [5009] **Deputies may be appointed.**—Every inspector shall have power to appoint as many deputies as shall be necessary to perform the duties imposed on them by this chapter; and such deputies shall have the same power and authority to perform the duties of their office as their principal; and the inspectors shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall, before entering upon their duties, take and subscribe the oath prescribed by the constitution, which, together with the certificate of the officer administering the same, shall be indorsed upon the bonds. [Id. p. 295, sec. 4.]

Art. 7264. [5010] **Appointment to be recorded.**—The appointment of each deputy shall be in writing, with the seal of the inspector thereon, and shall, with their bonds and oath of office, be recorded by the clerk of the county court of the county constituting their district; and the inspectors shall be responsible to any persons injured thereby for the official acts of each of their deputies, and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties. [Id. pp. 295-6, sec. 5.]

Art. 7265. [5011] **Meaning of terms.**—Whenever in this chapter the word "inspector" is used, it shall be taken and deemed to be "the inspector of hides and animals," the words "deputy inspector" shall be taken to mean

the "deputy inspector of hides and animals," and the words "county," "district" or "inspection district" shall be held to include each organized county in this state not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. [Id. p. 301, sec. 27.]

Art. 7266. [5012] **May authenticate instruments.**—Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal. [Id. p. 302, sec. 30.]

Art. 7267. [5013] **Inspections and record thereof.**—It shall be the duty of the inspector, in person or by deputy, to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and the inspector shall keep a record, in a well-bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor or vendors, and of the purchaser or purchasers thereof. [Id. p. 296, sec. 7.]

Art. 7268. [5014] **Monthly returns to county clerk.**—He shall return a certified copy of all entries made in such record during each month to the clerk of the county court of the county on the last day of each month, which report shall be filed among the records of the county court. The book of records herein provided for shall at all times be open for the inspection of any person interested therein. [Id.]

Art. 7269. [5015] **Exemptions from inspection.**—The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned, as provided in the preceding articles. [Id.]

Art. 7270. [5016] **Shall not certify unbranded animals, etc.**—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands can not be ascertained, and he shall prevent the same from being taken or shipped out of the county, unless they are identified by proof or by a bill of sale signed by the owner of such hides or animal, and acknowledged before some officer authorized to authenticate instruments for record in this state. [Id. sec. 8.]

Art. 7271. [5017] **May seize certain animals, etc.**—Every inspector shall have power to and may seize and sequesterate all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mothers thereof, or are identified by the presentation of a bill of sale from the person proved to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this state. [Id. sec. 9.]

Art. 7272. [5018] **Also unbranded hides and animals.**—Every inspector shall have power to and may seize and sequesterate all unbranded animals or hides, and animals and hides upon which the mark or brand can not be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in the preceding article. [Id. sec. 10.]

Art. 7273. [5019] **Procedure in cases of seizure.**—When the inspector has seized any hides or animals, as provided for in the two preceding articles, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may

come within the jurisdiction of either of said courts; and it shall be the duty of said judge or justice to issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property, with a description of the same, commanding them to appear at a day named in said citation to show cause why the said property should not be forfeited to the county wherein the same was seized and sold for the benefit of said county; said citation shall be directed to the sheriff or any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, as herein required, it shall be the duty of the judge or justice of the peace issuing said citation to proceed to condemn the property mentioned in said citation, unless satisfactory proof should be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned; and in case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county. [Id. p. 304, sec. 44.]

Art. 7274. [5020] **Bill of sale to be taken.**—Every person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive any animal or animals for slaughter, shall, at the time of purchasing and before driving the same, procure a bill of sale from the owner or owners thereof, or from his or their legally authorized agent; which bill of sale shall be in writing, properly signed and acknowledged before some officer authorized to authenticate instruments for record in this state. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all the marks and brands discernable on said animals; and said animals shall, before leaving the county in which they have been gathered, be inspected by the inspector of such county or his deputy. [Id. p. 297, sec. 11.]

Art. 7275. [5021] **Also in sale of hides.**—Every person who shall purchase any hides of cattle shall, at the time of purchasing the same, obtain from the owner thereof, or from his legally authorized agent, a bill of sale in writing, certified to by the inspector, or by any officer authorized to take acknowledgments, which bill of sale shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green. [Id. sec. 12.]

Art. 7276. [5022] **Certificate of inspection to be given.**—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent, duly authorized in writing, which bill of sale, power of attorney or authority shall be in writing, duly signed and acknowledged by the person executing the same before some officer authorized to authenticate instruments for record in this state, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the provisions of this chapter, which certificate shall not be complete until the same and bill of sale herein provided for shall be recorded in the office of the clerk of the county court of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser or purchasers, and shall protect him or them from

the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported. [Id. sec. 13.]

Art. 7277. [5023] **Same subject.**—Any person or persons driving cattle in his or their own mark and brand shall be entitled to the certificate of inspection provided for in the preceding article, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the clerk of the county court of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle. [Id. sec. 14; amend, 1895, Sen. Jour., No. 101a, p. 484.]

Art. 7278. [5023a] **Road brand.**—Any person or persons who shall drive any cattle to market beyond the limits of this state shall, before removing such cattle from the county where the same are gathered, place upon each and every animal so to be driven a large and plain road brand, composed of any device he may choose, which brand shall be branded on the left side of the back behind the shoulder; and every person or persons using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county. [Acts of 1876, p. 295; Sen. Jour. 1895, p. 484.]

Art. 7279. [5023b] **Exportation of cattle to Mexico.**—Any person intending to drive or ship any animals to the Republic of Mexico may ship the same from any point on the coast of Texas, or may drive or ship them across the Rio Grande river at any point where a custom house of the United States is located, and shall not drive or ship such animals across the Rio Grande at any other point or points; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated; such inspection shall be made before shipment from the state or passage across said river of said animals. [Id.]

Art. 7280. [5023c] **Herds in transit may be inspected.**—Whenever a drove of cattle may be passing through any county, it shall be the duty of the inspector, if called upon to do so by any person, to stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed in articles 7267, 7271 and 7272. [Id.]

Art. 7281. [5023d] **Fees, how paid.**—If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle, but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance and request said drove was inspected. [Id.; Sen. Jour., 1895, p. 485.]

Art. 7282. [5023e] **Hides imported from Mexico.**—The hides of all cattle imported into this state from Mexico shall be inspected by the inspector of hides and animals of any county or district into which the same may be introduced or imported; and, should the importer of said hides fail or refuse to pay the inspection fees as required by law, the inspector is hereby authorized to retain possession of said hides and sell a sufficient number thereof, after public notice of three days, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. [Id.]

Art. 7283. [5023f] **Horses and mules.**—Horses and mules imported from Mexico into this state shall be inspected in accordance with the provisions

of the preceding article, and with like authority to retain and sell as therein provided for a failure to pay the inspection fees. [Id.]

Art. 7284. [5023g] **Suspicious hides to be seized.**—Should an inspector of hides and animals find among hides imported from Mexico any hides which, from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, it shall be his duty to separate said hides from the others undergoing inspection, and to notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. [Id.]

Art. 7285. [5023h] **Procedure upon seizure.**—Should no person appear to claim said hides, the inspector shall, within twenty-four hours, make oath before the county judge of the county, or before a justice of the peace of the county, that he has reason to believe that said hides have been stolen; whereupon said county judge or justice of the peace shall issue a citation, directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show cause why said hides should not be condemned.

Art. 7286. [5024] **Importer to recover on proof.**—Should said importer or claimant make proof that he is the lawful owner of said hides by showing a bill of sale from the owner of the same, or his legally authorized agent, and by showing a complete chain or transfer of title from the original owner of the brand to himself, or his firm, as the case may be, the county judge or justice of the peace shall direct that the same be delivered to said importer or claimant upon his paying the inspection fees. [Id.]

Art. 7287. [5025] **Hides to be sold, if not proven away.**—Should the importer or claimant of said hides fail to establish his claim as the lawful owner of the same, or to any number of said hides so seized, it shall be the duty of the county judge or the justice of the peace to direct that said hides be sold at public auction by the inspector of hides and animals, or his deputy, after a notice of ten days, published in a newspaper, should there be one published in said county, or if no newspaper be published in the county, then by notice in writing, posted at the court house and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. [Id.]

Art. 7288. [5026] **Fees of inspector in such cases.**—The inspector of hides and animals shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor; and said county treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county. [Id.]

Art. 7289. [5027] **Hides to be delivered to true owner, etc.**—Should any person appear either by himself, his agent or attorney, and claim any hides imported from Mexico at any time before said hides shall have been sold as above directed, and should said claim be established before the county judge or a justice of the peace of said county, such hides shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; provided, that at any time before proceedings shall have been commenced as above directed, the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides imported by him from Mexico and presented in any county of this state for inspection, and upon such payment, and the fees for inspection, such hides shall be released. [Id.]

Art. 7290. [5028] **Revised list of marks and brands.**—The clerk of the county court in each county shall transcribe the list of all recorded marks and brands in his county and revise the same. Such revised list shall be written in a well-bound book, kept for that purpose only, and shall be arranged as

follows, viz.: All brands of the letter class shall be placed in alphabetical order, following which shall be the numeral, character and device brands in the order of the date of their registration. Opposite each brand shall be stated the marks corresponding to said brand, the name of the owner of the brand, his place of residence; if the same be sold, the name of the person to whom sold, and his residence; the date of registration of brands and marks, particulars relating thereto. Before each brand shall be placed its number, commencing at one for the first brand on the revised list; and the name of the owner of each brand shall be indexed, reference being had in such index to the list number of the brand or brands of such owner; and all new brands and marks placed on record shall be immediately recorded and indexed in said book, which shall at all times be open to the inspection of all persons; provided, that the provisions of this article shall apply only to counties in which the work of transcribing the records has not already been done, in accordance with law. [Id. p. 300, sec. 23.]

Art. 7291. [5029] **Same brand, etc., not to be recorded twice, etc.**—In all cases where application for registration of any mark or brand shall be made, the clerk of the county court shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk of the county in which said brand had been recorded, stating that said brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded; and the clerk shall, on the record, make a minute setting forth said facts. [Id. sec. 24.]

Art. 7292. [5030] **In the county where cattle range.**—All marks and brands of cattle shall be recorded in the county or counties in which they usually range; provided, that when cattle are gathered near the county line the bills of sale of the same shall be recorded in both counties; and, when any stock of cattle is sold, the fact shall be noted on the record opposite or near the record of its mark and brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. It is made the duty of the inspector to procure certified copies of the marks and brands of this county for himself and his deputies, and, monthly, to have added thereto the marks and brands that may be recorded. [Id. p. 301, sec. 28.]

Art. 7293. [5031] **Only one mark and brand to be used.**—No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand; provided, that any person may own and possess animals in many marks and brands, the same having been by him acquired by purchase; and bills of sale in writing, properly acknowledged, from the previous owner or owners of his or their legally constituted agent, shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark. [Id. p. 300, sec. 22.]

Art. 7294. [5032] **Counterbranding.**—In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters

or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding. [Id. sec. 21.]

Art. 7295. [5033] **Authority to gather, etc.**—Any person having marks and brands recorded in the office of the clerk of the county court may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified list shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock; and the filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described. [Id. p. 209, sec. 20.]

Art. 7296. [5034] **Inspections to be personal.**—In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully inspect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. [Id., p. 301, sec. 29.]

Art. 7297. [5035] **Certificate of inspection.**—He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the recorded owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal, containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him or her, as appears by bills of sale from the recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself or herself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the state, for sale or slaughter; or, if out of the state, he shall then name the place on the border of the state through which it is proposed to drive or ship such stock. [Id.]

Art. 7298. [5036] **Inspection before exportation.**—Whenever any person shall be about to drive or ship any stock out of the state, if the inspector shall believe, or is informed by any credible person, that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment, or border county where said person leaves the state, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in article 7281 of this chapter, provided, that the said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and, if said inspection is made by the inspector, at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. [Acts of 7879, S. S., ch. 22.]

Art. 7299. [5037] **Certificate, where filed.**—One of these certificates the inspector shall immediately remit by mail, postage paid, to the first inspector.

and the party owning the cattle shall deposit the other with him in two months from the date of the original inspection, both to be kept by him in his office. [Id.]

Art. 7300. [5038] **Seizure of cattle not inspected originally.**—But if the inspector at the point of destination shall find, upon inspection, that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall be had as are prescribed in article 7271. [Id.]

Art. 7301. [5039] **Writ of sequestration if necessary.**—If the person in charge of any such cattle shall refuse to deliver the same into the possession of the inspector, such inspector may apply for and obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, and shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon the proceedings referred to in the preceding article shall be had before the officer issuing the writ, either in term time or in vacation. [Id.]

Art. 7302. [5040] **Proceeds paid into county treasury subject to claims.**—The net proceeds of the sale of cattle condemned under the two preceding articles, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle; and if no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. [Id.]

Art. 7303. [5041] **Description, etc., of cattle also filed.**—At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, the amount for which each sold. [Id.]

Art. 7304. [5042] **Change of destination.**—If the owner of the inspected herd should desire to sell, slaughter or ship the cattle, or any of them, at any other place than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination like proceedings shall be had in the way of inspection, comparison and return of the certificates of inspection as are prescribed for the original point of destination. [Id.]

Art. 7305. [5043] **Counties exempted.**—The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Bowie, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Delta, Denton, DeWitt, Dickens, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hiladgo, Hill, Hockley, Hood, Hopkins, Houston, Hunt, Irion, Jackson, Jack, Jasper, Jeff Davis, Jefferson, Johnson, Karnes, Kaufman, Kendall, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Madison, Marion, Mason, Medina, Maverick, McLennan, Milam, Mills, Mitchell, Montague, Montgomery,

Morris, Motley, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shackelford, Shelby, Smith, Somervell, Stephens, Tarrant, Terrell, Throckmorton, Titus, Trinity, Tyler, Upshur, Val Verde, Van Zandt, Victoria, Walker, Ward, Washington, Webb, Wharton, Wheeler, Williamson, Wilson, Wise, Ward, Winkler and Young, are hereby exempted from the provisions of this chapter, and from all laws regulating the inspection of hides and animals. [Acts 1909, pp. 30, 113.]

LOCAL OPTION AS TO HIDE AND ANIMAL INSPECTION.

Art. 7306. **Commissioners' court to order election, when.**—Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners' court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at general or special term, order such election to be held after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. It shall be the duty of the clerk of said court to prepare said notices and the sheriff to put up same and make return of such posting and file with said clerk, showing time and place of such posting. [Acts 1909, p. 127, sec. 1.]

Art. 7307. **Result to be declared, etc.**—The commissioners' court at the time of ordering said election shall appoint two persons to act as judges, designating one of such as presiding judge, and two persons to act as clerks, who shall hold said election, count the votes and foot up same, showing the number of votes for and against the issue; the result shall be prepared in duplicate and sealed up, one copy for the commissioners' court and the other to be retained by the presiding judge; and the presiding judge shall deliver or cause to be delivered one copy of the result of said election to the clerk of the county court for said commissioners' court within five days after said election. Within five days after such delivery of such returns to said clerk, the commissioners' court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. [Id. sec. 2.]

Art. 7308. **Ballots.**—The election shall be held under the law as now provided for holding local and general elections, and all qualified voters shall be entitled to vote, and each ballot shall have written or printed on same, "For Inspector," or, "Against Inspector." [Id. sec. 3.]

Art. 7309. **In case election is carried.**—If at such election a majority of the votes cast be "For Inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and inducted into office as now provided by law; but, in counties having no inspector, the commissioners' court shall appoint one to serve until the next general election, who shall give bond and take the oath of office as now provided by law. [Id. sec. 4.]

Art. 7310. **Fees of inspector.**—Such inspector as herein provided for shall be entitled to such fees for his services as are now provided by law; provided, that no inspector herein provided for shall be entitled to any fee, unless he shall make a personal inspection of each animal or hide to be inspected as provided by law. [Id. sec. 5.]

Art. 7311. **Election not to be held oftener than two years.**—No election shall be held oftener than every two years under this law. [Id. sec. 6.]

CHAPTER EIGHT.

LIVE STOCK SANITARY COMMISSION.

Article.	Article.
Commission created; oath, bond, term.....7312	Sheriffs and constables subject to com- mission .....7320
Qualifications of commissioners.....7313	Appropriation for purposes of this chap- ter .....7321
Duties and powers of commission.....7314	Quarantine line.....7322
When governor shall proclaim quaran- tine .....7315	Concurrence of two commissioners neces- sary .....7323
Commission to purchase supplies.....7316	Law cumulative .....7324
Railways to keep clean stock cars.....7317	
Infection to be reported.....7318	
Compensation of commissioners.....7319	

Article 7312. [5043a] **Commission created; oath, bond and term of office.**—There shall be appointed by the governor, and with the consent of the senate, a live stock sanitary commission of the state of Texas, composed of three members. Before entering upon the duties of their office, said commissioners shall take and subscribe to the usual oath of office and file the same with the secretary of state; and they shall also, before entering upon the performance of their duties, execute a bond, to be approved by the state comptroller, in the sum of ten thousand dollars each, conditioned that they will faithfully perform the duties of their office, which said bond they shall file with the secretary of state. The term of office of said commissioners shall be for a period of two years next from the day of their qualification, and until their successors shall have been appointed and qualified. [Acts of 1893, p. 70.]

Art. 7313. [5043b] **Qualifications of commissioners.**—The commissioners, whose appointment is provided for in the preceding article, shall each be practical live stock raisers in the state of Texas, and shall have been actively engaged in said business for at least five years next preceding the date of their appointment, and shall be bona fide residents of and stock raisers in the particular section of the state from which they may be appointed. One of said commissioners shall be appointed from the west, one from the south, and one from the eastern portion of said state. [Id.]

Art. 7314. [5043c] **Duties and powers of the commission.**—It shall be the duty of the commission provided for in article 7312 to protect the domestic animals of this state from all contagious or infectious diseases of a malignant character, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain, and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with live stock quarantine commissioners and officers of other states and territories, and with the United States secretary of agriculture, in establishing such interstate quarantine lines, rules and regulations as shall best protect the live stock industry of this state against Texas or splenic fever. It shall be the duty of said commission, upon receipt by them of reliable information of the existence among the domestic animals of the state of any malignant disease, to go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be affected with any such disease, and ascertain, if possible, what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious; and, if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread of any such disease. And no domestic animal infected with disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises, or grounds so quarantined, except by authority of the commissioners. The said commission shall also, from time to time,

give and enforce such directions and prescribe such rules and regulations as to separating, feeding, and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said commissioners are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act. [Id.]

Art. 7315. [5043d] **When the governor shall proclaim quarantine.**—When the commission shall have determined the quarantine lines and other regulations necessary to prevent the spread among domestic animals of Texas of any malignant, contagious, or infectious disease found to exist among the live stock of this state, or elsewhere, and given their orders as hereinbefore provided, prescribing quarantine and other regulations, they shall notify the governor of the state of Texas, who shall issue his proclamation, proclaiming the boundary of such quarantine around such diseased stock, and the orders, rules, and regulations prescribed by the commission; and such commission shall give such notice as may to them seem best to make the quarantine established by them effective. [Id.]

Art. 7316. [5043e] **Commission to purchase supplies, etc.**—The commission provided for in this chapter shall have power to purchase such supplies and material as may be necessary to carry into full effect all orders by them given, as hereinbefore provided; which said supplies and material and wages, and expenses of the veterinarian hereinafter provided for, shall be paid out of the moneys hereinafter appropriated, on the warrant of the comptroller, issued to said commissioners, upon their filing with the comptroller an itemized account thereof, properly verified by affidavit; provided, that no material or supplies may be purchased by the commissioners, except such as may be necessary to carry into effect the quarantine and other regulations prescribed by them. And such commissioners shall have the power to employ a competent veterinarian to assist them in the investigation of the diseases amongst the live stock of this state, whenever they may deem the services of one necessary; provided, that the compensation of such veterinarian shall not exceed the sum of ten dollars per day and actual expenses while so employed; and provided, further, that the expenditures for the compensation of veterinarians shall not exceed nine hundred dollars in any one year. [Id.]

Art. 7317. [5043f] **Railways to keep clean transporting cars.**—It shall be the duty of the railway corporations doing business in the state to cleanse and disinfect the cars used by them in transporting live stock in or through this state, at such times and places as the commissioners may designate, whenever, in the opinion of the commissioners, any such order may be necessary to prevent the spread of infectious or contagious disease; and such corporations violating the provisions of this article shall be liable to a penalty of five hundred dollars for each offense, to be recovered in a civil action, to be prosecuted under the direction of the attorney general in the name of the state of Texas. [Id.]

Art. 7318. [5043g] **Knowledge or suspicion of infection to be reported.**—It shall be the duty of any owner or person in charge of any domestic animal or animals, who discovers, suspects or has reason to believe that any of his domestic animals, or domestic animals in his charge, are affected with any contagious or infectious disease, to immediately report such fact, belief or suspicion to the commission and to the sheriff and county clerk of the county in which said domestic animals are found.

Art. 7319. [5043h] **Compensation of commissioners.**—The commissioners appointed by the governor, as hereinbefore provided, shall receive five dollars per day for the time by them necessarily employed in the discharge of the duties required by this chapter; and said commissioners, hereinbefore

provided for, shall receive in addition thereto the actual and necessary traveling expenses incurred by them and paid in the discharge of the duties required of them by the provisions of this chapter; which said per diem and expenses shall be drawn from the treasury on the warrant of the comptroller, to be issued to said commisisoners on their filing with the comptroller an itemized account thereof, properly verified by affidavit.

Art. 7320. [5043i] **Sheriffs and constables subject to orders of commissioners.**—The live stock sanitary commission shall have power to call upon any sheriff, deputy sheriff, or constable to execute their orders, and such officers shall obey the orders of said commissioners; and the officer or officers performing these duties shall each be entitled to two dollars and fifty cents per day for himself and horse, which payment shall be made upon a sworn account, approved by said commissioners; provided, said expenses under this article shall not exceed in any event five hundred dollars per annum. [Id.]

Art. 7321. [5043j] **Appropriation for purposes of this chapter.**—The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of the general revenue fund not otherwise appropriated, for the purpose of carrying into effect the provisions of this chapter; provided, that the exhaustion of the appropriation herein made shall terminate the liability of the state for the two years next following, and absolve it from any future claims of any and all persons who may have claims, real or pretended, under the provisions of this chapter. [Id.]

Art. 7322. [5043k] **Quarantine line.**—Any quarantine line that may be fixed by the live stock sanitary commission against Texas or splenetic fever shall be so fixed as to conform to the federal quarantine line established or that may be established by the United States department of agriculture. [Amended Act 1897, p. 4.]

Art. 7323. [5043l] **Concurrence of two commissioners, etc.**—No quarantine line shall be established at any time, nor regulations made in relation thereto, unless two of the live stock sanitary commissioners agree thereto.

Art. 7324. [5043m] **Cumulative law.**—This chapter does not repeal any law in force for the protection of domestic animals, but is cumulative thereto.

TITLE 125.

SUPPLIES FOR PUBLIC INSTITUTIONS.

[See Acts of 1909, p. 275, providing for supplying electric lights, etc., to public institutions at the capital.]

Chapter.

1. State Purchasing Agent for Eleemosynary Institutions.

Chapter.

2. Of the Mode of Supplying Fuel to the Executive and Other Departments.

CHAPTER ONE.

STATE PURCHASING AGENT FOR ELEEMOSYNARY INSTITUTIONS.

<p>Article. State purchasing agent; appointment; forbidden to receive rebates, etc. 7325 Oath; bond; forbidden to be concerned in sale of merchandise, etc., to state. 7326 Storekeepers; appointment; bond; duties. 7327 Manner of contracting for supplies. 7328 Bids, submission of. 7329 Bids, opening and acceptance of. 7330 Invoices, payment of. 7331</p>	<p>Article. Successful bidder must give bond. 7332 Emergency purchases. 7333 Purchases must be according to appropriations. 7334 Purchase of perishables. 7335 Purchasing agent's clerk. 7336 Institutions contemplated by this chapter. 7337 Payment only on affidavit. 7338</p>
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Article 7325. **State purchasing agent; appointment; forbidden to receive rebates, etc.**—The state purchasing agent shall be appointed by the governor, by and with the advice and consent of the senate, every two years, and shall hold his office for the term of two years from the date of his qualification, and until his successor is appointed and qualified. Said purchasing agent shall receive an annual salary of two thousand dollars, which shall not be increased or diminished during his term of office, and he shall not receive, directly or indirectly, any extra compensation in the way of commissions or otherwise. Said agent shall not be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of said institutions, or to any other department or institution of the state, or with any person, firm or corporation who is interested in, or in any manner connected with, any kind of contract with the state or any of its institutions and departments, nor shall he collect or be paid his salary, or any part thereof, while he is in any manner or degree indebted to the state, or in arrears in his accounts and reports as such agent. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party. [Act 1899; p. 138, sec. 1.]

Art. 7326. **Oath; bond; forbidden to be concerned in sale of merchandise, etc., to state.**—Upon being appointed and confirmed as aforesaid, said agent shall take the constitutional oath of office, and enter into a bond, with two or more good and sufficient sureties, payable to the state of Texas, in the sum of fifty thousand dollars, to be approved by the governor of the state, and conditioned for the faithful performance of his duties, and that he will correctly and honestly pass upon and award all bids and contracts for supplies, and will fully and accurately account to and pay over to the state, or to the persons authorized to receive the same, all moneys, merchandise and articles of value that shall come into and pass through his hands as such agent, or for which he may be responsible; and also conditioned that he will

honestly, faithfully and accurately disburse and account for all moneys controlled or handled by him in the performance of his duties. It is unlawful and within the conditions of said bond for said agent to sell or be in any manner concerned in the sale of any merchandise, supplies or other articles to any of the institutions herein named, or to any other department or institution of the state. It shall also be within the conditions of said bond and the same shall provide that said purchasing agent shall not accept or receive, directly or indirectly, by rebate, commissions or in any other manner whatever any money or other thing of value from any person, firm or corporation to whom said agent may award any contract, directly or indirectly. The said bond shall be filed in the office of the comptroller, and recoveries may be had on the same until exhausted. [Id. sec. 2.]

Art. 7327. **Storekeepers; appointment; bond; duty.**—There shall be appointed by the superintendents, with the advice and consent of the boards of managers, of said institutions, storekeepers and accountants, one for each of said institutions, who shall hold their offices for two years from date of qualification, or until their successors shall have qualified, unless sooner removed by the boards of managers at the suggestion of the superintendent, or upon the complaint of the purchasing agent, for inefficiency, incompetency, neglect of duty or other adequate cause affecting their faithful and satisfactory performance of duty. Said storekeepers or accountants shall receive a compensation not to exceed the sum of nine hundred dollars per annum, to be charged and paid as part of the current expenses of said institutions; and they shall not be entitled to charge, collect or receive any other compensation or commutation or commission, unless their own individual board and lodging, if they shall be required to reside within the institutions to which they are attached. Each of said storekeepers or accountants shall, before entering upon the performance of his duties, make and file with the comptroller of public accounts a bond in the sum of ten thousand dollars, payable to the state of Texas, to be approved by the governor and filed with the comptroller, which bond shall be conditioned for the full, faithful, accurate and honest performance of his duties; and it shall not be lawful for said storekeepers or accountants to sell or be in any way concerned in the sale of any merchandise, supplies or other articles to any of the institutions herein named, or to have any interest in any bid or contract therewith, or with any other institution or department of the state government. The offices or positions of steward, quartermaster or other similar position heretofore existing in any and all of said named institutions are abolished, and said storekeepers or accountants shall hereafter perform all the duties, except such as may be inconsistent with the provisions of this chapter heretofore imposed upon such abolished officers or employes, as well as such other duties as may be required of them by the management of said institutions. They shall also keep the purchasing agent constantly advised as to the amount and character of supplies on hand, and the amount and character required in order to keep the institutions constantly provided for. They shall also furnish any other information respecting such matters as may be desired by the said purchasing agent. [Id. sec. 3.]

Art. 7328. **Manner of contracting for supplies.**—It shall be the duty of the purchasing agent aforesaid to contract for all supplies, merchandise and articles of every description needed for the maintenance and operation of said institutions, except those supplies that are of a strictly perishable character, basing his contract or contracts upon estimates to be furnished him by the superintendents and approved by the boards of said institutions respectively, by the first day of May of each year, for an entire year; and all such contracts shall be made after full notice by advertisement of not less than four weeks in at least four of the leading papers of the state, to be

selected by said agent and within the limit of appropriations made by the legislature for such purposes, regard being had to the appropriation for each institution. Such advertisement shall call for sealed bids or proposals to furnish the aggregate of the desired articles and supplies as estimated for by such institutions, naming the articles and supplies and the quantities and character required; and all such bids or proposals shall be for the entire period of one year; such supplies, articles and merchandise to be delivered at such times, in such quantities, and to such institutions as said agent may from time to time designate; and, should the supplies, or any portion thereof, as contracted for, be not sufficient for the year for which the contract or contracts shall be made, then the contractor or contractors shall be required to furnish such additional supplies at the prices named for similar articles under the contract or contracts; provided, that should said purchasing agent at any time discover that he could purchase the same supplies for less money for any one year by buying the same for a less length of time than one year, he shall have the authority to make such purchases for a shorter length of time, but not less than three months. It being the purpose of this chapter to authorize and require said purchasing agent to make such contracts upon such terms as will secure the best and cheapest rates for the state in the purchase of supplies and articles of necessity for said institutions, and to that end he shall reserve the right to reject any and all bids, or to accept any bid in part or reject it in part; and if none of the bids and proposals are deemed advantageous and satisfactory, he may buy in the open market until a proper and satisfactory bid is offered. The period for which such bids or proposals are invited shall be clearly stated in said advertisements, as well as the terms and conditions contemplated by the provisions of this chapter. When the same article is estimated for by two or more institutions, but of different brands or grades, the purchasing agent may determine which of the brands or grades shall be purchased, so as to produce uniformity in use by all the institutions; provided, that other things being equal, supplies offered by bidders who have an established local business in this state shall have preference. [Id. sec. 4.]

Art. 7329. Bids, submission of.—Any and all bids or proposals under this chapter shall be accompanied by a good and sufficient bond or a certified check, in such sum as the said purchasing agent may require, the same to be stated in the advertisements aforesaid; and the said agent may, if he deems it advisable, advertise for the various articles and supplies needed separately or together, and may accept the bid or bids for the same to be furnished separately or all by one bidder, as may be most advantageous to the state, and when purchases are made by the state purchasing agent, preference shall be given to state or home products, all things being equal. [Id. sec. 5.]

Art. 7330. Bids, opening and acceptance of.—All bids shall be opened on the date and at the place specified in the advertisement for the same, and such opening and inspection of the bids shall be made by the purchasing agent in the presence of the governor and comptroller of public accounts and of the superintendent and board of managers, if they desire to be present. The supplies and articles furnished under all bids and contracts shall be such as are called for by requisitions of the superintendents of the several institutions named, and equal to and of the same quality as the sample furnished purchasing agent; and all supplies furnished by contract as provided herein shall be equal to the sample which is required by article 7328 to accompany the bid. And when the supplies delivered under contract do not come up to the sample, the superintendent shall refuse to accept the same. The estimates furnished said purchasing agent as aforesaid, upon which he makes his advertisements and contracts, shall, as near as practicable, state

the quantity and quality of the articles and supplies needed, and when possible, the brand of the same, and copies of such estimates shall be filed with the comptroller and be open to public inspection. [Id. sec. 6.]

Art. 7331. **Invoices, payment of.**—Invoices of all supplies of whatever kind shall be furnished in triplicate by the contractor or seller at the time of each delivery of said supplies, two of which shall be transmitted to the storekeeper of the institution to which supplies are sent, and one by the same mail to the purchasing agent. As soon as the supplies shall have been received and examined by the storekeeper of the institution to which the same shall have been shipped, and if he shall find them to correspond in every particular with the invoices transmitted him and the samples by which the supplies were sold, he shall transmit to the purchasing agent one of said invoices with a certificate thereon that the supplies received correspond in every particular with the invoice and the sample by which the supplies were sold; and if the purchasing agent shall, upon further examination, find such invoice to be correct, he shall transmit it with his approval to the comptroller; and when such invoice so approved by the storekeeper of the institution to which the supplies named therein have been furnished, and by the purchasing agent, shall have been further approved by the comptroller, he shall draw his warrant for the amount due on the invoice, or upon so much thereof as has been allowed, upon the state treasury, and it shall be charged against the institution so furnished. And the contractor or seller, to the invoice to be transmitted by him to the storekeeper, thence to the purchasing agent, and thence to the comptroller, shall append an affidavit made and subscribed to by him before any officer having a seal and authorized to administer oaths, that the invoice is correct, and that it corresponds in every particular to the supplies furnished and shipped. [Id. sec. 7.]

Art. 7332. **Successful bidder must give bond.**—When any bid shall have been accepted, the purchasing agent shall require of the successful bidder a bond payable unto the state, with good and sufficient sureties, in the sum not less than one-third of the amount of the bid, to be approved by the comptroller, conditioned that he will fully, faithfully and accurately execute the terms of the contract into which he has entered, said bond to be filed in the office of the comptroller, and recoveries may be had on such bond until exhausted. [Id. sec. 8.]

Art. 7333. **Emergency purchases.**—In case any temporary and unforeseen exigency should arise in any of the institutions named, and it shall be made to appear upon the written statement of the superintendent to the board of managers of such institution that a serious detriment will be caused to the service if the method of purchase, as hereinbefore defined, shall be pursued, then such board, if upon examination it shall deem an immediate purchase necessary, may by appropriate order, to be approved by the governor and duly entered upon its minutes, authorize the purchase of such supplies as may be needed to meet such temporary and unforeseen exigency, and which are not embraced in any existing contract; and the superintendent may thereupon direct the storekeeper to purchase the same in open market. A report of such purchase, together with a copy of the application of the superintendent, and the order of the board, shall be transmitted to the purchasing agent, and he shall transmit the same, with his endorsement thereon, to the comptroller, and upon it the comptroller shall issue his warrant upon the treasury of the state for the amount so expended. The provisions of this article shall only apply to articles and supplies that are not of a strictly perishable character. [Id. sec. 9.]

Art. 7334. **Purchases must accord with appropriations.**—All purchases by contract or otherwise, as herein authorized, shall be in accordance with such

appropriations as have been made by the legislature for the support of the several institutions respectively. [Id. sec. 10.]

Art. 7335. **Purchase of perishables.**—The governor, comptroller, and purchasing agent shall frame and transmit to each institution a system of rules and regulations for the purchase of such supplies as are strictly perishable in their character, and to which conformity by all the institutions is hereby required. [Id. sec. 11.]

Art. 7336. **Purchasing agent's clerk.**—The purchasing agent shall have authority to appoint one clerk to assist him in his duties, with a salary not to exceed one thousand dollars per annum, and shall make an annual report to the governor at the end of each fiscal year covering all his acts and doings; and such report shall be laid before the legislature at its next session thereafter. [Id. sec. 12.]

Art. 7337. **Institutions contemplated by this chapter.**—The institutions herein contemplated are those for the care of the insane, the deaf and dumb, the blind, the orphans, the Confederate home, and all others of a charitable and eleemosynary character, to be hereafter established under state patronage and control. [Id. sec. 13.]

Art. 7338. **Payment only on affidavit.**—No account for goods, wares or merchandise purchased by any officers to whom this chapter refers shall be paid, unless sworn to as required by article 3712, which affidavit shall further state that no commission or other compensation has been or will be paid as a consideration for such purchase, and that affiant knows such facts. [Id. sec. 15.]

CHAPTER TWO.

OF THE MODE OF SUPPLYING FUEL TO THE EXECUTIVE AND OTHER DEPARTMENTS.

	Article.		Article.
Board of contractors.....	7339	Contractor's bond.....	7344
Advertisement for proposals.....	7340	Rescission of contract.....	7345
Proposals, how made.....	7341	No officer to be interested in contract.....	7346
Contract awarded to lowest bidder.....	7342	Rate for fuel.....	7347
Bids to be guaranteed.....	7343	Record of proceedings.....	7348

Article 7339. [2929] **Board of contractors; duration of contract.**—The attorney general, treasurer, and secretary of state are constituted a board of contractors, and required to contract with any suitable person or persons, firm or firms, who are residents of and doing business in this state, to furnish such fuel as may be required by law or needed by any department of the state government, except the judicial department; and said contracts shall be for the term of one year, and until a new contract shall be made and approved. [Act Aug. 21, 1876, p. 273, sec. 1; Const., art. 16, sec. 21.]

Art. 7340. [2930] **Advertisement for proposals.**—The secretary of state shall every year, and at such other times as are necessary, advertise for thirty days in one or more newspapers published in the city of Austin, and having the largest circulation, for sealed proposals for furnishing such fuel, and shall in said advertisement state a time and place when and where said proposals shall be received and opened and contract awarded, not exceeding forty days from the date of the first publication of said advertisement; and he shall in said advertisement give such specifications and estimates of the probable amount and quality of fuel that will be required as may be practicable. [Id. sec. 2.]

Art. 7341. [2931] **Proposals, how made.**—All proposals shall be sealed and addressed to the secretary of state, and shall be indorsed with the statement that they are proposals for fuel, and when received shall be filed carefully away by the secretary of state in his office, and the seals thereof shall not be broken until the day named in the advertisement for awarding the contract, and shall be opened in the presence of the contracting board and such bidders as may desire to be present. [Id. sec. 2.]

Art. 7342. [2932] **Contract awarded to lowest bidder.**—The bids shall be examined by the contracting board, a careful comparison made, and the contract awarded to the lowest and most responsible bidder, whose bid shall be below such maximum rates as are hereinafter prescribed. [Id.]

Art. 7343. [2933] **Bids to be guaranteed.**—Each bid shall be accompanied by a guarantee, signed by at least two responsible citizens, guaranteeing that if the contract be awarded to said bidder that he or they will enter into contract, and give a good and sufficient bond to carry out the same. [Id.]

Art. 7344. [2934] **Contractor's bond.**—The party to whom any contract is awarded shall immediately after such award enter into bond in such sum as may be prescribed by the board of contractors, payable to the state, and with good and sufficient sureties to be approved by the board, conditioned for the faithful performance of such contract; which bond shall be deposited in the office of the secretary of state.

Art. 7345. [2935] **Rescission of contract.**—At any time after a contract has been made and entered into with any person or firm, as herein provided, the legislature may annul said contract if not executed, and may alter or amend by enactment the maximum rates for such fuel. The board of contractors shall have power and is hereby required when the legislature is not in session to cancel the contract whenever the party or parties fail to comply

with the contract as promptly as the exigencies of the public service demand; and it shall be their duty to let out a new contract in the manner herein provided. [Id. sec. 3.]

Art. 7346. [2936] **No officer to be interested in contracts.**—No member or officer of any department of the government shall be in any way interested in said contracts; and all such contracts shall be in writing and signed by the board of contractors, and approved in writing by the governor, secretary of state, and comptroller. [Id. p. 274, sec. 5.]

Art. 7347. [2937] **Rate for fuel.**—The rate paid for fuel in said contracts shall not exceed six dollars and ten cents per cord for dry cedar, and five dollars and ten cents per cord for dry oak and other kinds of wood, except cedar. [Id. sec. 6.]

Art. 7348. [2938] **Record of proceedings.**—The secretary of state shall keep a record of his proceedings and the proceedings of the board of contractors; and a majority of said board shall be competent to do business.— [Id. sec. 4.]

TITLE 126.

TAXATION.

Chapter.	Chapter.
1. Of the Levy of Taxes and Payment of Occupation Taxes.	11. Of the Property Subject to Taxation, and the Mode of Rendering Same.
2. Taxes Based Upon Gross Receipts.	12. Of the Assessment of Taxes; Election and Qualification of Assessor.
3. Franchise Tax.	13. Of the Collection of Taxes; Election and Qualification of Collector.
4. State Intangible Tax Board.	14. Of the Assessment and Collection of Back Taxes on Unrendered Lands.
5. Tax on Liquor Dealers.	15. Delinquent Taxes.
6. Tax on Sale of Intoxicating Liquors in Local Option Territory.	16. Evidence of Title to Redeem Land.
7. Tax on Dealers in Non-intoxicating Malt Liquors.	17. Assessment and Collection of Taxes in Certain Cases.
8. Tax on Persons Soliciting Orders or Operating Cold Storage for Intoxicating or Non-intoxicating Beverages in Local Option Districts.	18. Of Municipal Taxes to Pay Subsidies in Aid of Railroads and Other Internal Improvements.
9. Occupation Tax on Handling Liquors C. O. D.	19. New Counties.
10. Inheritance Tax.	

CHAPTER ONE.

OF THE LEVY OF TAXES AND PAYMENT OF OCCUPATION TAXES.

Article.	Article.
Board to calculate ad valorem tax.....7349	Tax collector to be furnished books.....7360
Tax assessor to make certificate to comptroller.....7350	Tax to be paid before occupation begins.....7361
Method of ascertaining tax rate.....7351	Occupation tax receipts to be furnished collector.....7362
Comptroller to certify rate to tax assessor.....7352	Account of occupation tax receipts by collector.....7363
Commissioners' court to calculate county rate, when.....7353	License.....7364
Foll tax.....7354	Purchaser of unexpired license may pursue occupation, when.....7365
Occupation tax.....7355	Powers and duties of state revenue agent.....7366
Tax on dealers in cannon crackers.....7356	State revenue agent to have access to books, etc.....7367
County ad valorem.....7357	Compensation.....7368
Taxes payable in money.....7358	
Collector to keep books.....7359	

Article 7349. **Board constituted.**—The governor, comptroller of public accounts, and treasurer of this state, are constituted a board to calculate the ad valorem tax to be levied and collected each year for state and public free school purposes. [Act 1907, p. 464, sec. 1.]

Art. 7350. **Tax assessor to make certificate to comptroller.**—It shall be the duty of the tax assessor of each county in this state to make to the comptroller of public accounts, on or before the fifteenth day of July of each year a statement, showing as nearly as can be ascertained from his inventories or assessments, the total amount of property in each county subject to taxation; provided, that the tax for state and public free school purposes shall not be calculated and carried out upon said rolls. [Id. Amended Act 1909, p. 371, sec. 2.]

Art. 7351. **Method of ascertaining tax rate.**—Within five days after the comptroller of public accounts has received such certified statements from every assessor within this state, said board shall meet for the purpose of calculating the ad valorem rate for taxes to be collected for the state and public free school purposes. In calculating said rates, the board shall calculate the same by the following rules and upon the following basis: They shall find,

by adding together all the property subject to taxation in all the counties as shown by the certified statements returned by the assessors, the total valuation of all property within this state subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the legislature, which will or which may become due by the state during the following fiscal year, the total sum which will or which may become due by the state, during the following fiscal year. They shall find, by adding all sums paid into the state treasury as taxes for state purposes from all sources other than as ad valorem taxes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum paid into the state treasury from said sources during said time. They shall find, by subtracting from the total sum which will or which may become due by the state during the next succeeding fiscal year the total sum which was paid into the state treasury as taxes for state purposes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum for state purposes which must be collected by ad valorem taxes. They shall add to such remainder twenty per cent of said remainder. They shall divide the total sum for state purposes which must be collected by ad valorem taxes added to twenty per cent of such total sum by the quotient of the total valuation of all property within this state divided by one hundred. The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for state purposes; provided, that said quotient shall not be run to more than three decimals; and provided, that the rate for state purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, the said board shall take into consideration the number of children in the state within the scholastic age to be determined from the most recent official school census; and shall fix a rate that will yield and produce for such fiscal year four dollars per capita for all the children within the scholastic age, as shown by said scholastic census; provided, the rate so fixed for any year shall never exceed the rate fixed by law. [Act 1907, p. 464, sec. 3.]

Art. 7352. Comptroller to certify rate to tax assessor.—It shall be the duty of the comptroller of public accounts to certify to the assessor of taxes of each county in this state, through registered letter, the rate of taxes for state purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the state and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the state for state purposes, and also the taxes due for public free school purposes, on all taxable property within his county, as set out in article 7351, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the clerk of the county court and to be returned to the comptroller of public accounts, as provided by law. After he has so completed the said copies of the tax rolls, he shall return to the comptroller of public accounts a copy of same. [Id. sec. 4.]

Art. 7353. Commissioners' court to calculate the county rate, when.—The commissioners' courts of the several counties of this state, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the comptroller of public accounts the certificate required in article 7350 and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls. [Id. sec. 5.]

Art. 7354. [5048] **Poll tax.**—There shall be levied and collected from every male person between the ages of twenty-one and sixty years, resident within this state, on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf and dumb or those who have lost one hand or foot, excepted) an annual poll tax of one dollar and fifty cents, one dollar for the benefit of free schools, and fifty cents for general revenue purposes; provided, that no county shall levy more than twenty-five cents poll tax for county purposes. [Acts 1882, p. 18.]

Art. 7355. [5049] **Occupation taxes.**—There shall be levied on and collected from every person, firm, company or association of persons pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance, except where herein otherwise provided, on every such occupation or separate establishment, as follows:

Section 1. **Itinerant merchants.**—From every merchant who may remove from place to place and offer for sale “bankrupt stocks” of goods, or advertising “fire sales,” or “water and fire damaged stocks for sale,” for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each and every place where such business is located; and for each additional month that such sales are continued, at any given place, said merchant shall pay an additional sum of twenty dollars; provided, that where they remain for six months in one place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month; and provided, further, that, if they remain in one place for the period of twelve months, they shall be required to pay, in addition to the one hundred dollars for the first month, the sum fixed in the preceding paragraph, according to class and amount of goods sold in one year.

Sec. 2. **Traveling vendors of patent medicines.**—From every traveling person selling patent or other medicines, one hundred dollars; and no traveling person shall so sell until said tax is paid; provided, that this tax shall not apply to commercial travelers, drummers or salesmen making sales, or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale.

Sec. 3. **Auctioneers.**—From every auctioneer, an annual tax of ten dollars.

Sec. 4. **Ship brokers and agents.**—From every person, firm or association of persons following the occupation of ship brokers or ship agents, an annual tax of ten dollars.

Sec. 5. **Persons selling on commission.**—From every person, firm or association of persons selling on commission, ten dollars.

Sec. 6. **Itinerant physicians, etc.**—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars.

Sec. 7. **Shooting gallery.**—From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of thirty dollars in each county.

Sec. 8. **Billiard and pool tables.**—From every billiard or pool table, or any thing of the kind used for profit, twenty dollars; and any such table used in connection with any drinking saloon or other place of business where intoxicating liquors, cigars or other things of value are sold or given away, or upon which any money or other thing of value is paid, shall be regarded as used for profit.

Sec. 9. **Nine and ten pin alleys.**—From every nine or ten pin alley, or any other alley used for profit, by whatever name called, constructed or operated upon the principle of a bowling alley, and upon which balls, rings or other

devices are used as [or] substitutes thereof are rolled, without regard to the number of pins used, or whether pins are used or not, or whether the balls, rings or other device are rolled by hand or with a cue or any other device, one hundred dollars. Any such alley used in connection with any drinking saloon, or any drug store, or with any drug store where intoxicating liquors are sold or given away, or upon which money or anything of value is paid, shall be regarded as used for profit.

Sec. 10. **Hobby horses, etc.**—From all persons keeping or using for profit any hobby-horse, flying-jenny, or device of that character, with or without name, fifteen dollars for each county wherein the same are kept or used.

Sec. 11. **Foot peddlers.**—From every foot peddler, five dollars in each county in which he peddles; from every peddler with one horse or one pair of oxen, the sum of seven dollars and fifty cents in the county in which he peddles; from every peddler with two horses or two pair oxen, ten dollars in each county in which said occupation is pursued; from every peddler with sail or other boat in streams along coasts or bays of this state, ten dollars in each county in which said occupation is pursued; provided, that nothing herein contained shall be so construed as to include traveling vendors of literature or traveling vendors of poultry, vegetables, fruits or other country produce exclusively, and fruit trees exclusively.

Sec. 12. **Clock peddlers.**—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this chapter when sold in his place of business.

Sec. 13. **Theaters.**—From every theater or dramatic representation for which pay for admission is demanded or received in towns or cities of fifteen hundred inhabitants or less, one dollar; in towns and cities of fifteen hundred and not over three thousand, two dollars; in towns and cities of over three thousand and not less than five thousand, three dollars; in towns and cities over five thousand and not over ten thousand, four dollars, and in towns and cities of over ten thousand inhabitants, five dollars per day for every day they may perform; provided, that theatrical or dramatic representations given by performers for instruction only, or entirely for charitable purposes, shall not be herein included; provided, however, that this tax shall not be collected where the performances are exhibited in regularly recognized opera houses or theaters; but in lieu of said tax the managers of said opera houses or theaters shall pay an annual occupation tax of twenty-five dollars.

Sec. 14. **Circus.**—From every circus wherein equestrian or acrobatic feats and performances are exhibited, for which pay for admission is demanded or received, for each performance or exhibition where an admission fee of one dollar is charged, two hundred and fifty dollars; for each performance or exhibition where admission fee of seventy-five cents is charged, two hundred dollars; for each performance where fifty cents or less is charged, one hundred dollars; provided, that the amount of fee charged for reserved seats shall be considered as a part of such admission fee; provided, that where there is a combination of circus and menagerie, or circus and other exhibitions, the highest tax fixed by this law for any division or department of the combination shall be collected; provided, further, that every show or exhibition which advertises itself as a circus and menagerie, or a combination of circus and menagerie, shall be held and construed to be a circus or a menagerie, or a circus and menagerie, whether it be such or not.

Sec. 15. **Menagerie, etc.**—From every menagerie, wax-works, side show or exhibition, whether connected with a circus or not, where a separate fee for

admission is demanded or received, ten dollars for every performance or exhibition in which fees for admission are received.

Sec. 16. **Acrobatic performances.**—From every exhibition where acrobatic feats are performed and an admission fee charged for profit, not connected with the circus or theater, ten dollars for each performance.

Sec. 17. **Sleight of hand performances.**—From every sleight of hand performance or exhibition of legerdemain, not connected with a theater or circus, twenty-five dollars.

Sec. 18. **Waxworks, etc.; benevolent associations exempt.**—From every menagerie, wax-works or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received; provided, that exhibitions by associations organized for promotion of art, science, charity or benevolence, shall be exempt from taxation; and provided, further, that persons who form a museum composed entirely of the products of Texas shall have the right to exhibit the same for a fee without paying any occupation tax.

Sec. 19. **Concerts, etc., exemptions.**—From every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt.

Sec. 20. **Insurance adjusters and general agents.**—From each and every person acting as general adjuster of losses, or agents of fire and marine insurance companies, who may transact any business as such in this state, an annual occupation tax of fifty dollars. By "general agent," as used in this law, is meant any person or firm, representative of any insurance company in this state, or who may exercise a general supervision over the business of such insurance company in this state, or over the local agency thereof in this state, or any subdivision thereof.

Sec. 21. **Lightning rod agents.**—From every person, firm or association of persons, dealing in lightning rods, an annual tax of thirty-six dollars to the state and eighteen dollars as county tax to the county in which such business is carried on; and upon every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars to the state and fifty dollars as county tax, in each county in which such canvassing is done.

Sec. 22. **Cotton brokers and commission merchants.**—From every person, firm or association of persons following the occupation of cotton broker, cotton factor, or commission merchant, in a city of ten thousand inhabitants or over, thirty-five dollars; and in all cities and towns of less than ten thousand inhabitants, an annual tax of eighteen dollars; provided, that a merchant who pays an occupation tax under this law shall not be considered as a cotton broker. A "commission merchant," in the meaning of this article, is every person, firm or association of persons, receiving country produce, horses, cattle, sheep, hogs, grain, corn, hay, lumber, shingles, wood, coal, goods, wares and merchandise, or anything else for sale, to be accounted for to the owner when sold, and charging a commission therefor.

Sec. 23. **Pawnbrokers.**—From every pawnbroker, an annual tax of one hundred and fifty dollars.

Sec. 24. **Sewing machine dealers.**—From every person, firm, agency, or association of persons dealing in sewing machines, an annual tax of fifteen dollars to the state and seven dollars as a county tax in every county where such business may be carried on; provided, that a merchant who pays an occupation tax, as required by this article, shall not be required to pay this special tax to sell sewing machines when sold in his place of business.

Sec. 25. **Gas companies.**—From each gas company, manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars.

Sec. 26. **Electric light companies.**—From each electric light company operating an electric light plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars.

Sec. 27. **Waterworks companies.**—From each waterworks company operating a waterworks plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars.

Sec. 28. **Money lenders.**—From every person, firm, or association of persons loaning money as agent or agents for any corporation, firm or association, either in this state or out of it, an annual occupation tax of one hundred and fifty dollars for the state, for the principal office, and a county tax of fifteen dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in this state.

Sec. 29. **Credit associations.**—From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this state, or acting as agent or business manager in this state for any such person, party, partnership, joint stock association, or corporation, three hundred dollars; and provided, further, that no county, city or town shall levy or collect any occupation tax upon or from any such person, party, partnership, joint stock association, or corporation. The payment of this tax, evidenced by the receipt of the comptroller of public accounts, shall exempt the company or party paying the same from the payment of this tax in any other county; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this state.

Sec. 30. **Skating rinks.**—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars.

Sec. 31. **Ball parks.**—From every manager of a base ball park in a city or town containing five thousand or more inhabitants, where an admission fee is charged, twenty-five dollars.

Sec. 32. **Ice dealers.**—From each person or corporation, who are wholesale dealers, selling imported or home-made ice to the trade to be sold again, in cities and towns of twenty thousand inhabitants, or more, fifty dollars; in cities and towns of less than twenty thousand inhabitants, or more than ten thousand inhabitants, thirty dollars; in cities and towns of less than ten thousand inhabitants, and more than five thousand inhabitants, twenty dollars; in cities and towns of less than five thousand inhabitants, ten dollars.

Sec. 33. **Race tracks.**—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions.

Sec. 34. **Street car companies.**—From every street car company in this state, two dollars per mile on each mile of track owned by said company or corporation.

Sec. 35. **Phonographs, etc.**—From each owner or manager of every phonographic, electric battery, graphophone or other like machines or instruments, where a fee is charged, an annual tax of twenty-five dollars; provided, that when an electric battery is used by a regularly authorized physician on a patient no tax shall be charged.

Sec. 36. **Moving picture shows.**—From each owner or keeper of every kinesiograph, cinematograph or similar machine or instrument used for profit, which

shows the life-like motions of persons or animals, an annual occupation tax of twenty-five dollars.

Sec. 37. **Panorama or view shows.**—From each owner, manager or keeper of every panorama or view show, used for profit, exhibiting in a wagon, room, tent or elsewhere, an annual occupation tax of ten dollars and a county occupation tax of two dollars per annum. A panorama or view show, in the meaning of this act, is a show exhibiting pictures, statuary or other works of art which are to be viewed through stereoscopic or magnifying lenses.

Sec. 38. **Medicine shows, etc.**—From each owner, manager or keeper of every show or company of persons giving exhibitions of music, songs, recitations, sleight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any state or county fair during the time that said state or county fair is giving its annual exhibition.

Sec. 39. **Brokers.**—From every person, firm or association of persons selling on commission, if in a city of more than ten thousand inhabitants, fifty dollars; if in a city or town of less than ten thousand inhabitants, twenty-five dollars. This article is intended to cover every person, firm or association of persons selling on samples only, and who do not carry any stock of merchandise or anything else on hand; provided, that this tax shall not apply to commercial travelers or salesmen making sales or soliciting trade from merchants.

Sec. 40. **Cigarette dealers.**—From all dealers in cigarettes in this state, the sum of ten dollars per annum, a cigarette being within the meaning of this act the same as defined by the laws of the United States government; provided, that this tax shall be in addition to the occupation tax levied on merchants, and any other tax levied under the law; and provided, further, that each dealer shall be required to procure an annual license from the county clerk of the county where he proposes to sell cigarettes, which shall be granted for no shorter or longer period than one year; and provided, further, that the license shall describe the house and locality where the dealer proposes to sell cigarettes. [Acts 1897, 1 S. S., p. 49.]

Art. 7356. **Tax on dealers in cannon crackers, etc.**—There shall be levied upon every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this state, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business shall be located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term, "cannon cracker," is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing in this article shall be so construed as to prohibit the sale of or to place a tax on the sale of cartridges, combustible packages or explosives commonly used for fire arms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. [Act 1909, p. 174.]

Art. 7357. [5050] **County ad valorem, etc.**—The commissioners' courts of the several counties of this state shall have the power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to

a state tax by the provisions of this title; and, for the payment of debts incurred prior to September, 1883, and for the erection of public buildings and other permanent improvements, they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year; and, for the improvement of public roads, a tax not to exceed fifteen cents on the one hundred dollars valuation under the restrictions provided in chapter seven of title ninety-seven, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the state upon all occupations not herein otherwise specially exempted; provided, any one wishing to pursue any of the vocations named in this chapter, upon which a county occupation tax may be levied, may do so by paying the same quarterly; and provided, further, the receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named; and provided, further, the provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners' court to levy a different rate of tax; and provided, further, no person shall be allowed license for selling intoxicating or spirituous liquors, or for keeping any nine or ten pin alley, or billiard, bagatelle, pigeon-hole, jenny-lind, devil-among-the-tailors table, or anything of the kind used for profit, for a period of less than twelve months; and provided, further, the mayor and board of aldermen of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the county commissioners' court; and be it further provided, that in all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the collector of taxes shall at once present to the receiver or assignee of said dealer for payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes; and said taxes until paid shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [Acts of 1885, p. 105. Acts of 1891, p. 51.]

Art. 7358. [5051] **Taxes payable in what.**—The taxes herein levied by this chapter are hereby made payable in the currency or coin of the United States; provided, that persons holding scrip issued to themselves for services rendered the county may pay their county ad valorem taxes in such scrip. [Act 1897, 1 S. S., p. 38.]

Art. 7359. [5052] **Collector to keep books, etc.**—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under article 7355; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the comptroller of public accounts a tran-

script or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax; provided, that nothing contained in this article is intended to affect the liability, which, in the absence of this statute, would be incurred under any special enactment of this state. [Acts of 1879, p. 143.]

Art. 7360. [5053] **Tax collector to be furnished books, etc.**—The comptroller of public accounts shall be authorized and required to furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. [Id. sec. 7.]

Art. 7361. [5054] **Tax to be paid before occupation begins.**—The payment of the specific tax herein provided for shall be required by the collector of taxes to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under the provisions of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in or making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. [Id. sec. 9.]

Art. 7362. [5055] **Occupation tax receipts furnished collectors.**—The comptroller shall cause occupation tax receipts for each occupation to be printed, with his signature, for all occupations payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector, whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially; and no person shall pursue any occupation, unless he has a receipt, signed as herein provided, by the comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said licenses. [Id. sec. 9.]

Art. 7363. **Account of occupation tax receipts by collectors.**—When the comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners' courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the comptroller. The comptroller shall furnish the commissioners' court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. [Act 1897, 1 S. S., p. 49, sec. 2.]

Art. 7364. [5056] **License, transfer of.**—Any person, firm, corporation or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this state, shall be and are hereby authorized to transfer the same on the books of the officer by whom the same was issued. [Acts of 1885, p. 27, sec. 1.]

Art. 7365. [5057] **Purchaser of unexpired license may pursue occupation, when, etc.**—The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof; provided, that such assignee or purchaser shall, before following such occupation, comply in all other respects with all the requirements of the law provided for in original applications for such licenses; and provided, further, that nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time; and provided, further, that whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. [Id. sec. 2.]

REVENUE AGENT.

Art. 7366. [5058] **Powers and duties of state revenue agent.**—The governor is authorized to appoint a suitable person as revenue agent for the state, for the purpose of securing a better enforcement of the revenue laws of the state. The agent provided for herein shall be known as the state revenue agent. Said revenue agent shall be subject to the directions of the governor, who may, whenever in his judgment the public service demands it, direct the said revenue agent to investigate books and accounts of the assessing and collecting officers of this state, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the governor may direct. Whenever any such investigation is ordered by the governor, the revenue agent shall report to him in writing the results of such investigation, and point out the particulars, if any, wherein the revenue laws have been violated, their enforcement neglected, together with the names of the parties delinquent therein. Whereupon the governor shall institute civil and criminal proceedings through the attorney general in the name of the state against such delinquent parties who are reported by such agent to be delinquent. Said revenue agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the state institutions or for any other purpose or for improvements made by the state on state property or money received and disbursed by any board authorized by law to receive and disburse any state money. Said revenue agent shall also have power and authority, and it is hereby made his duty, to fully investigate any and all state institutions when so directed by the governor or required by information coming to the knowledge of said agent. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the state. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof. He shall also investigate and ascertain all sums of money due the state from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this state under existing law; and he shall report all such facts to the governor, who shall proceed therein as provided by this or any other law of this state. [Acts 1891, p. 87, amended Act 1899, p. 26.]

Art. 7367. [5059] **Shall have access to books, etc.**—When said revenue agent, acting under the direction of the governor, calls on any person connected with the public service to inspect his accounts, records or books, said officers or official so called upon shall submit to said agent all books, records and accounts so called for without delay. [Id.]

Art. 7368. [5060] **Compensation, etc.**—Said revenue agent shall receive as compensation for his services not exceeding two thousand dollars per annum, together with his actual traveling expenses, which shall be paid on the approval of the same by the governor; provided, said revenue agent shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis county. [Id.]

CHAPTER TWO.

TAXES BASED UPON GROSS RECEIPTS.

[For taxes on life insurance companies, see "Insurance."]

Article.	Article.		
Express companies.....	7369	Text or law book publishers.....	7381
Telegraph companies.....	7370	Telephone companies.....	7382
Gas, electric light, electric power or		Oil well companies.....	7383
waterworks plants.....	7371	Terminal companies.....	7384
Collecting or commercial agency.....	7372	Tax to be paid when business is begun	
Car companies.....	7373	after beginning of quarter.....	7385
Pipe line companies.....	7374	Penalty for failure to report.....	7386
Sleeping car, palace car or dining car		Penalty for failure to pay tax.....	7387
companies.....	7375	Penalties to be recovered by attorney	
Insurance companies.....	7376	general.....	7388
Wholesale dealers in oils; "wholesale		Permit not granted until tax is paid.....	7389
dealer" defined.....	7377	Tax in addition to all other taxes.....	7390
Interurban and electric railway compa-		Comptroller may require additional re-	
nies.....	7378	ports.....	7391
Wholesale dealer in or distributors of		Revenue agent to examine books, etc.,	
liquors; "wholesale dealer" defined.....	7379	when.....	7392
Dealers in pistols.....	7380		

Article 7369. **Express companies.**—Each and every individual, company, corporation or association doing an express business, by railroad or water, in this state, shall, on or before the first day of March of each year, make a report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from charges and freights within this state paid to or collected by such individual, company, corporation or association on account of money, goods, merchandise or other character of freight carried within this state during the twelve months next preceding. Said individuals, companies, corporations or associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the year beginning on said date equal to two and one-half per cent of said gross receipts as shown by said report. [Act 1907, p. 479, sec. 1.]

Art. 7370. **Telegraph companies.**—Each and every individual, company, corporation or association owning, operating, controlling or managing any telegraph lines in this state, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages, or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under

oath of the individual, or of the president, treasurer or superintendent of such companies, corporation or association, showing the gross amount received from all business within this state during the preceding quarter, in the payment of telegraphic or aerograms charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the state during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to two and three-fourths per cent of said gross receipts as shown by said report. [Id. sec. 2.]

Art. 7371. Gas, electric lights, power or waterworks.—Each and every individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or waterworks or water and light plant, within this state and charging for gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from the business done within this state in the payment of charges for gas, electric lights, electric power and water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any town or city of ten thousand inhabitants and less than twenty-five thousand inhabitants, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one-fourth of one per cent of said gross receipts, as shown by said report; and, for any town or city of twenty-five thousand inhabitants or more, the said individual, company, corporation or association, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date an amount equal to one-half of one per cent of said gross receipts as shown by said report; provided, that nothing herein shall apply to any gas, electric light, electric power or waterworks or water and light plant within this state owned by any city or town. [Id. sec. 3.]

Art. 7372. Collecting or commercial agency.—Each and every individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency, or commercial reporting credit agency within this state, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this state the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. [Id. sec. 4.]

Art. 7373. Car companies.—Each and every individual, company, corporation or association, residing without the state of Texas, or incorporated under the laws of any other state or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the state of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from

such rentals, or mileage, or from other sources of revenue received from business done within this state, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to three per cent of said gross receipts as shown by said report. [Id. sec. 5.]

Art. 7374. **Pipe line companies.**—Each and every individual, company, corporation or association, whether incorporated under the laws of this state, or of any other state or territory, or of the United States, or of any foreign nation, which owns, manages, operates, leases or rents any pipe line or pipe lines within this state, whether such pipe line or pipe lines be used for transmission of oil, natural or artificial gas, whether such oil or gas be for illuminating or fuel purposes, or for steam, for heat or power, or for any other purpose, and whether such pipe line or pipe lines be used for the transmission of articles by pneumatic or other power, shall, on or before the first days of January, April, July and October of each year, pay to the state of Texas an occupation tax equal to two per cent of its gross receipts, if such pipe line or pipe lines lie wholly within this state; and, if such pipe line or pipe lines lie partly within and partly without the state, such individuals, companies, corporations and associations shall pay a tax equal to two per cent of such proportion of its gross receipts, as the length of such line or lines within the state bears to the whole length of such line or lines; provided, that if satisfactory evidence is submitted to the comptroller of public accounts at any time prior to the date fixed by this article for the payment of the tax herein imposed, that any other proportion more fairly represents the proportion which the gross receipts of any pipe line or pipe lines for any quarter within this state bears to its total gross receipts, it shall be his duty to collect for such quarter from every such pipe line or pipe lines a tax equal to such other proportion of two per cent of its total gross receipts. For the purpose of determining the amount of such tax, the individual or the president, treasurer or superintendent of such company, association or corporation, shall quarterly, on the dates aforesaid, make a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross receipts of such pipe line or pipe lines from every source whatsoever for the quarter next preceding, and shall immediately pay to the state treasurer an occupation tax for the quarter beginning on said date, calculated on the gross receipts so reported. [Id. sec. 6.]

Art. 7375. **Sleeping, palace or dining car companies.**—Every sleeping car company, palace car company, or dining car company doing business in this state, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this state for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this state, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except

the tax of twenty-five cents on the one hundred dollars of the capital stock of such car companies as provided by law. [Id. sec. 7.]

Art. 7376. **Insurance companies.**—Every fire, fire and marine, marine, and marine inland insurance company, and every life and accident, life and health, accident, credit, title, steam boiler, live stock, fidelity, guaranty, surety, and casualty company, and all other insurance companies doing business in this state, except fraternal life and domestic benevolent life insurance companies, and life insurance companies, at the time of filing its annual statement, shall report to the commissioner of insurance and banking the gross amount of premiums received in the state upon property located in the state, and from persons residing in this state, during the preceding year; and each of such companies shall pay an annual tax upon such gross premium receipts as follows: All companies enumerated above shall pay a tax of two per cent of such gross premiums; provided, that any company doing life insurance business in connection with any other class of insurance enumerated shall pay the same tax upon the gross receipts from life insurance of a company conducting a purely life insurance business; and the gross premium receipts are understood to be a premium receipt reported to the commissioner of insurance and banking by the insurance companies upon the sworn statement of two principal officers of such companies. Upon receipt by him of sworn statements showing the gross premium receipts by such companies, the commissioner shall certify to the state treasurer the amount of taxes due by each company, which tax shall be paid to the state treasurer for the use of the state, on or before the first of March following, whose receipt shall be evidence of the payment of such taxes; and no insurance company shall receive a permit to do business in this state until such taxes are paid. And if any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: Real estate in the state of Texas, bonds of the state or of any county, incorporated city or town of this state, or other property in this state in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent of its said gross premium receipts; and, if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent of its gross premium receipts, as above defined; and provided, further, that no occupation tax shall be levied on insurance companies, herein subjected to a gross premium receipt tax, by any county, city or town; provided also that all mutual fraternal benevolent associations, now or hereafter doing a life insurance, or a life and accident insurance business in this state under the lodge system and on the assessment plan, whether organized under the laws of this state, or a foreign state or country, are exempt from the provisions of this article. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this state against any such insurance companies; and no occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this law shall not be construed to prohibit the levy and collection of state, county and municipal taxes upon the real and personal property of such companies; provided, that this shall not relieve agents from paying an occupation tax; provided, further, that purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit shall be exempt from the provisions of this chapter. [Id. sec. 8.]

Art. 7377. **Wholesale dealer in oils; "wholesale dealer" defined.**—Each and every individual, company, corporation or association created by the laws of this state, or any other state or nation, which shall engage in his

own name, or in the name of others, or in the name of its representatives, or agents in this state in the business of wholesale dealers in coal oil, naphtha, benzine or any other mineral oils refined from petroleum, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this state of any of said articles during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to two per cent of said gross receipts and amount uncollected from said sales as shown by said report. A wholesale dealer, within the meaning of this article, is any individual, company, firm, partnership, corporation or association who buys any of the articles hereinbefore mentioned, either in his own name or in the name of others, or in the name of their representative or agent, and sells same either in his name, or in the name of others, or in the name of their representatives or agents, to any person, firm, corporation or association to be sold again. [Id. sec. 9.]

Art. 7378. **Interurban and electric railway companies.**—Each and every individual, company, corporation or association, owning, operating or controlling any interurban, trolley, traction or electric street railway in this state and charging for transportation on said railway, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from said charges for transportation on said railway paid to or uncollected by said individuals, company, corporation or association for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report, if in or if connecting any town or city of less than twenty thousand inhabitants, shall pay to the treasurer of the state as an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report; if in a city of more than twenty thousand inhabitants, said individual, company or corporation or association, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to three-fourths of one per cent of said gross receipts as shown by said report; provided, that in ascertaining the population of any city or town, the same shall be ascertained by the last United States census; and provided, further, that where any interurban railroad shall connect any town having a population of more than twenty thousand with another of a less population, that it shall be liable for the taxes measured by the population of the largest town; provided, further, that the provisions of this chapter shall not apply to any street railway or traction company wholly within any town of less than ten thousand inhabitants. [Id. sec. 10.]

Art. 7379. **Wholesale dealers in or distributors of liquors; "wholesale dealer" defined.**—Each and every individual, company, corporation or association created by the laws of this state or any other state, who shall engage in his own name or in the name of others, or in the name of its representatives or agents in this state, in the business of a wholesale dealer or a wholesale distributor of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or associa-

tion, showing the gross amount collected and uncollected from any and all sales made within this state of any of said articles during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date, equal to one-half of one per cent of said gross receipts from said sale as shown by said report. A wholesale dealer or distributor, within the meaning of this article, is any individual, company, association or corporation selling any of the articles hereinbefore mentioned, either in his own or in the name of others, or in the name of its representatives or agents, to retail dealers, or who deliver on consignment to their agents for retail. [Id. sec. 11.]

Art. 7380. **Dealers in pistols.**—Each and every individual, company, corporation or association created by the laws of this state or any other state, who shall engage in his own name or in the name of others, or in the names of its representatives or agents in this state, in the business of a wholesale or retail dealer of pistols, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of said company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this state of all such firearms during the quarter next preceding. Such individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to fifty per cent of said gross receipts from sales of all firearms as shown by said report. [Id. sec. 12.]

Art. 7381. **Text or law book publishers.**—Each and every individual, company, corporation or association, whether incorporated under the laws of this state, or of any other state or nation, engaged in publishing, printing, or selling text books used in the schools of this state, or law books of any character, or owning, controlling or managing any such business, as text books or law book purchasers, within the state or out of it, and having state agencies within this state for the purpose of selling any book or books to be used in any of the schools of this state, or any law books, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing any such business, showing the gross amount received from such business done within this state from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one per cent of said gross receipts, as shown by said report. [Id. sec. 13.]

Art. 7382. **Telephone companies.**—Each and every individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this state, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this state during the preceding quarter, in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this state during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax, for the quarter beginning on said

date, equal to one and one-half per cent of said gross receipts, as shown by said report. [Id. sec. 14.]

Art. 7383. **Oil well companies.**—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other state or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any oil well within this state, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the total amount of oil produced during the quarter next preceding and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one-half of one per cent of the total amount of all oil produced, at the average market value thereof, as shown by said report. [Id. sec. 15.]

Art. 7384. **Terminal companies.**—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other state, or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this state, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this state, during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever, as shown by said report. [Id. sec. 16.]

Art. 7385. **Tax to be paid when business is begun after beginning of quarter.**—If any individual, company, corporation, firm or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the treasurer of the state of Texas in advance, but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the comptroller of public accounts of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter. [Id. sec. 17.]

Art. 7386. **Penalty for failure to report.**—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the state of Texas a penalty of not exceeding one thousand dollars. [Id. sec. 18.]

Art. 7387. **Penalty for failure to pay tax.**—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the state of Texas a penalty of ten per cent upon the amount of such tax. [Id. sec. 19.]

Art. 7388. **Penalties to be recovered by attorney general.**—The penalties provided for by this chapter shall be recovered by the attorney general in a suit brought by him in the name of the state of Texas; and venue and juris-

diction of such suit is hereby conferred upon the courts of Travis county, Texas. [Id. sec. 20.]

Art. 7389. **Permit not granted until tax is paid.**—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this state, or continue to do business in the state, until the tax hereby imposed is paid. The receipt of the treasurer of the state of Texas shall be evidence of the payment of such tax. [Id. sec. 21.]

Art. 7390. **Tax in addition to all other taxes.**—Except as herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupations and business taxed by this chapter. [Id. sec. 22.]

Art. 7391. **Comptroller may require additional reports.**—If for any reason the comptroller of public accounts is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm, or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The comptroller shall prepare blanks to be used in making the reports required by this chapter. [Id. sec. 23.]

Art. 7392. **Revenue agent to examine books, etc.**—If the comptroller has reason to believe, or does believe, that any individual, company, corporation, association, receiver or receivers, subject to the provisions of this chapter, has made a false return or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of this chapter, he shall report the same in writing to the governor; and it shall be the duty of the governor to immediately require the revenue agent of the state of Texas to examine any books, papers, documents, or other records or evidence showing or tending to show such unlawful act or omission. Said revenue agent shall check the report made with such books, papers, documents or other records or evidence, and make his report to the comptroller; and, if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this chapter to make reports, has failed or omitted to make a full return, as required by law, then the comptroller shall notify such individual, or the president, treasurer or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional or supplemental report; and, if any such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional or supplemental report, he shall be guilty of a misdemeanor, and on conviction shall be punished as provided in the Penal Code; and venue of such prosecution is fixed in Travis county, Texas. If it appears from the report of the state revenue agent, or if the comptroller has reason to believe or does believe, that any individual, or any president, treasurer or superintendent of any company, corporation or association, or any receiver of any corporation or association, or any member of any firm, has wilfully and deliberately made a false report, the comptroller

shall report the matter to the grand jury of Travis county, Texas, for its action; and venue of any offense arising out of such transaction is hereby fixed in Travis county, Texas. Said state revenue agent, in the performance and discharge of the duties imposed upon him by this article, shall have the right to examine, either by himself or by any person acting under his direction, any books, papers, documents, records or evidence which he may believe material and proper to examine. [Id. sec. 24.]

CHAPTER THREE.

FRANCHISE TAX.

Article.	Article.
Tax to be paid by domestic corporations.....7393	Foreign corporations may withdraw....7401
Tax to be paid by foreign corporations..7394	No business to be done after forfeiture; penalty .....7402
Only part of the tax to be paid, when...7395	Certain corporations not required to pay tax, when.....7403
Certain affidavits may be required.....7396	Attorney general to bring suit, when...7404
Reports to be filed, etc.....7397	Forfeiture of charter by court; duty of clerk .....7405
Supplemental tax to be paid when cap- ital increased.....7398	Payment of franchise tax by corpora- tions in process of liquidation.....7406
On failure to pay tax, charter forfeited, when; penalty.....7399	
Notice of forfeiture.....7400	

Article 7393. **Tax to be paid by domestic corporations.**—Except as herein provided, each and every private domestic corporation heretofore chartered, or that may hereafter be chartered, under the laws of this state, shall on or before the first day of May of each year, pay in advance to the secretary of state a franchise tax for the year following, which shall be computed as follows, viz: Fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation, unless the total amount of capital stock of such corporation issued and outstanding, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporations issued and outstanding, plus its surplus and undivided profits; provided, that such franchise tax shall not in any case be less than ten dollars; provided, that, where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and for each additional one thousand dollars, in excess of one million dollars, it shall be twenty-five cents. [Act 1907, p. 503, sec. 1.]

Art. 7394. **Tax to be paid by foreign corporations.**—Except as herein provided, each and every foreign corporation, authorized, or that may hereafter be authorized to do business in this state, shall on or before the first day of May of each year, pay in advance to the secretary of state a franchise tax for the year following, which shall be computed as follows, viz: One dollar on each one thousand dollars, or fractional part thereof, of the authorized capital stock of the corporation up to and including one hundred thousand dollars, and two dollars on each five thousand dollars or fractional part thereof of such stock in excess of one hundred thousand dollars and up to and including one million dollars, and two dollars on each twenty thousand dollars, or fractional part thereof, of such stock in excess of one million dollars, and up to and including ten million dollars,

and two dollars on each fifty thousand dollars of such stock in excess of ten million dollars, unless the total amount of the capital stock of such corporation issued and outstanding, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be two dollars on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation, issued and outstanding, plus its surplus and undivided profits, up to and including one hundred thousand dollars, and two dollars on each five thousand dollars, or fractional part thereof, of such stock, surplus and undivided profits in excess of one hundred thousand dollars, and up to and including one million dollars, and two dollars on each twenty thousand dollars, or fractional part thereof, of such stock, surplus and undivided profits in excess of one million dollars, and up to and including ten million dollars, and two dollars on each fifty thousand dollars of such stock, surplus and undivided profits in excess of ten millions dollars; provided, that such franchise tax shall not in any case be less than twenty-five dollars. [Id. sec. 2.]

Art. 7395. Only part of tax to be paid, when.—Whenever a private domestic corporation is chartered in this state, and whenever a foreign corporation is authorized to do business in this state, and such corporation shall be required to pay in advance to the secretary of state, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May next following, bears to a calendar year. [Id. sec. 3.]

Art. 7396. Certain affidavits may be required.—For the purpose of determining the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this state, and also for the purpose of determining the correctness of any report which is provided for in this chapter, the secretary of state may, whenever he may deem it necessary or proper to protect the interests of the state, require any one or more of the officers of such corporations to make and file in the office of the secretary of state an affidavit or affidavits in writing, which shall be subscribed by such officer, and by him sworn to before some officer who is by law duly authorized to administer oaths, and verified by his seal of office, setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the secretary of state shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. [Id. sec. 4.]

Art. 7397. Reports to be filed, etc.—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this state, the president, vice-president, general manager, secretary, treasurer and superintendent of each and every domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the secretary of state to do so, report to the secretary of state, in writing, and under oath, as required by the preceding article, the total amounts of the capital stock issued and out-

standing, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the secretary of state may ascertain such facts from other sources; and, if the true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter shall be thereon collected and paid; otherwise, its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty of making any report required by this article, except such report or reports as may be required by the secretary of state. [Id. sec. 5.]

Art. 7398. **Supplemental tax to be paid when capital increased.**—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in article 7395 in case of the first franchise tax payment to be made under this chapter by a domestic corporation which may be hereafter authorized to do business within this state. [Id. sec. 6.]

Art. 7399. **Failure to pay tax; charter forfeited, when; penalty.**—Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation; and, if the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this state; which forfeiture shall be consummated without judicial ascertainment by the secretary of state entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture; and any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any other courts of this state, except in a suit to forfeit the charter of such corporation; and, in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this state shall be revived as provided by this chapter. And each and every director and officer of any corporation whose right to do business within this state shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this state, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. [Id. sec. 8.]

Art. 7400. **Notice of forfeiture.**—The secretary of state shall, during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this state, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this state will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the secretary of state, and shall

be addressed to such corporation and mailed to the postoffice named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation; and a record of the date of mailing such notice shall be kept by the secretary of state. Such notice and said record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying the secretary of state any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all such penalties shall be fully paid to the secretary of state, he shall revive and reinstate the right of the corporation to do business within this state by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation whose right to do business within this state shall hereafter be forfeited under the provisions of this chapter, shall fail to pay the secretary of state, on or before the first day of January next following the revival, amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient grounds for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. [Id. sec. 9.]

Art. 7401. Foreign corporations may withdraw.—Should any foreign corporation which may have or hereafter obtain a permit to do business within this state desire at any time to withdraw from doing business in this state, it may surrender such permit to the secretary of state, who shall thereupon mark or stamp such permit, "surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this state without having made any further payment of franchise tax under such old permit. [Id. sec. 11.]

Art. 7402. No business to be done after forfeiture; penalty.—In any and all cases in which the charter, or right to do business, of any private domestic corporation, heretofore or hereafter chartered under the laws of this state, or the permit of any foreign corporation, or its right to do business within this state, shall have been or shall hereafter be forfeited, it shall be unlawful for any person or persons who were or shall be stockholders, or officers, of such corporation at the time of such forfeiture to do business within this state, in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this state has been revived in the manner provided by law and is at the time in good standing. [Id. sec. 12.]

Art. 7403. Certain corporations not required to pay tax, when.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which now is required to pay an annual tax measured by their gross receipts, or to corpora-

tions having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship, or for providing places of burial not for private profit, or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. [Id. sec. 13.]

Art. 7404. **Attorney general to bring suit, when.**—The attorney general shall be authorized, and it shall be his duty, to bring suit therefor against any and all such corporations which may be or become subject to or liable for any and all franchise tax or taxes or penalties under this or any former law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, it shall be his duty to bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is hereby conferred upon the courts of Travis county concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any and all of the provisions of this chapter. In any and all cases in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. [Id. sec. 14.]

Art. 7405. **Forfeiture of charter by court; duty of clerk.**—Upon the rendition by the district court of any judgment or forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the secretary of state a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "judgment of forfeiture," and the date of such judgment. In event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the secretary of state the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the secretary of state, who shall briefly note same upon the record of such charter in his office and the date of such final disposition. [Id. sec. 15.]

Art. 7406. **Payment of tax by corporations in process of liquidation.**—In case a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. [Id. sec. 15a.]

CHAPTER FOUR.

STATE INTANGIBLE TAX BOARD.

Article.	Article.		
State tax board, of whom composed; tax commissioner, apportionment of.....	7407	Statements placed before board, when.....	7418
Bond of tax commissioner.....	7408	Duties and powers of board in passing upon statements.....	7419
Secretary.....	7409	Same.....	7420
Duties of board.....	7410	Unincorporated companies and individuals; capital, how ascertained.....	7421
Same.....	7411	Board to certify amount of intangible assets to assessors.....	7422
Powers of board.....	7412	Failure of tax assessor to comply; penalty.....	7423
Failure to obey subpoena; penalty.....	7413	Failure to make statement, etc.; penalty.....	7424
Tax on intangible assets; law applies to whom.....	7414	Receivers and trustees in bankruptcy to make reports, etc.....	7425
Same.....	7415	Persons complying with this chapter relieved of other taxes.....	7426
Statement of intangible assets; to contain what.....	7416		
Date of receipt to be endorsed on statement; board may demand additional statements.....	7417		

Article 7407. **State tax board, of whom composed; tax commissioner, appointment of.**—There is hereby created a state tax board, which shall be composed of the comptroller of public accounts, the secretary of state and a third member, to be known as tax commissioner of the state of Texas. Except as herein otherwise provided, such tax commissioner shall be appointed by the governor in accordance with and subject to the provisions of section 12 of article 4 of the constitution of Texas, and shall hold his office for two years and until his successor shall be appointed and qualified, and shall receive an annual salary of two thousand five hundred dollars, in equal installments payable at the end of each month. A majority of said board shall constitute a quorum to do business. A record of the proceedings of said board shall be kept at the state capitol, and shall be open to the inspection of the public. [Act 1909, p. 469.]

Art. 7408. **Bond of tax commissioner.**—Before the tax commissioner shall enter upon or proceed with the discharge of his official duties, he shall execute a bond payable to the state of Texas, at Austin, in Travis county, Texas, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the oath of office prescribed by the constitution of this state, which bond and oath shall be filed in the office of the secretary of state. [Id. sec. 2.]

Art. 7409. **Secretary.**—The state [tax] board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive for his services as secretary and stenographer a salary of one hundred dollars per month. [Id. sec. 3.]

Art. 7410. **Duties of board.**—It shall be the duty of said tax board—

(a) To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

(b) To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any and all information that may in any manner aid in securing a compliance with any tax law or revenue law of this state by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this state, which is now in force, or which may hereafter be enacted.

(c) To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise

obtained, together with experience and observation of the operation of the laws of this state, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of the laws of this state, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

(d) To report to the legislature, at each regular session thereof, the whole amount of state revenues collected in this state for all purposes, and the sources thereof, the amount of such revenues which may be lost to the state through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof, may deem to be of public interest. [Id. sec. 4.]

Art. 7411. **Same.**—Said tax board, or any member thereof, or the state revenue agent under the direction of said board or of the governor of Texas, shall, at least once in each year, visit such counties of the state as said board, or the said governor, may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this state, and especially those concerning the rendition, assessment and collection of taxes. [Id. sec. 5.]

Art. 7412. **Powers of board.**—Each member of said state tax board shall have power to administer oaths and to subpoena and examine witnesses, and to issue subpoenas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any injury [inquiry] under or in the execution of any provision of this chapter; and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. [Id. sec. 6.]

Art. 7413. **Failure to obey subpoena; penalty.**—Any person who shall disobey any such subpoena, or subpoena duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpoena directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. [Id. sec. 7.]

Art. 7414. **Tax on intangible assets; law applies to whom.**—Each and every incorporated railroad company, ferry company, bridge company, turn-pike or toll company, doing business wholly or in part within the state of Texas, whether incorporated under the laws of this state, or of any other state, territory, or foreign country, and every other individual, company, corporation or association doing business of the same character in this state, in addition to the ad valorem taxes on intangible properties which are or may be imposed upon them, respectively, by law, shall pay an annual tax to the state, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in this chapter. The county or counties in which such taxes are to be paid, and the manner of the apportionment of the same, shall be determined in accordance with the provisions of this chapter. [Id. sec. 8.]

Art. 7415. **Same.**—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the pos-

session of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [Id. sec. 9.]

Art. 7416. Statement to contain what.—Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

(a) The name of the individual, company, corporation, or association making such statement; and the character of its business.

(b) If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

(c) The locality of its principal office and the amount and kind of business done by it in this state and the total gross receipts derived from its business within this state, including a due proportion of its interstate business, if it has done any business of that character.

(d) Its total authorized capital stock and the number of shares thereof which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the state.

(e) The market value of said shares of stock, or, if they have no market value, the actual value thereof.

(f) The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in each county in this state and the total assessed value and also the true value thereof.

(g) The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this state, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

(h) A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge, and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

(i) A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

(j) Every such railroad company shall also show in each statement made by it:

1. The total length of all lines of said company, whether within or without this state.

2. The total length of such lines as are within the state.

3. The length of its lines in each of the counties in this state into which its lines extend. [Id. sec. 10.]

Art. 7417. Date of receipt to be endorsed on statement; board may demand additional statements.—The tax commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall endorse upon each the date of receipt thereof, signing such endorsement officially. Said state tax board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once

demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. [Id. sec. 11.]

Art. 7418. Statements placed before board, when.—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said state tax board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. [Id. sec. 12.]

Art. 7419. Duties and powers of board in passing upon statement.—Said state tax board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in their power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the state and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any and all the provisions of this chapter, said board, and each member thereof, may require and compel, as provided in this chapter, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said state tax board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this state, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation, or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such state tax board, at Austin, in Travis county, Texas, on a date to be fixed in such notice, and request of such board a change or changes in such valuation and apportionment, or either, or a cancellation of such valuation and apportionment; and said individuals, companies, corporations, associations, receivers, assignees, trustees and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this state; and such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this state upon the railroad commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation

and apportionment, as said board may deem just and proper in the premises. [Id. sec. 13.]

Art. 7420. **Same.**—In so far as the other evidence and information adduced before said state tax board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this state and outside of it, in ascertaining the true value of its property within this state, said tax board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this state, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said tax board shall then fix the true value of the property of such individual, company, corporation or association within this state, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this state and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this state, so that there shall be apportioned to this state, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this state when compared with the total lines or total receipts both inside and outside of the state of Texas. From the entire value of the property within this state, when ascertained as directed by this chapter, said state tax board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this state, as so ascertained by said state tax board, and the residue and remainder of value shall be by said state tax board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this state. Said state tax board shall apportion the sum of the said total taxable values within this state to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such county, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said state tax board shall have the right and it shall be its duty to make use of and consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [Id. sec. 14.]

Art. 7421. Unincorporated companies and individuals; capital, how ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this state in any character of business embraced within the provisions of article 7414, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this act of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [Id. sec. 15.]

Art. 7422. Board to certify amount of intangible assets to assessors.—Thereafter, and not later than the twentieth day of June of each year, said state tax board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county in this state to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof, as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such state tax board to any unorganized county shall be by said board so certified to the tax collector of the county to which such unorganized county is attached for judicial purposes. It shall be the duty of the tax assessor of such county, upon receiving such certificate or certificates of said state tax board, to place, set down and list, upon forms prescribed by the comptroller of public accounts for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said state tax board. Such county tax assessor shall extend and prorate upon said rolls the state and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such state tax board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the state and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All state and county ad valorem taxes upon all intangible property in this state belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is now or as may hereafter be provided by law. [Id. sec. 16.]

Art. 7423. Failure of tax assessor to comply; penalty.—Any county tax assessor who shall violate or in any respect fail to comply with any of the provisions of this chapter, and any member of any board of equalization and any county tax assessor who shall modify or change, or vote to modify or change, in any manner whatsoever the finding, valuation or apportionment of any of said intangible assets as so fixed, determined, declared and certified by said state tax board, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code. [Id. sec. 17.]

Art. 7424. Failure to make statement, etc.; penalty.—Every individual, company, corporation and association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said state tax board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper postoffice address or principal place of business, shall forfeit and pay to the state of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the state by the attorney general; and venue of such suits is hereby fixed within the county of Travis, in said state; and the courts of said county are hereby vested with jurisdiction of said causes. [Id. sec. 18.]

Art. 7425. Receivers and trustees in bankruptcy to make reports, etc.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. [Id. sec. 19.]

Art. 7426. Persons complying with this chapter relieved of other taxes.—Whenever any individual, company, corporation or association, embraced within article 7414, shall pay in full, and within the year for which same may be assessed, all its state and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this state; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible state and county taxes for that year. [Id. sec. 21.]

CHAPTER FIVE.

TAX ON LIQUOR DEALERS.

Article.	Article.		
Tax to be collected.....	7427	Clerk to issue license, when.....	7450
"Retail liquor dealer" defined.....	7428	Regulating hours of closing, etc.....	7451
"Retail malt dealer" defined.....	7429	Bond	7452
Liquor dealer's license.....	7430	Unearned portion returned in case of	
Malt dealer's license.....	7431	death	7453
Right of wine growers to sell wine.....	7432	Clerk to make statement.....	7454
Transfer of license, etc.....	7433	Duty of clerk to certify forfeitures, etc.....	7455
Forfeiture of license.....	7434	Act of servant deemed to be the act of	
Application of license.....	7435	master	7456
Comptroller may revoke license.....	7436	No license issued to person whose license	
Same	7437	has been revoked until five years.....	7457
Same	7438	Licenses not to be issued, when.....	7458
Same	7439	Law not to conflict with local option	
Same	7440	law	7459
Same	7441	License to be posted	7460
Same	7442	List of licenses to be delivered to grand	
Same	7443	jury	7461
Same	7444	District judge to charge law to grand	
Number of licenses limited, etc.....	7445	jury	7462
Petition for license.....	7446	Fees of officers	7463
License not to be granted for business		In case of forfeiture may dispose of stock	
within three hundred feet of a church.....	7447	in bulk	7464
Judge shall head petition, etc.....	7448	"Intoxicating liquor" defined.....	7465
Clerk to furnish certified copy of judg-		Law to be valid, though part is held to be	
ment	7449	invalid	7466

Article 7427. **Tax to be collected.**—There shall be collected from every person, firm or association of persons selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in this state, not located in any county, or subdivision of a county, justice precinct, city or town where local option is in force under the laws of Texas, an annual tax of three hundred and seventy-five dollars on each separate establishment as follows: For selling such liquors or medicated bitters in quantities of one gallon or less than one gallon, three hundred and seventy-five dollars; for selling such liquors or medicated bitters in quantities of one gallon or more than one gallon, three hundred and seventy-five dollars; provided, that in selling one gallon the same may be made up of different liquors in unbroken packages aggregating not less than one gallon; for selling malt liquors exclusively sixty-two dollars and fifty cents; provided, further, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, on the prescription of a physician or otherwise, from the payment of the tax herein imposed; provided, further, that this article shall not apply to the sale by druggists of tinctures and drug compounds, in the preparation of which such liquors or medicated bitters are used and sold on the prescription of a physician or otherwise, and which tinctures and compounds are not intoxicating beverages prepared in the evasion of the provisions of this chapter nor the local option law. The commissioners' courts of the several counties in this state shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half of the state tax herein levied; and, where any such sale is made in any incorporated city or town, such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners' court of the county in which such city or town is situated; provided, that where any special charter gives the right to any city to refuse a license for the sale of intoxicating liquors, no license issued on behalf of the state or county shall become operative therein until a license therefor has been issued by such city. [Act 1909, 1 S. S., p. 293, sec. 1.]

Art. 7428. **"Retail liquor dealer" defined.**—A "retail liquor dealer" is a person or firm permitted by law, being licensed under the provisions of this

law, to sell spirituous, vinous and malt liquors, and medicated bitters capable of producing intoxication, in quantities of one gallon or less, which may be drunk on the premises. Any person who sells intoxicating liquors in quantities less than one gallon shall be governed by the provisions of this law and be required to take out license hereunder. [Act 1909, 1 S. S., p. 294, sec. 2.]

Art. 7429. **“Retail malt dealer” defined.**—A “retail malt dealer” is a person or firm permitted by law, being licensed under the provisions of this law, to sell malt liquors capable of producing intoxication, exclusively in quantities of one gallon or less, which may be drunk on the premises. [Id. sec. 3.]

Art. 7430. **Liquor dealer’s license.**—No person shall, directly or indirectly, sell spirituous or vinous liquors capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail liquor dealer. [Id. sec. 4.]

Art. 7431. **Malt dealer’s license.**—No person shall sell, directly or indirectly, malt liquor capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail malt dealer; provided, that this article shall not apply to a retail liquor dealer, and that a retail liquor dealer’s license shall be construed to embrace a retail malt dealer’s license. [Id. sec. 5.]

Art. 7432. **Right of wine growers to sell wine.**—This law shall not be so construed as to deny the right of wine growers to sell wine of their own production in any quantity without license; provided, that such wine grower shall not permit nor suffer any wine so sold by him to be drunk on his premises; and provided, further, that this article shall not be so construed as to give any wine grower the right to sell any wine to any minor without the permission of the parent, master or guardian of such minor first had and obtained, or any habitual drunkard, after being notified by any relative of such drunkard not to make such sale, gift or disposition. [Id. sec. 6.]

Art. 7433. **Transfer of license, etc.**—No retail liquor dealer nor retail malt dealer shall carry on said business at more than one place at the same time under the same license, nor shall any such license be voluntarily assigned more than once; but, before the assignee of such license can engage in business thereunder, he shall comply with the provisions of this law, as required of the original licensee; and provided, further, that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution or mortgage; and the purchaser of such license at such sale shall have the right to surrender such license to the state or county which issued the tax receipt which is the basis therefor, and shall receive therefor the pro rata unearned portion of such license; provided, further, that, should said original licensee, or his assignee, desire to change the place designated in said license, he may do so by applying to the county judge as in case of original application for license as provided in article 7435 of this chapter, but it shall not be necessary to furnish another certificate from the comptroller of public accounts. [Id. sec. 7.]

Art. 7434. **Forfeiture of license.**—Any person or firm having a license as a retail liquor dealer, or a retail malt dealer, who shall violate any of the provisions of this law, or the provisions or conditions of the liquor dealer’s bond required by this law to be given by such person or firm, shall forfeit his or their license as a retail liquor dealer, or retail malt dealer, as the case may be; and, if affidavit is filed by any property taxpaying citizen in the office of the clerk of the county court that such person or firm, having either of such licenses, has been guilty of violating any of the provisions of this law, or the provisions or conditions of said liquor dealer’s bond, it shall be the duty of the judge of said county court to immediately cause to be issued a notice in writing to such person or firm so having such license, notifying

them of the filing of such affidavit; and it shall also be the duty of the judge of said county court to set a time for the hearing of said affidavit and evidence upon the same at a time not less than six days nor more than ten days after the date of filing of said affidavit; and, upon the hearing of said affidavit and the proof for and against the same, if it shall be determined that said person or firm so having such license has violated any of the provisions of this law, or any of the provisions or conditions of their said liquor dealer's bond, then it shall be the duty of the judge of said court to enter an order on the minutes of said court declaring the said license forfeited, and said license shall be canceled from said date. In case it is determined that the said person or firm so having such license has violated any of the provisions of this law, or any of the provisions or conditions of his said liquor dealer's bond, it shall be the duty of the clerk of said court to immediately notify the comptroller of public accounts of the state of Texas, at Austin, Texas, of the result of such hearing. It shall be the duty of the county attorney to prosecute all complaints made as hereinbefore provided for, or in any other manner in this law provided for, against any person or firm engaged in the business of a retail liquor dealer, or a retail malt dealer, as the case may be, at the time which is designated by the county judge for the hearing of said complaint. In case either party make affidavit showing good cause why he can not at that time try the matters in issue, then said hearing may be postponed for a time not to exceed three days; and provided that no more than two postponements shall be granted to either party. [Id. sec. 8.]

Art. 7435. **Application for license.**—Any person or persons desiring to obtain a retail liquor dealer's license in this state or a retail malt dealer's license, shall, before filing his or their petition for such license with the county judge as now provided by this law, make application under oath to the comptroller of public accounts of this state for a permit to apply for a license to engage in such business, which application shall be in form substantially as follows:

To the comptroller of public accounts of the state of Texas:

I, or we, and of the county of state of Texas, hereby apply for a permit to apply for a license to engage in the business of retail liquor dealer or dealers (or retail malt dealer or dealers) under the laws of this state, said business to be conducted at No. street, in in the county of, state of Texas; that there is now no statute or ordinance of the city in force prohibiting the retail sale of liquors at said place; that I, or we, have resided for the past two years in county, state of Texas, and during said time have been engaged in the business of; that I am, or we are, not disqualified under the laws of this state from engaging in the proposed business; that no other person or corporation is in any manner interested in or to be interested in the proposed business; that I, or we, have not, since the first day of May, A. D. 1909, as owner, or as the representative, agent or employe of any other person, kept open any saloon or place of business where spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, were sold, or sold, aided or advised any other person in selling in or near any such house or place of business any such liquor after twelve o'clock midnight on Saturday, and between that hour and five o'clock a. m. of the following Monday of any week; or since said date, either in person or by agent or employe, knowingly sold or permitted to be sold or given away in or near any such place of business, any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to any student of any institution of learning, or to any habitual drunkard, after having been notified in writing through the sheriff, or other peace officer, by the wife, sister, father,

mother or daughter, of such person not to sell to such habitual drunkard; or permitted any person not over the age of twenty-one years to enter and remain in such house or place of business, or permitted any games prohibited by the laws of this state to be played, dealt or exhibited in or about such house or place of business, or rented or let any part of the house or place of business in which such business was conducted to any person or persons for the purpose of conducting any game or games prohibited by the laws of this state; or knowingly sold or given away any adulterated or impure liquors of any kind, or sold or permitted, aided or advised in selling under a retail malt dealer's license any other liquors than those defined by the law as malt liquors. And if the permission herein sought be granted and the said retail license be issued, I, or we, will not either in person, or knowingly by any agent, employe or representative, during the year for which such license shall run, keep open house or place where liquors shall be sold under such license for the sale thereof, or transact such business in such house or place of business after twelve o'clock midnight on Saturday and between that hour and five o'clock a. m. on the following Monday of any week; or knowingly sell in or near any such place of business, or give away, or permit to be given away, any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to any student of any institution of learning, or to any habitual drunkard, after having been notified in writing, through the sheriff, or other peace officer, by the wife, mother, father, daughter or sister not to sell to such habitual drunkard; or to permit any person not over the age of twenty-one years to enter and remain in such house or place of business; or permit any game prohibited by the laws of this state to be played, dealt or exhibited in or about such house or place of business, or rent or let any part of the house or place of business in which such business is conducted to any person or persons, for the purpose of conducting any game or games prohibited by the laws of this state; or knowingly sell or give away any impure liquor or adulterated liquors of any kind; and, if the application be for a retail malt dealer's license, it shall further state that he or they under the said license will not sell any other liquors than those defined by law as "malt liquors." And it is hereby agreed that, if the license to be applied for be issued, that the same will be issued upon condition that it shall remain in force only so long as I, or we, observe and carry out each and all of the declarations herein made, and that in the event I, or we, violate any of the promises or do or perform any one or more of the acts which it is herein declared shall not be done or performed, that either the county judge or the comptroller of public accounts of the state of Texas, in the manner provided in this law, may rescind, cancel and annul the said state and county license granted in pursuance of this application, and that all money paid for such license shall be forfeited to the state and county or city to whom paid; and that I, or we, will at once, upon the cancellation of such license, close up the place where such business is being conducted, and cease to do such business, and will not within five years from that date again, either as owner, agent, representative or employe of any other person, attempt to enter into or engage in the retail liquor business, unless the order of the comptroller cancelling and rescinding such license shall be annulled, in case such licenses shall have been canceled by the comptroller.

Sworn to and subscribed before me, a....., within and for the county of, state of Texas, by on this, the day of, 19....

(L. S.)

(Signature of officer.)

That, upon receiving such application, it shall be the duty of the comptroller to file the same and keep it as a permanent record in his office, to examine and act upon the same; and, if he is satisfied that such applicant is entitled to such permit, he shall upon the payment to him by the applicant of two dollars issue to him such permit, under his hand and the seal of his office, which, together with a copy of such application, duly certified to under the hand and seal of the comptroller, shall be delivered by him to the applicant; and the said permit, together with the certified copy of said application, shall be filed with the county judge, together with the petition for license to be filed with the county judge, and shall remain a permanent record in the office of the county judge; and no petition for license shall be entertained by the county judge until said certified copy and permit have been filed with him by the applicant. [Id. sec. 9.]

Art. 7436. **Comptroller may revoke license.**—In addition to the power conferred by this law upon the county judge to cancel or revoke license, the comptroller of public accounts of the state of Texas shall likewise have power to cancel or revoke such license in the following manner:

If the comptroller shall at any time be advised, or receive information, that any person or persons to whom a retail liquor dealer's license, or retail malt dealer's license, has been issued, has violated any of the conditions and provisions set out in the application filed with the comptroller for a permit to apply for such license, as provided in the preceding article, it shall be his duty to at once institute an inquiry and ascertain, if possible, the names and residences of all persons who know and will testify to the facts concerning such violation; and, if it shall be necessary in making such inquiry to do so, he may call to his aid the state revenue agent, whose duty it shall be, upon the request of the comptroller, to make a careful investigation of the charges and ascertain the names of the persons by whom such facts can be proven; and neither the comptroller nor the state revenue agent shall disclose the name of any person who shall become an informer, or who shall aid in securing the names of such witnesses, or evidence relating to such matters. [Id. sec. 9a.]

Art. 7437. **Same.**—Upon securing the names of such witnesses, it shall be the duty of the comptroller to, in his discretion, either notify the county judge of the proper county of the alleged violation of this law by the licensee, or to issue a commission addressed to an officer to be selected by the comptroller, who is authorized under the laws of this state to take depositions in the county in which the place of business is located, where he is advised such violation occurred, stating therein the violation of the law charged, and the name or names of the persons charged therewith, and directing him to take the deposition of the witnesses named in the commission, and the depositions of such other persons as may be required or necessary, and, when such depositions are taken, to return the same to the comptroller in like manner as is provided by law governing the taking of depositions in civil suits in this state; provided, that if the comptroller shall notify the county judge as above provided, it shall be his duty to proceed at once to cause to be instituted against such licensee the proper proceedings in his court as provided by this law, and, if the county judge shall within ten days after receiving such notice cause to be instituted against such licensee the proper proceedings in his court, then the comptroller shall proceed no further in the premises; but, if the county judge shall upon receiving such notice, fail or refuse to cause such proceedings to be instituted against the licensee, or should the comptroller elect to proceed himself without notifying the county judge, then, in either of such cases, the comptroller shall proceed himself as in this law provided. [Id. sec. 9b.]

Art. 7438. **Same.**—Upon receipt of said commission, such officer shall set a day for taking the depositions of the witnesses, and shall issue a subpoena commanding them to appear before him and testify on said day, and place the same in the hands of the proper officers for service on said witnesses; and shall also notify the county attorney of such county of the time when and the place where said depositions shall be taken, requesting him to appear at said time and place and interrogate said witnesses; and he shall also notify the person or persons who are charged with having conducted such business in violation of the law, and whose conduct is to be investigated, of the character of the charge, and of the time and place where said investigation will be conducted, and that he or they shall have the right to appear in person, or by attorney, and cross examine the said witnesses, and, if they so desire, to testify themselves or to offer the testimony of other witnesses relating to the matter under investigation; and the person whose conduct is to be investigated shall have the right to all proper process to compel the attendance of witnesses whose testimony he may desire. [Id. sec. 9c.]

Art. 7439. **Same.**—If the said witnesses shall fail to obey the said subpoena, then the said officer shall issue and cause to be served upon them attachments to compel their attendance; and he may punish them for contempt for failure to attend and testify as provided by law in case of taking depositions in civil suits in this state. [Id. sec. 9d.]

Art. 7440. **Same.**—If the county attorneys shall fail or refuse to appear and conduct the examination of said witnesses, the said officer authorized to take such depositions may appoint some practicing attorney of said county to act in the absence of the county attorney, as special county attorney; and the said officer taking the depositions shall have the power, independently of the county attorney or any other person, to interrogate the witnesses so as to develop fully the facts. [Id. sec. 9e.]

Art. 7441. **Same.**—At the time fixed, the said officer shall proceed to take the depositions of said witnesses in answer to oral questions to be propounded to them, and shall cause the questions and answers to be written down, and the depositions to be subscribed and sworn to by the witnesses, respectively, as provided by law for taking depositions; and such officers shall make a thorough investigation of the facts relating to the charges and he may summon other witnesses than those whose names have been furnished to him; and, when the taking of the testimony is concluded, and the depositions subscribed and sworn to by the witnesses, he shall certify thereto and shall seal up the commission together with the depositions in an envelope or package in like manner as is required by law in returning depositions in civil suits in this state, and deposit the same in the postoffice, postage prepaid, addressed to the comptroller of public accounts of the state of Texas at Austin, Texas. [Id. sec. 9f.]

Art. 7442. **Same.**—Upon receipt of the said depositions, the comptroller shall open and proceed to consider the same, and, if he shall determine from the preponderance of the credible evidence therein contained, that at any time after the issuance of said license the house or place where the business of selling liquors under said license was conducted, was kept open and business conducted therein after midnight on Saturday and between that hour and five o'clock a. m. on the following Monday of any week, or that any intoxicating liquors, or medicated bitters capable of producing intoxication, were knowingly sold, permitted to be sold or given by the holder or holders of such license to any person under the age of twenty-one years, or to any student of any institution of learning, or to any habitual drunkard after having been notified in writing through the sheriff, or other peace officer, by the wife, mother, father, daughter or sister of such habitual drunkard

not to sell same to him, or that any person not over the age of twenty-one years had been permitted to enter and remain in such house or place of business, or that games prohibited by laws of this state had been permitted to be played, dealt or exhibited in or about such house or place of business, or that the person or persons holding such license had rented or let any part of the said house or place of business where such business is conducted to any person or persons for the purpose of conducting any game or games prohibited by the laws of this state, or that the person or persons holding such license had knowingly sold or given away any adulterated or impure liquors of any kind, or sold or knowingly permitted to be sold, or aided or advised in selling, under a retail malt dealer's license, any other liquors than those defined by law as malt liquors, he shall rescind, vacate and withdraw such license, and shall issue a certificate in triplicate under his hand and the seal of said office, declaring the rescission of such license, theretofore issued, to such person or persons, one copy of which certificate shall remain on file in his office, and one copy shall be forwarded by the comptroller by mail to the county judge of the county where the place of business of the person or persons whose license is withdrawn and rescinded is located, and the other copy shall be forwarded by mail to the person or persons whose license has been so rescinded and withdrawn; and it shall be unlawful thereafter for such person or persons to continue such business, and any attempt to do so shall subject him or them to the penalty herein provided for pursuing such business without a license; and any person or persons whose license has been so rescinded and withdrawn shall forfeit to the state, county and city all money paid therefor, and they shall never have any claim against the state, county or city on account of any money paid for such license. [Id. sec. 9g.]

Art. 7443. **Same.**—Any person feeling himself aggrieved by the action of the comptroller in vacating, annulling and rescinding such license under this law, may bring suit in the district court of the county of his residence in Texas against the comptroller to reinstate such license, but the business conducted under such license shall be suspended during the pendency of such suit, and shall not be reopened, unless the order of the comptroller shall be set aside by final judgment of the proper court; but, if such order shall be by a final judgment set aside, then such licensee shall have the right to pursue such occupation under such license without paying any additional tax for a period to be added to the time of the license equal to the time his right to do business was suspended. [Id. sec. 9h.]

Art. 7444. **Same.**—The county attorney, or his substitute, shall receive five dollars per day for attending the taking of depositions and interrogating the witnesses during the time necessarily consumed in the investigation herein provided for; the officer taking the deposition shall receive the same fees as are provided by the law for taking depositions, and the witnesses shall receive the same fees provided in criminal cases, the amount of which shall be fixed by the certificate of the officer taking the depositions, and shall be paid by the state upon warrants issued by the comptroller. [Id. sec. 9i.]

Art. 7445. **Number of licenses limited.**—The comptroller of public accounts of the state of Texas shall not issue any permits to any person or firm for any city or town or justice precinct of any county in excess of the number of permits actually issued and existing on the twentieth day of February, 1909, in such city or town, or justice precinct, respectively, unless such number of permits are less than one for each five hundred inhabitants, in which event he shall, if applied for, issue permits not exceeding one for each five hundred inhabitants of such city or town or justice precinct. In case the number of permits issued and existing on the twentieth day of February, 1909, for each said city or town or justice precinct is in excess of one for

each five hundred inhabitants, the number of permits existing on the twentieth day of February, 1909, as applied for, shall be granted; but that number shall not be increased until the number of inhabitants of such city or town or justice precinct increases to the extent that the permits issued and actually in existence on February 20, 1909, is less than one for each five hundred inhabitants; but the provisions of this article shall not apply to hotels now in existence, or which may hereafter be opened, when located in the business section of a city or town having a population of over twenty thousand; and provided that in granting permits for licenses as a retail liquor dealer, or a retail malt dealer, the comptroller of public accounts shall give preference to those applicants who apply for a permit to do business at the places and locations in said city or town, or justice precinct, where permits had heretofore been issued and granted; provided, further, that at least one permit may be issued in any city, town or justice precinct, where local option is not in force. The population of each city, town and justice precinct in the state shall be ascertained by the commissioners' court of such county at the August term thereof of each and every year in the following manner: It shall be the duty of the superintendent of public instruction for such county, upon the request of such commissioners' court, to inform such commissioners' court of the total school census of each city and town and justice precinct; and it shall be the duty of the commissioners' court in determining the population of such city, town or justice precinct to estimate the population at the rate of six persons for every one name on such scholastic census, and upon such basis, at the August term of said court of each year, to ascertain and determine the population of such city, town and justice precinct, and to enter an order and decree upon the minutes of said court finding and determining what such population is, and shall send a certified copy thereof to the comptroller of public accounts of the state of Texas. [Id. sec. 9j.]

Art. 7446. **Petition for license.**—Any person or firm desiring a license as a retail liquor dealer, or as a retail malt dealer, may, in vacation or in term time, file a petition with the judge of the county court of the county in which he desires to engage in such business, which petition shall have attached thereto as exhibits the permit and copy of application required by article 7435, and shall state that the applicant is a law-abiding, taxpaying male citizen of the state of Texas, over the age of twenty-one years, and has been a resident of the county wherein such license is sought for more than two years next before the filing of such petition; and that his license as a retail liquor dealer, or retail malt dealer, has not been revoked or forfeited within five years next before the filing of such petition; that he desires a license as a retail liquor dealer, or as a retail malt dealer, as the case may be, specifically stating the place where such business is to be conducted, describing with reasonable certainty the house or place wherein the same is to be conducted, and, if the place of business be in any block or square of any town or city where there are more bona fide residences than there are business houses in said block or square, or in any block where there is a church or school, then said petition shall be accompanied with written consent of a majority of the bona fide householders or residents in said block or square, who have resided for at least six months preceding such application, and those within three hundred feet of such place of business. Upon the filing of the petition herein provided for, the county judge shall set the same for hearing at a time not less than ten or more than twenty days from the filing of same, and if, upon the trial or hearing thereof, he finds that facts stated in said petition are true and that the same is accompanied by the permit aforesaid, he shall grant a license such as prayed for; provided, however, that, upon the filing of such petition, the clerk of the county court shall give

notice of the filing thereof, by posting on the court house door a written notice of such petition, together with the substance thereof; and the petition when filed shall remain with said clerk until the same is acted upon by the county judge and shall be open to the inspection of any person desiring to see the same. And any resident taxpaying citizen residing or owning property in the block or square where said business is to be conducted, or any such citizen residing or owning property within three hundred feet of the proposed place of business, or the county or district attorney shall be permitted to contest the facts stated in such petition and the applicant's right to obtain the license sought, upon giving security for all costs which may be incurred in such suit, should the same be decided in favor of applicant; provided, no county nor district attorney shall be required to give bond for such costs, but the county or state, as the case may be, shall be liable therefor. [Id. sec. 10.]

Art. 7447. License not to be granted for business within three hundred feet of a church.—The county judge shall in no case grant a license in any village, town or city, where the proposed place of business is within three hundred feet of a church, school or other educational or charitable institution, the measurements to be along the property lines of the street fronts, and from front door to front door, and in a direct line across intersections where they occur; provided, the proposed place of business is not within a business block, or within three hundred feet thereof, as such block is defined in the preceding article. [Id. sec. 10a.]

Art. 7448. Judge shall hear petition, etc.—Upon the hearing of the petition, as provided in article 7446, the county judge shall determine the truth or falsity of the facts alleged, and shall render his judgment granting or refusing the license accordingly, and shall cause the same to be recorded at length in a book kept for that purpose, which book shall be a record of said court and shall be preserved by the clerk as an archive of his office. [Id. sec. 11.]

Art. 7449. Clerk to furnish certified copy of judgment.—Upon the granting of a license by the county judge, as provided by law, the clerk shall furnish the applicant with a certified copy of the judgment, which, when exhibited to the county tax collector of the license tax herein provided for, said collector shall receive said license tax and issue to such applicant his receipt therefor, showing the amount paid, date of payment, for what paid, whether retail liquor dealer's or retail malt dealer's license, and where such business is to be conducted. [Id. sec. 12.]

Art. 7450. Clerk to issue license, when.—Upon the presentation to the county clerk by the applicant of the tax collector's receipt provided for in the preceding article, and delivery to him of the bond provided for in article 7452 of this chapter, he shall examine such bond and receipt; and, if such bond conforms to the provisions of said article 7452, and if the said receipt conforms to the judgment authorizing the same, he shall issue to the applicant the proper license, which shall be by him signed, be under the seal of his office, be dated, state on its face for what it is issued, the date when it will expire, by whom and where such business is to be conducted, and shall describe the place where the same is to be kept. [Id. sec. 13.]

Art. 7451. Regulating hours of closing, etc.—Every person or firm having a license under the provisions of this law, who may be engaged in or who may hereafter engage in the sale of intoxicating liquors to be drunk on the premises in any locality of this state, other than where local option is in force, shall close and keep closed their houses and places of business and transact no business therein or therefrom from and after twelve o'clock midnight until five o'clock a. m. of each week day, and shall close and keep closed their houses and places of business and transact no business therein

or therefrom from and after twelve o'clock midnight Saturday until five a. m. of the following Monday of each week. [Id. sec. 14.]

Art. 7452. Bond.—Every person or firm desiring to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to be drunk on the premises, shall, before engaging in such sale, be required to enter into a bond in the sum of five thousand dollars; provided, however, that any person or firm dealing exclusively in malt liquors shall be required to give bond only in the sum of one thousand dollars, with at least two good, lawful and sufficient sureties, and the sureties required by law on the bonds of liquor dealers shall make affidavit, before some officer authorized to administer oaths, that they, in their own right, over and above all exemptions, are each worth the full amount of the bond they sign as sureties; and no county judge shall approve any such bond, unless the affidavit as provided for in this article shall have been duly made. The approval of any such bond by the county judge without such affidavit shall make said county judge liable for any penalty recovered on such liquor dealer's bond; and any person who shall make any false affidavit, as required by this law, shall be punished as provided for in the Penal Code of this state; provided, that nothing herein shall prevent the making of such bond by a surety company as permitted by law, payable to the state of Texas, to be approved as to security by the county judge; which bond shall be conditioned that said person or firm so selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, shall not, either in person or knowingly by any agent, employe or representative, during the year for which such license shall run, keep open the house or place where liquors shall be sold under such license for the sale thereof, or transact such business in such house or place of business, after twelve o'clock midnight on Saturday and between that hour and five o'clock a. m. on the following Monday of any week; and that such person or firm shall keep an open, quiet and orderly house or place for the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, and that such person or firm, or his or their agent or employe, will not sell or permit to be sold in his or their house or place of business, nor give nor permit to be given, any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to a student of any institution of learning, or any habitual drunkard, after having been notified in writing, through the sheriff or other peace officer, by the wife, father, mother, daughter or sister of such habitual drunkard, said notice shall be in force and effect for a period of two years, not to sell to any such person, and that he or they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business; that he or they will not permit any games prohibited by the law of this state to be played, dealt or exhibited in or about such house or place of business, and that he or they will not rent or let any part of the house or place in which he or they have undertaken to sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, to any person or persons for the purpose of running or conducting any game or games prohibited by the laws of this state, and that he or they will not adulterate the liquors sold by them in any manner, mixing the same with any drug, and that he or they will not knowingly sell or give away any impure or adulterated liquors of any kind; which said bond shall be filed in the office of the county clerk of the county where such business is conducted, and shall be recorded by such clerk in a book to be kept for such purpose; for which service said clerk shall be entitled to a fee of seventy-five cents; which said bond may be sued on at the instance of any person or

persons aggrieved by the violations of its provisions, and such person shall be entitled to recover the sum of five hundred dollars as liquidated damages for each infraction of the conditions of such bond; and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition to civil proceedings for individual injuries brought on said bond, as above indicated, if any person or firm shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorney, or either of them, to institute suit thereupon; or any person owning real property in the county may institute suit thereupon, in the name of the state of Texas, for the use and benefit of the county, but no compensation shall be allowed such citizen, and he may be required to give security for costs; and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon the liquor dealer's bond, upon the breach of any of the conditions thereof; and hereafter, when any recovery is had by any person, or by any county or district attorney, for the use and benefit of the county in any action in any court of competent jurisdiction, upon the bond of any person or firm engaged in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, to be drunk on the premises, in any locality other than where local option is in force, upon the ground that such licensee sold, or permitted to be sold, or gave or permitted to be given, any such liquors to a minor in his place of business, or permitted a minor to enter or remain in his place of business, or sold such liquor to any habitual drunkard after having been notified in writing not to sell to such habitual drunkard, or that such licensee permitted prostitutes or lewd women to enter and remain in his place of business, or permitted any games prohibited by the law to be played, dealt or exhibited in or about his place of business, or of renting or letting his place of business, or any part thereof, for such purpose or purposes, the license of such person or firm shall, by reason of such recovery, be forfeited, revoked and canceled; and the court entering judgment of recovery shall also enter an order declaring forfeited, revoked and canceled such license; and the unearned portion of the occupation tax paid therefor shall not be refunded, but shall be forfeited to the state and county, city or town to which the money for the same may have been paid. And any person or firm who shall sell any such liquors or medicated bitters in any quantity, to be drunk on the premises, without first giving bond as required by this law, or who shall sell the same after said license shall have been forfeited, revoked or canceled, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in the same amount provided for sales where no license has been obtained. An open house, in the meaning of this chapter, is one in which no screens or other device is used or placed inside or outside of such house or place of business for the purpose of or that will obstruct the view through the open door or place of entrance into any such house or place where intoxicating liquors are sold to be drunk on the premises. A quiet house or place of business, in the meaning of this chapter, is one in which no music, loud or boisterous talking, yelling or indecent or vulgar language is allowed, used or practiced, or any other noise calculated to disturb or annoy any person residing or doing business in the vicinity of such house or place of business, or those passing along the streets or public highways. By an orderly house is meant one in which no prostitutes or lewd women or woman are allowed to enter or remain; and it is further provided, that said house must not contain any vulgar or obscene pictures. Any surety on such bond may relieve himself from further liability thereon by giving the principal in said bond notice in writing that he will no longer remain as surety thereon, and by filing with the county judge an affidavit that such notice has been given; and, if within

five days after such notice the principal fails to make a new bond, he shall cease to pursue said business until a new bond is given. Any person who shall continue to pursue said business, after such notice is given and such affidavit is filed, shall be guilty of a misdemeanor and shall be punished as provided in cases where no license has been procured; provided, that where the sale was made in good faith, or the minor permitted to enter and remain in good faith, with the belief that the minor was of age, and there is good ground for such belief, that shall be a valid defense to any recovery on such bond; provided, further, that where the sale to an habitual drunkard is made in good faith, with the belief that he is not an habitual drunkard, and there are good grounds for such belief, that shall be a valid defense to any recovery on such bond; provided, the provisions of this law shall apply to suits by the state or of any individual. Provided, that no license shall be issued under this law to any person who has been convicted of a felony and served such term of conviction. [Id. sec. 15.]

Art. 7453. **Unearned portion returned in case of death.**—In the event of the death of any licensee under this law leaving an unearned portion of any license issued under this law, the heirs, executors, administrators or legal representatives of such deceased person may present the license of such person to the state and county and receive payment of the unearned portion of such license tax collected by them, respectively. [Id. sec. 16.]

Art. 7454. **Clerk to make out statement.**—The clerk of the county court shall make out a statement of all such licenses granted by him and the amount paid the collector on each for state and county taxes and report the same to the comptroller of public accounts of the state. [Id. sec. 17.]

Art. 7455. **Duty of clerk to certify forfeitures, etc.**—Hereafter, when the license issued to any person or firm to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, to be drunk on the premises, in the locality other than where local option is in force, has been declared forfeited, by either the county or district court, revoked or canceled, it shall be the duty of the clerk of the county or district court to immediately certify such forfeiture under the seal of such court to the comptroller of public accounts of the state of Texas, which said certificate shall state the date of such forfeiture, the number and the nature of the cause, and the name and residence of the licensee or defendant, the name of the person and style of the firm, and the names and places of residence of the individual members of any such firm, or the name and place of residence of any such person, as the case may be, as shown by the application for license filed by such person or firm in the county court; for which service the clerk shall receive a fee of one dollar, to be taxed against the defendant or defendants. And it shall be the duty of the comptroller, upon receiving any such certificate, to file and record the same in a book to be kept by him for such purpose, and he shall likewise record all such forfeitures by him made; and thereafter no permit or license shall be issued to any such person or firm, or to any member of any such firm, to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, within the period of five years from and after the date of entry of such forfeiture. [Id. sec. 18.]

Art. 7456. **Act of servant deemed to be act of master.**—Any sale, gift or other disposition of intoxicating liquors knowingly made to any minor, or to any habitual drunkard, or on any Sunday or election day by an agent, clerk or other person acting for any retail liquor dealer or retail malt dealer, or other person, shall be deemed and taken to be for all purposes of this law as the act of such retail liquor dealer or retail malt dealer or other person. [Id. sec. 20.]

Art. 7457. No license issued to person whose license has been revoked, until five years.—No retail liquor dealer's, nor retail malt dealer's license shall be issued to any person whose license as either a retail liquor dealer or retail malt dealer has been revoked or forfeited within five years before the filing of his application for license, or who has had in his employ in his business of retail liquor dealer, or retail malt dealer, any person whose license has been revoked or forfeited within five years next before the filing of such application. [Id. sec. 22.]

Art. 7458. License not to be issued, when.—No license shall be granted to any person as a retail liquor dealer, or as a retail malt dealer, who shall have carried on any such business after the expiration of his license previously issued and without having received a license for such purpose, or whose license shall have been revoked or forfeited under the provisions of this law, within five years before the filing of his application for such license. No license shall be issued to any person to do business as a retail liquor dealer, or retail malt dealer, in any house or building used for the purpose of prostitution, or as a house of assignation, or as a house of ill-fame, or gambling house. If, after a license has been issued to a retail liquor dealer, or retail malt dealer, the building in which the same is located shall be used for the above mentioned purposes, or any of them, with the knowledge and consent of such licensee, his license may be revoked, as hereinbefore provided. [Id. sec. 23.]

Art. 7459. Law not to conflict with local option law.—This law, or any of the provisions thereof, shall not be construed to be in conflict with any local option law now or hereafter to be in force in this state, and no license to any retail liquor or retail malt dealer shall be issued or shall be effective at any place where local option law is in force and operation. [Id. sec. 27.]

Art. 7460. License to be posted.—Any license required by this law shall be posted in some conspicuous place in the house where the business or occupation for which such license is necessary is carried on before engaging in such business or occupation. [Id. sec. 28.]

Art. 7461. List of licenses to be delivered to grand jury.—The county clerk of any county in this state where intoxicating liquors are sold, having a population of more than fifty thousand inhabitants, shall make out a list of all persons then having a license under the provisions of this law, and shall deliver the same to each grand jury impaneled in such county. Said list shall be arranged in alphabetical order, shall give the names of the persons to whom same were issued, the date of its issue, the date it will expire, stating whether the same is a retail liquor dealer's, or retail malt dealer's license, and shall describe where said license was to be used. [Id. sec. 30.]

Art. 7462. District judge to charge law to grand jury.—The judges of the district courts in this state shall give this law in special charge to each grand jury impaneled in their respective districts. [Id. sec. 31.]

Art. 7463. Fees of officers.—The county clerk, county judge and other officers shall receive for services rendered in the carrying out of this law such fees as are now allowed by law for similar services. [Id. sec. 32.]

Art. 7464. In case of forfeiture, may dispose of stock in bulk.—In case the license of any retail liquor dealer, or retail malt dealer, is forfeited under any of the provisions of this law, nevertheless such licensee shall be authorized to sell or dispose of in bulk any stock of intoxicating liquors he may have on hand at the time such license is forfeited. [Id. sec. 33.]

Art. 7465. "Intoxicating liquor" defined.—The term "intoxicating liquor," as used in this law, shall be construed to mean fermented, vinous or spirituous liquors, or any composition of which fermented, vinous or spirituous liquors is a part; and all of the provisions of this law shall be liberally construed as remedial in character. [Id. sec. 34.]

Art. 7466. **Law to be valid, even though part is held to be invalid.**—If, for any reason, any article or part of this chapter shall be held by the courts to be unconstitutional or invalid, then that fact shall not invalidate any other part of this chapter, but the same shall be enforced without reference to the parts, if any, which shall be so held to be invalid, unless the entire chapter shall be held to be invalid. [Id. sec. 35a.]

CHAPTER SIX.

TAX ON SALE OF INTOXICATING LIQUORS IN LOCAL OPTION TERRITORY.

	Article.		Article.
Tax for selling intoxicating liquors on		Licenses to be posted.....	7472
prescription in local option territory..	7467	County clerk to report application for	
Counties may levy.....	7468	license to state revenue agent.....	7473
Prerequisites to issue of license to sell..	7469	Producers of domestic wines to be	
License to issue when.....	7470	exempt	7474
License to issue for one year and shall		Dealer must give bond before license	
designate place of sale, etc.....	7471	will issue	7475

Article 7467. [5060a] **Tax for selling intoxicating liquors on prescription in local option territory.**—There shall be collected from every person, firm, corporation or association of persons, for every separate establishment selling vinous, malt or spirituous liquors or medicated bitters, within this state and located within a county, subdivision of a county, justice precinct, town or city, in which local option is in force under the laws, the sum of two hundred dollars; provided, the same shall not be sold in such locality, except on prescription and in compliance with the laws governing sales in such localities; provided, further, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, on the prescription of a physician or otherwise, in either locality as above set forth, from the payment of the tax herein imposed; provided, further, that this article shall not apply to the sale by druggists of tinctures and drug compounds, in the preparation of which such liquors or medicated bitters are used and sold on the prescription of a physician or otherwise, and which tinctures and compounds are not intoxicating beverages prepared in the evasion of the provisions of this chapter nor the local option law. [Act 1897, p. 223.]

Art. 7468. [5060b] **Counties may levy.**—The commissioners' courts of the several counties in this state shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half the state tax herein levied; and where any such sale is made in any incorporated city or town, such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners' court of the county in which such city or town is situated. [Acts 1893, p. 177.]

Art. 7469. **Prerequisites to the issue of license to sell.**—Every person, firm, corporation or association of persons, desiring to engage in the business of selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in this state, in any county, justice precinct, school district, town, city, or other subdivision of a county where the qualified voters thereof have, by a majority vote, determined that the sale of such

intoxicating liquors shall be prohibited therein, except for sacramental and medicinal purposes, shall, before engaging in such business, and in addition to all the requirements of law now in force, file with the county judge of the county in which the said business is to be pursued, an application in writing for a license to engage therein, and shall state the county and the particular portion thereof in which the said business is to be pursued, and describe the building in which it is to be pursued; said application shall give the name, residence and address of every person connected with the said association, corporation, or other applicant, and shall state that each person so connected with said applicant is a bona fide resident of the county where said business is to be pursued; said application shall have attached thereto a petition addressed to said county judge, requesting that a license be granted to said applicant or applicants, naming them, authorizing them to engage in the business of selling such liquors on prescriptions of physicians in a justice precinct and building to be named therein; said petition to be signed in person by a majority of the qualified voters of the justice precinct where said business is to be conducted at the time said petition is filed; said majority of qualified voters to be determined by the poll tax receipts and the exemption certificates issued by the tax collector of said county. There shall be attached to said petition an affidavit from some credible person or persons to the effect that every name signed to said petition is the genuine signature of the person represented to have signed the same. Upon the filing of said application for license and said petition with the county judge, the said judge shall set the same down for hearing, either in term time or in vacation, for some day not less than ten nor more than fifteen days from the day the same is filed; and said judge shall at once notify the county attorney of the day said hearing will be had. Upon the day so designated, or at some time thereafter to which the same may be postponed, the said county judge shall hear the said matter; and the county attorney, or any bona fide citizen of said justice precinct, may appear and contest the genuineness of the signatures to said petition, and whether or not a majority of the qualified voters have signed the same; and upon such hearing, if the said judge is convinced that the applicant or applicants have complied with all the requirements of law, he shall make his order authorizing the issuance of said license by the county clerk of said county, when the said applicant or applicants shall have paid all occupation taxes, given the required bond, and met all other requirements of existing laws concerning said business; but in no case shall such license be issued for a longer or shorter period than one year. [Act 1910, 3 S. S., p. 35.]

Art. 7470. [5060d] **License to issue, when.**—After the county judge has entered an order authorizing the issuance of a license, as provided in article 7469, and the applicant shall have complied with the provisions of said order, the county clerk of said county shall issue to said applicant a license to sell spirituous, vinous, or malt liquors, or medicated bitters, at the place and in the manner and quantities set forth in the application, and no sale shall be made until such license is procured. The receipt of the tax collector shall be evidence of the payment of the tax. For issuing licenses herein provided for, county clerks shall be entitled to charge a fee of twenty-five cents for each license. [Acts 1893, p. 177.]

Art. 7471. [5060e] **License to issue for one year, and shall designate place of sale, etc.**—No license shall be granted for a longer or shorter period than one year. The particular place and house in which the liquors are to be sold shall be designated in the license, and no license shall authorize any person to sell spirituous, vinous, or malt liquors, or medicated bitters, at any other place or house than that designated in the license; provided, that if any person, or association of persons, having a license to sell such liquors,

desires to change his or their place of business, such change may be made by presenting the license to the clerk of the county and having the new place of business inserted therein, but in no case to admit of the temporary closing of one place of business to sell at another place. [Id.]

Art. 7472. **Licenses to be posted.**—The license provided for in this chapter, and the occupation tax receipts, together with the internal revenue receipt issued by the United States, shall be posted by the licensee in a conspicuous place in his or their place of business; and, on failure to so post such license, receipt or internal revenue receipt, he or they so failing shall be considered as having no license and subject to all the pains and penalties as if no such license had issued.

Art. 7473. [5060f] **County clerk to report applications for license to state revenue agent.**—The county clerk in each and every county in this state shall, between the first and tenth day in each month, forward to the state revenue agent a sworn statement, giving the names of all persons who have filed applications for license during the preceding month; and the tax collector of each county shall keep a register in which shall be entered the names of all persons paying taxes under this chapter, with the date of payment, and shall, between the first and tenth day of each month, make to the state revenue agent a sworn report, giving the names of all persons who have paid a liquor tax during the preceding month, and the character of tax paid by each. The reports provided for in this article shall be made upon blank forms to be furnished by the comptroller. [Acts 1893, p.177.]

Art. 7474. [5060i] **Producers of domestic wines exempt.**—The provisions of this chapter shall not apply to wines produced from grapes grown in this state, while the same is in the hands of the producers or manufacturers thereof.

Art. 7475. [5060j] **Dealer must give bond before license will issue.**—Every person, firm, corporation or association of persons, before engaging in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any county, subdivision of a county, justice precinct, town or city, in which local option is in force, shall enter into a bond in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties, payable to the state of Texas, to be approved by the county judge of the county in which such sales are to be made, conditioned that said person, firm, corporation or association of persons, so selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, shall not sell in any quantity, except on the prescription of a regular practicing physician, addressed to such person, firm, corporation or association of persons, written with ink on white paper in the handwriting of such physician, dated, numbered and signed by such physician, giving his and applicant's place of residence, and certifying on his honor, that he has in person carefully examined the applicant or patient, and that he finds him or her actually sick, giving the malady or disease with which he or she is suffering, as near as he can ascertain, and that he or she is in immediate need of an alcoholic stimulant, such as prescribed; and there shall not be sold more than one quart on any one prescription, which shall be sold at one time and in one package, and delivered to the purchaser at time of sale; and that he or they shall not permit the same to be drunk on the premises where sold, nor on any other premises owned or controlled by him or them; and that he or they shall not sell more than once on the same prescription, and shall not sell on any prescription bearing the same number of another prescription given by the same physician and dated during the same year; and that he or they shall not sell on a prescription bearing date more than three days prior to the date of its presentation nor upon the prescription of a physician not known to him or them to be a regular practicing physician,

authorized under the laws of Texas to practice his profession, nor permit a minor to remain on his premises or his place of business, except the house or place of business of a regular pharmacist; and that he or they shall not permit any games prohibited by the laws of this state to be played, dealt or exhibited in or about such house or place of business; and that he or they shall not rent or let any part of the house or place of business or premises in which or on which they are selling such liquors or medicated bitters, to any one, for the purpose of carrying on any business in violation of the local option laws, or the penal laws of the state; and that he or they shall not adulterate the liquors or medicated bitters sold by him or them, nor knowingly sell or give away such adulterated liquors; and that he or they shall keep an open, orderly house, and shall not use any screen or other device for the purpose of or which shall obstruct the view through the door or doors opening out on the street or alley; which said bond shall be filed in the office of the county clerk of the county where such business is carried on, and recorded by him in a book to be kept for that purpose; and for recording same he shall receive a fee of seventy-five cents. For every breach or violation of any of the provisions of said bond, the person, firm, corporation or association of persons, and the sureties on said bond, shall be liable in damages to any person, firm, corporation or association of persons injured thereby. In addition to the proceedings by parties sustaining damages by the violation, it shall be the duty of the county and district attorneys to institute suit in the name of the state of Texas for each and every infraction or violation thereof, for the use and benefit of the county; and the sum of two hundred and fifty dollars shall be recovered for each infraction, against the principal and sureties on said bond, as liquidated damages; which said sum shall be paid into the county treasury and become a part of the road fund of said county. Said bond shall not be void on the first recovery, but may be sued upon for each infraction thereof until the full penal sum named therein shall be exhausted. If said bond shall be exhausted, or become in danger of being exhausted by suits, said person, firm, corporation or association of persons shall be required to execute another bond; notice of such requirement shall be given by the county judge of the county, and such parties shall have ten days after notice to comply, and upon failure to do so shall be subject to all the pains and penalties from the time such notice was given as if no bond had been given in the first instance; provided, that, in case the county judge shall fail to give the notice herein required, then any citizen of the county, over the age of twenty-one years, may do so; and in case of failure to execute another bond within the time required, as above set forth, said person may bring suit in the district court of the county to require such person, firm, corporation or association of persons to execute a new bond; provided, further, that, in case the sureties on such bond shall become insolvent, or found to be insolvent after the execution of such bond, it shall be the duty of the county judge of the county to require of them a new bond, the same as above set forth; and, in case of his failure to do so, any citizen, as above set forth, may proceed in the district court aforesaid to compel them to execute such bond; and in case the insolvency of said sureties or either of them is established, which shall be done under the rules of evidence governing other like cases, or in case it is shown that said bond is exhausted or in danger of being exhausted by suit, said court shall enter up its judgment requiring said parties to enter into a new bond within ten days from the date of the judgment, and adjudge the cost against defendants, and assess a reasonable attorney's fee against them as cost. In case of an appeal from such judgment, the bond shall be in an amount sufficient to cover all costs and damages, to be fixed by the judge trying the cause; and, in ad-

dition to the conditions now required in appeal bonds, be conditioned further to pay all damages occasioned by the breach or violation of the local option and penal laws of the state from the date of the institution of the suit until the final termination of such suit. In case appellants are cast in the suit and the same is finally determined against him or them, said appeal bond may be sued upon and recoveries had the same as provided in this chapter and article for suits and recovery on the original bond; provided, further, that, when suit is instituted hereunder by a citizen, the suit shall be prosecuted without bond for cost or appeal bond. [Act 1897, p. 223.]

CHAPTER SEVEN.

TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS.

Amount of tax.....	Article. 7476	County clerk to report license.....	Article. 7478
Application for license to state what; must be paid in advance.....	7477		

Article 7476. **Amount of tax.**—There is hereby levied upon all firms, persons, associations of persons and corporations, selling non-intoxicating malt liquors, an annual state tax of two thousand dollars. Counties, incorporated cities and towns where such sales are made may each levy an annual tax of not exceeding one thousand dollars upon all such persons, firms or corporations; provided, that this article shall not prevent the sale of such proprietary remedies as “malt extract,” “malt medicine” and “malt and iron” manufactured and used exclusively as medicine and not as a beverage, when sold upon the prescription of a regular practicing physician; provided, further, that not more than one sale shall be made upon any one prescription. [Acts 1909, p. 51, sec. 1.]

Art. 7477. **Application for license to state what; must be paid in advance.**—Each person and each firm and each corporation and each association of persons desiring to engage in the business mentioned in the preceding article, before engaging in same, shall file with the county clerk of the county in which the business is proposed to be pursued an application in writing for a license to engage therein and shall state the place or house in which said business is to be pursued, and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied by the state and the entire amount of the annual tax upon such business as may be levied by the commissioners’ court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person, or firm, or corporation, or association of persons, applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter; and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license; and it shall be unlawful to carry on business under said license in more than one place at the same time, or in any place other than that named in said

application for said license, unless the party carrying on said business shall first file with the county clerk of the county in which said business is carried on a written statement showing such change of place of business. [Act 1909, p. 51. Amended 2 S. S., p. 397.]

Art. 7478. **County clerk required to report licenses.**—The county clerk is hereby required to make report of all licenses issued by authority of this chapter, as in other cases. [Acts 1909, p. 51, sec. 3.]

CHAPTER EIGHT.

TAX ON PERSONS SOLICITING ORDERS OR OPERATING COLD STORAGE FOR INTOXICATING OR NON-INTOXICATING BEVERAGES IN LOCAL OPTION DISTRICTS.

Amount of tax for soliciting orders.....	Article. 7479	Application for license.....	Article. 7481
Amount of tax for keeping cold storage.....	7480	County clerk to report licenses issued.....	7482

Article 7479. **Amount of tax for soliciting orders.**—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of selling, or offering for sale, any intoxicating liquors by soliciting or taking orders therefor in any quantities whatsoever, in any such county, justice precinct, town, city, or other subdivision of a county, an annual state tax of four thousand dollars; and each county and also each incorporated city or town may levy an annual tax not exceeding two thousand dollars in any such county or incorporated city or town where such business is pursued. [Act 1909, p. 53, sec. 1.]

Art. 7480. **Amount of tax for keeping cold storage.**—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of keeping, maintaining or operating what is commonly known as a "cold storage," or any place by whatever name known or whether named or not, where intoxicating or non-intoxicating liquors or beverages are kept on deposit for others, or where any such liquors are kept for others under any kind or character of bailment, an annual tax of two thousand dollars. Counties, incorporated cities and towns, where such business is located, may each levy an annual tax of not exceeding one thousand dollars upon each such place so kept, run, maintained or operated. [Id. sec. 2.]

Art. 7481. **Application for license.**—Each person and each firm and each corporation and each association of persons desiring to engage in the business mentioned in articles 7479 and 7480 of this chapter in said local option territory, before engaging in same shall file with the county clerk of the county in which the business is to be pursued an application in writing for a license to engage therein, and shall state the county, or portion of the county, in which the business is to be pursued; and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person

or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied for the state, and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person or firm or corporation or association of persons applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter, and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license. [Id. sec. 3.]

Art. 7482. **County clerk to report licenses issued.**—The county clerk shall be and is hereby required to make report of all licenses issued by authority of this chapter as in other cases. [Id. sec. 4.]

CHAPTER NINE.

OCCUPATION TAX ON HANDLING LIQUORS C. O. D.

	Article.		Article.
Amount of tax.....	7483	| Invalidation of part not to affect whole chapter	7486
Penalty for failure to pay tax.....	7484		
No one required to keep office for handling liquors C. O. D.....	7485		

Article 7483. **Amount of tax.**—Any person, firm or corporation doing business in this state shall, at each office or place kept, operated or maintained by such person, firm or corporation at which intoxicating liquors legally deliverable are delivered upon payment of purchase money therefor, commonly designated as shipments C. O. D., pay annually for each office or place so kept an annual occupation tax to the state of Texas of five thousand dollars; and any county or any incorporated city or town, wherein such office or place is located, may levy an annual occupation tax upon such person, firm or corporation herein referred to for each of said offices, not to exceed one-half of the amount hereby levied by the state, such tax to be due and payable annually. [Act 1907, p. 3.]

Art. 7484. **Penalty for failure to pay tax.**—The maintaining or operating such office or offices, place or places, by any person, firm or corporation in this state without paying the occupation tax required in section one [article 7483] of this chapter shall subject such person, firm or corporation so operating and maintaining such office or offices, place or places, to pay to the state of Texas the sum of fifty dollars, and to the county and any incorporated city or town in which said offices or places are located, each the sum of fifty dollars for each day such office or offices, place or places, may be maintained or operated, and for each office or place so operated; and the state or county, or any incorporated city or town, may sue for and recover, either jointly or severally, each the said sum, for each day that each of said offices or places may be maintained and operated without prepayment of the aforesaid occupation tax. [Id. sec. 2.]

Art. 7485. **No one required to keep office.**—No person, firm or corporation shall be required to keep, operate or maintain any office at which intoxicating

liquors are deliverable upon the payment of the purchase price thereof, nor shall any such person, firm or corporation be compelled to receive, transport or deliver any intoxicating liquors, the purchase price of which, or any part thereof, is to be paid said person, firm or corporation on delivery. [Act 1907, p. 149, sec. 2a.]

Art. 7486. **Invalidity of part not to affect whole chapter.**—In the event any article of this chapter should be attacked, or for any reason held invalid, such action shall not affect the force or legality of the other articles of this chapter. [Acts 1907, p. 149, sec. 2c.]

CHAPTER TEN.

INHERITANCE TAX.

	Article.		Article.
Property subject to the tax.....	7487	Taxes charged on real estate, when.....	7495
Property passing in two or more estates.....	7488	Tax paid, when.....	7496
Property bequeathed to executor or trustee in lieu of commission, taxed when.....	7489	Collector to sue for tax, when.....	7497
Inventory to be filed when; penalty.....	7490	Collector pays tax to state treasurer.....	7498
County court to appoint administrator.....	7491	Tax deposited to credit of general revenue.....	7499
Appraisers appointed; notice to be given, etc.....	7492	Tax refunded when.....	7500
County judge to regulate tax.....	7493	Final account of executor, etc., not allowed till tax paid.....	7501
Property withheld until tax paid.....	7494	Appointment of administrator dispensed with.....	7502

Article 7487. **Property subject to the tax.**—All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of

twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. [Act 1907, p. 496, sec. 1.]

Art. 7488. **Property passing in two or more estates.**—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

Art. 7489. **Property bequeathed to executor or trustee in lieu of commission, taxed when.**—If a testator bequeaths or devises to his executor or trustee property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the state, shall be subject to taxation under this chapter.

Art. 7490. **Inventory to be filed when; penalty.**—Every executor, administrator and trustee of the estate of a decedent leaving property subject to taxation under this chapter, whether such property passes by will or by the laws of descent or otherwise, shall, within three months after his appointment, make and file an inventory thereof in the county court having jurisdiction of the estate of the decedent. Any executor, administrator or trustee, refusing or neglecting to comply with the provisions of this article, shall be liable to a penalty not exceeding one thousand dollars, to be recovered in an action brought in behalf of the state by the district or county attorney upon notice from the judge of the county court.

Art. 7491. **County court to appoint administrator.**—If within three months after the death of a decedent leaving property subject to taxation under this chapter, no application for letters testamentary or of administration shall be made, it shall be the duty of the county court to appoint an administrator. It shall be the duty of the county attorney to report to the judge of the county court all such estates, whether the property subject to taxation passes by will or by laws of descent or otherwise. For each decedent's estate thus reported, the county attorney shall receive a compensation of ten per cent of the tax payable, but not to exceed twenty dollars in any one estate. Such payment shall be made by the collector of taxes, on the certificate of the county judge, out of the taxes paid him on property belonging to such estate.

Art. 7492. **Appraisers appointed; notice to be given, etc.**—Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons

known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee, and the collector of taxes of the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge, who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this chapter; provided, however, that upon the agreement of the parties interested to dispense with the appointment of appraisers, the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person.

Art. 7493. County judge to regulate tax.—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged.

Art. 7494. Property withheld until tax paid.—If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

Art. 7495. Tax charged on real estate, when.—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

Art. 7496. Tax paid, when.—All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

Art. 7497. Collector to sue for, when.—In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, admin-

istrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require.

Art. 7498. **Collector pays to state treasurer.**—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes received by him under this law before the first day of that month, deducting therefrom all lawful disbursements made by him under this act, and also his compensation at the rate of one per cent of all taxes collected under this act.

Art. 7499. **Tax deposited to credit of general fund.**—The moneys received by the state treasurer under this chapter shall be deposited in the state treasury to the credit of the fund now there existing and known as the general revenue fund.

Art. 7500. **Tax refunded when.**—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.

Art. 7501. **Final account not allowed until tax is paid.**—No final account of an executor, administrator or trustee shall be allowed by the county judge, unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment.

Art. 7502. **Appointment of administrator dispensed with.**—If for any reason administration of the estate of a decedent, leaving property subject to taxation under this law, shall not be necessary in this state, except in order to carry out the provisions of this chapter, it shall be in the discretion of the county judge, upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisal and other proceedings required by this chapter shall be had as in other cases.

CHAPTER ELEVEN.

OF THE PROPERTY SUBJECT TO TAXATION AND THE MODE OF RENDERING THE SAME.

Article.	Article.		
All property to be taxed.....	7503	Certain credits and stocks not to be listed.....	7519
Real property includes what.....	7504	Rendition of real estate.....	7520
Personal property what.....	7505	Rendition by banker, broker, etc.....	7521
Definition of terms.....	7506	Assessments of real estate by national banks.....	7522
Exemptions from taxation.....	7507	No deductions in certain cases.....	7523
When to be rendered.....	7508	Assessments by railroads.....	7524
How to be rendered.....	7509	Railroads to return sworn statements when, etc.....	7525
Where to be rendered.....	7510	Assessments of corporate property, etc.....	7526
To be rendered in but one county.....	7511	Assessments to be in owner's name.....	7527
Live stock, pastures, etc.....	7512	Lien for taxes.....	7528
Taxes not to be paid twice.....	7513	Leasehold interest in public lands.....	7529
Vessels, where to be listed.....	7514	Valuation of property for taxation.....	7530
Railroads, telegraphs, etc.....	7515	United States paper money taxable.....	7531
Listing for others.....	7516	Assessed as money on hand.....	7532
Shall be under oath, etc.....	7517		
The statement and its requisites.....	7518		

Article 7503. [5061] **All property to be taxed.**—All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed. [Act Aug. 21, 1876, p. 275, sec. 1.]

Art. 7504. [5062] **Real property includes what.**—Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise; and all the buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. [Id. sec. 2.]

Art. 7505. [5063] **Personal property includes what.**—Personal property shall, for the purposes of taxation, be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of the state, whether the same be in or out of the state; all ships, boats and vessels belonging to inhabitants of this state, if registered in this state, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this state, due the person, to be taxed over and above what he pays interest for; and all other debts due such person over and above their indebtedness; all public stock and securities; all stock in turnpikes, railroads, canals and other corporations (except national banks) out of the state, owned by inhabitants of this state; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the state of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. [Acts of 1879, ch. 40, p. 39, sec. 3.]

Art. 7506. [5064] **Definition of terms.**—The term, “money,” or, “moneys,” wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this state, is entitled to withdraw in money on demand.

“Credits.”—The term, “credits,” wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

“Tract or lot.”—The term, “tract or lot,” and, “piece or parcel,” of real property, and piece and parcel of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

“Singular and plural.”—Every word importing the single number only may extend to and embrace the plural, and every word importing the plural number may be applied and limited to the singular number; and every word implying the masculine gender only may be extended and applied to females as well as males.

“Oath.”—Wherever the word, “oath,” is used it shall be held to mean oath or affirmation; and the word, “swear,” may be held to mean affirm.

“Town or district.”—The words, “town or district,” wherever used shall be held to mean village, city, ward or precinct, as the case may be.

“Value.”—The term, “true and full value,” wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

“Person.”—The term, “person,” shall be construed to include firm, company or corporation. [Acts 1876, p. 275, sec. 4.]

Art. 7507. [5065] **Exemption from taxation.**—The following property shall be exempt from taxation, to-wit:

1. **Schools and churches.**—Public school houses and houses used exclusively for public worship, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, or in land or other property which has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; provided, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer; and all buildings used exclusively and owned by persons or associations of persons for school purposes. This provision shall not extend to leasehold estate of real property held under authority of any college or university of learning.

2. **Cemeteries.**—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof.

3. **Public property.**—All property, whether real or personal, belonging exclusively to this state, or any political subdivision thereof, or the United States, except that in each county in this state, where the state of Texas has heretofore or may hereafter acquire and own land for the purpose of establishing thereon state farms and employing thereon convict labor on state account, it shall be the duty of the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the managing of same, to render said land for taxes to the tax assessor of said county; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county purposes only; and said county taxes shall be paid annually out of the revenue derived from such state farms respectively, by the officer or officers having the management thereof, and same shall be charged to the expense account of operating such farm; and no debt shall be created against the general revenue of the state in case of the failure

to pay said taxes out of the revenues of any such farm; and provided, further, that in arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the state and situated on said land.

4. **County buildings.**—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected.

5. **Poor-houses.**—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor.

6. **Public charities.**—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profits, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this act is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provides homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons.

7. **Fire engines.**—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof.

8. **Market houses, etc.**—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town.

9. **Public libraries.**—All public libraries and personal property belonging to the same.

10. **Furniture.**—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. [Id. sec. 24.]

11. **Pensions.**—All annual pensions granted by the state, or United States. [Act 1907, p. 302. Amended Act 1910, S. S., p. 122.]

Art. 7508. [5066] **When property to be rendered.**—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1 and December 31 of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining. [Act 1909, p. 373.]

Art. 7509. [5067] **How to be rendered.**—All property shall be listed or rendered in the manner following:

1. **By the owner.**—Every person of full age and sound mind, being a resident of this state, shall list all of his real estate, moneys, credits, bonds or

stock of joint stock or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties, and all other property.

2. **As agent.**—He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

3. **Minor.**—The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

4. **Wife.**—The property of a wife, by her husband, if of sound mind; if not, by herself.

5. **Idiot.**—The property of an idiot or lunatic, by the person having charge of such property.

6. **Cestui que trust.**—The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

7. **Receivers.**—The property of corporations whose assets are in the hands of receivers, by such receivers.

8. **Corporations.**—The property of a body politic or corporate, by the president or proper agent or officer thereof.

9. **Copartnership.**—The property of a firm or company, by a partner or agent thereof.

10. **Manufactories.**—The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

11. **Nurseries.**—The stock of nurseries, growing and otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. [Id. sec. 7.]

Art. 7510. [5068] **Where to be rendered.**—All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the state or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. [Act 1897, p. 203.]

Art. 7511. [5069] **To be rendered in but one county.**—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county. [Acts of 1879, p. 153; amend. 1895, No. 104, Sen. Jour., p. 485.]

Art. 7512. [5070] **Live stock, when and how rendered.**—All persons, companies and corporations owning pastures in this state which lie on county boundaries shall be required to list for assessment all live stock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of live stock in pasture not their own shall list said live stock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such live stock shall be paid to the tax collectors of the several counties in which such live stock is listed and assessed. [Acts of 1889, p. 29.]

Art. 7513. [5071] **Taxes not to be paid twice, etc.**—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally as-

sessed; and any sales of such lands for alleged delinquency shall be illegal and void. [Acts of 1879, p. 153, sec. 2.]

Art. 7514. [5072] Vessels, where listed.—All persons, companies and corporations in this state owning steamboats, sailing vessels, wharf boats and other water crafts shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [Acts of 1876, p. 277.]

Art. 7515. [5073] Railroads, telegraphs, etc.—All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the comptroller. [Id. sec. 11.]

Art. 7516. [5074] Listing for others.—Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. [Id. p. 278, sec. 12.]

Art. 7517. [5075] Shall list under oath.—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. [Id. sec. 13.]

Art. 7518. [5076] The statement and its requisites.—Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motor cycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.

27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.
29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year.)
30. Value of materials and manufactured articles which such person is required to list as a manufacturer.
31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.
32. Number of steam engines, including boilers, and the value thereof.
33. Amount of moneys of bank, banker, broker or stock jobber.
34. Amount of credits of bank, banker, broker or stock jobber.
35. Money on hand or on deposit, in or out of the state, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.
36. Amount of credits other than of bank, banker, broker or stock jobber.
37. Amount and value of bonds and stocks other than United States bonds.
38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.
39. Value of all property of companies and corporations other than property hereinbefore enumerated.
40. Value of stock and furniture of saloons, hotels and eating houses.
41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.
42. Every franchise, the description and value thereof.
43. Value of all other property not enumerated above. [Act 1876, p. 278, amended act 1905, p. 357.]

Art. 7519. [5077] **Certain credits and stocks not to be listed.**—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. [Id. sec. 14.]

Art. 7520. [5078] **Rendition of real estate.**—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.
2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.
3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. [Id. p. 279, sec. 15.]

Art. 7521. [5079] **Assessment of personal property by rendition by banker, broker, etc.**—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the

shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers or dealers in exchange, or stock jobbers shall render their list in the following manner:

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

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. [Acts of 1895, p. 37.]

Art. 7522. [5080] **Assessment of real estate by banks.**—Every banking corporation, state or national, doing business in this state shall, in the city or town in which it is located, render its real estate to the assessor of taxes at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the assessor of taxes all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or state banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. [Acts of 1885, p. 106.]

Art. 7523. [5081] **No deductions in certain cases.**—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [Acts of 1876, p. 280, sec. 17.]

Art. 7524. [5082] **Assessment by railroads.**—It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this state. [Act 1909, p. 373.]

Art. 7525. [5083] **Railroads to return sworn statements, when, etc.**—It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the first day of April in each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, as is provided by article 7564 of this Code, and the other laws of this state, in respect to boards of equalization, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the comptroller of public accounts, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the postoffice address of such person or firm, or if it be a corporation or association, then the city, county and state of its principal office; and if from said statement it appear that said rolling stock belongs to any person residing in the state of Texas, or to any firm doing business in the state of Texas, or to any corporation or association organized under the laws of the state of Texas, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives,

or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the comptroller, and apportioned by the comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of the state of Texas, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the comptroller, and the valuation apportioned against said owner by the comptroller in the same manner as rolling stock belonging to the railroad corporation furnishing the list. [Act 1885, p. 30, amended act 1907, p. 192.]

Art. 7526. [5084] Assessments and collections of corporate property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. [Acts of 1876, p. 280, secs. 20, 21.]

Art. 7527. [5085] Assessments in owner's name.—All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [Id. sec. 21.]

Art. 7528. [5086] Lien for taxes.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title. [Id. sec. 22.]

Art. 7529. [5087] Leasehold interests in public lands.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this state, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the state under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And, should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the commissioner of the general land office shall furnish by the first of January each year to the various commissioners' courts and the tax assessors of the state of Texas a full and complete list of all timber sold by the state belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties

where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the state. [Act 1905, p. 72.]

Art. 7530. [5088] **Valuation of property for taxation.**—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale, or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such a price as such property, including a mine or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property, of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Id. sec. 24.]

Art. 7531. [5088a] **United States paper money taxable.**—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this state. [Acts 1895, p. 49.]

Art. 7532. [5088b] **Assessed as money on hand.**—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this state. [Id.]

CHAPTER TWELVE.

OF THE ASSESSMENT OF TAXES—ELECTION AND QUALIFICATION OF THE ASSESSOR.

Article.	Article.		
Election and term of assessor.....	7533	Penalty for neglect of duty by assessor.....	7571
Vacancies, how filled.....	7534	Oath of assessor.....	7572
Oath and bond.....	7535	Oath of board.....	7573
Purview of the bond.....	7536	Neglect of duty cause for removal from office; attorney general to file suit.....	7574
New bond.....	7537	Assessor to furnish list of delinquents.....	7575
Bond for county taxes.....	7538	And submit lists to board of equalization.....	7576
May appoint deputies.....	7539	Shall make out rolls in triplicate.....	7577
Authority of deputies.....	7540	Also rolls of unrendered property.....	7578
May administer oaths.....	7541	And add up columns.....	7579
The oath.....	7542	And return and oath.....	7580
Where and how the oath may be made.....	7543	All lists, etc., filed in the county clerk's office.....	7581
Penalty for failure to attest oath.....	7544	Rolls, how distributed.....	7582
Fraud upon the public revenue.....	7545	Compensation.....	7583
Taxpayer to make oath.....	7546	How paid by the state.....	7584
When assessments to be made.....	7547	By the county.....	7585
Irregular assessments.....	7548	Penalty for neglect of duty.....	7586
If taxpayer is absent.....	7549	Lands of non-residents in unorganized counties.....	7587
Or refuses to list.....	7550	Lands of residents in.....	7588
Duty of assessor in such cases.....	7551	Duties of comptroller in relation thereto.....	7589
Commissioner of general land office to furnish abstracts to assessors.....	7552	Same.....	7590
Books to be furnished assessors.....	7553	Same.....	7591
How to be filed by assessors.....	7554	Same.....	7592
Blocks and lots in cities.....	7555	May appeal from comptroller's assessment.....	7593
Duties of assessors as to same.....	7556	May levy upon and sell, when.....	7594
To be kept in office.....	7557	Sale.....	7595
Lands not on abstract to be put there, when and how.....	7558	May be bought by state, when.....	7596
Certificate from board of equalization.....	7559	Redemption.....	7597
Substitutes to be employed, when.....	7560	Tax deed.....	7598
Unorganized counties.....	7561	List of purchasers to be kept in office.....	7599
Manner and form of assessing.....	7562	Deeds shall vest good title, when.....	7600
Assessment of property not rendered.....	7563	County taxes to be paid, where.....	7601
Boards of equalization.....	7564	Comptroller to keep taxes of unorganized county.....	7602
Assessment of real property for previous years.....	7565	Same.....	7603
Assessment of back taxes on personal property, how made.....	7566	Special deposit to be made by comptroller.....	7604
Unlisted property; supplemental roll.....	7567		
Assessor to follow instructions.....	7568		
Equalization of assessments.....	7569		
Boards may equalize without complaint.....	7570		

Article 7533. [5089] **Election and term of assessor.**—There shall be elected by the qualified electors of each county within this state, at the same time and under the same law regulating the election of state and county officers, an assessor of taxes, who shall hold his office for two years, and until his successor is elected and qualified. [Const., art. 8, sec. 14: Act Aug. 21, 1876, p. 265, sec. 1.]

Art. 7534. [5090] **Vacancies, how filled.**—In case of a vacancy in the office of assessor of taxes, the same shall be filled by the county commissioners' court for the unexpired term only, and until the election and qualification of an assessor at the succeeding general election; and the person appointed to fill such vacancy shall qualify in the same manner as is prescribed by law for assessors of taxes, and shall have all the rights and perform all the duties required by law of the assessor elected.

Art. 7535. [5091] **Oath and bond.**—Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the state tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, conditioned that he will faithfully discharge all the duties of said office; and shall take and subscribe the oath prescribed by the constitution, which oath, together with said bond, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge

of the county to the comptroller, to be deposited in his office. [Id. p. 266, sec. 2.]

Art. 7536. [5092] **Purview of the bond.**—Said bond shall be deemed to extend to the faithful performance of the duties of his office as assessor of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. [Id.]

Art. 7537. [5093] **New bond.**—Assessors of taxes may be required to furnish a new bond and additional security whenever, in the opinion of the commissioners' court, it may be advisable; and, should any assessor of taxes fail to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and be removed from office in the mode prescribed by law for the removal of county officers. [Id.]

Art. 7538. [5094] **Bond for county taxes.**—The assessor of taxes shall give a like bond with like conditions to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county; which bond shall be recorded and deposited in the county clerk's office of the county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law. [Id. sec. 3.]

Art. 7539. [5095] **May appoint deputies.**—Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies. [Id. p. 267, sec. 7.]

Art. 7540. [5096] **Authority of deputies.**—The deputies appointed in accordance with the provisions of the preceding article shall do and perform all the duties imposed and required by law of assessors of taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the assessor of taxes in person. [Id. sec. 8.]

Art. 7541. [5097] **May administer oaths.**—Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. [Id. p. 266, sec. 4.]

Art. 7542. [5098] **The oath.**—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I,
....., (filling the blank with the name of the person subscribing) do solemnly swear (or affirm) that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county, and personal property not in this county subject to taxation in this county by the laws of this state, on the first day of January, A. D. 19.. (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God." [Id. p. 267, sec. 5. Amended act 1897, p. 204.]

Art. 7543. [5099] **Where and how the oath may be made.**—The owner or agent who is required under the laws of this state to render any property

for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this state, or any officer out of this state that is authorized by law to take acknowledgments of instruments for record in this state, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify, by mail or otherwise, the person from whom he received said list that he has referred said valuation to the board of equalization. [Acts 1876, p. 267, sec. 5.]

Art. 7544. [5100] **Penalty for failure to attest oath, etc.**—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in article 5098 to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon full and satisfactory information furnished the county judge; and for each and every failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. [Id. sec. 6.]

Art. 7545. [5101] **Fraud upon the public revenue.**—Any evasion by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this state for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this state. [Acts of 1891, p. 39, sec. 1.]

Art. 7546. [5102] **Taxpayer to make oath.**—All assessors of taxes in this state shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this state; provided, that if any person shall make a false affidavit as to any of the foregoing facts he shall be deemed guilty of perjury and be punished as is now provided by law. [Id. sec. 3.]

Art. 7547. [5103] **When assessments to be made.**—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person and listing the property required by law in his name, and requiring such person to make a statement under oath as prescribed by article 7542, of such property in the form hereinafter prescribed. [Act 1876, p. 265, sec. 9. Amended act 1909, p. 373.]

Art. 7548. [5104] **Irregular assessments valid.**—Should any property be listed or assessed for taxation after the thirtieth day of April of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessment shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. [Id.]

Art. 7549. [5105] **If taxpayer is absent, etc.**—If any person, who is required by this title to list property, shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The assessor of taxes shall carefully note in a book the date of leaving such notice. [Id. p. 268, sec. 10.]

Art. 7550. [5106] **Or refuses to list.**—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the assessor of taxes, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the assessor of taxes shall note in a book such fact, together with the name of such person. [Id. sec. 11.]

Art. 7551. [5107] **Duty of assessor in such cases.**—In all cases of failure to obtain a statement of real and personal property from any cause, it shall be the duty of the assessor of taxes to ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. [Id. sec. 12.]

Art. 7552. [5108] **Commissioner of general land office to furnish abstracts to assessors.**—The commissioner of the general land office shall furnish to each assessor of taxes in this state a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner of the general land office shall furnish said assessors an additional list of all new valid surveys in his county during the year; provided, that, in case the records of the land office do not show the quantity of acres in a survey, the surveyor of the district shall furnish said assessor a certified statement of the number of acres therein. [Acts of 1879, p. 24.]

Art. 7553. [5109] **Books to be furnished assessors; how to be filled by assessors.**—The commissioners' courts of each county in this state shall procure and furnish the assessor of said county three well-bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form: [Id. sec. 2.]

Abstract No. Assessor's Abstract for Co.

P A T E N T										C E R T I F I C A T E						
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character	To Whom Issued	Year	Value	Acres	By Whom Rendered	Year	Value
			Month	Day	Year											

Rendered for Taxation

Art. 7554. [5110] **How to be filled by assessor.**—The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. [Id. sec. 2.]

Art. 7555. [5111] **Blocks and lots in cities.**—Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners' court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivision, giving the number of the lots as per form following:

Block No. _____ Assessor's Abstract of City Lots in _____ County, City of _____			
Year	Owner's Name			No. Lot	Value
Year	Owner's Name	No. Lot	Value
Year	Owner's Name	No. Lot	Value

And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor. [Id. sec. 3.]

Art. 7556. [5112] **Duties of assessor as to same.**—Each assessor in this state, when he shall have made the assessment of his county for each year, shall, on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in articles 5110, 5111 and 5119 [7554, 7555 and 7563]; and that all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. And said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show by a survey, to be made by the county surveyor of the county, that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. [Id. sec. 4.]

Art. 7557. [5113] **To be kept in office.**—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. [Id. sec. 5.]

Art. 7558. [5114] **Lands not on abstract to be placed there.**—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. [Id. sec. 6.]

Art. 7559. [5115] **Certificate from board of equalization.**—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county, are rendered for taxation; which certificate shall be forwarded to the comptroller of this state before he shall issue to said assessor a draft on the tax collector of his county. And the same rule shall apply to the commissioners' court before they issue drafts on the county treasurer for his pay for assessing the county taxes. [Id. sec. 7.]

Art. 7560. [5116] **Substitute to be employed if assessor fails.**—The board of equalization or the county commissioners' court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year. [Id. sec. 8.]

Art. 7561. [5117] **Unorganized counties.**—The comptroller of this state shall be required to have this law carried out in the unorganized counties of this state, where lands are located. [Id. sec. 9.]

Art. 7562. [5118] **Manner and form of assessing.**—The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.

8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number and amount of land certificates, and value thereof.
16. Number of horses and mules and value thereof.
17. Number of cattle and value thereof.
18. Number of jacks and jennets, and value thereof.
19. Number of sheep and value thereof.
20. Number of goats and value thereof.
21. Number of hogs and value thereof.
22. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
23. Number of sewing machines and knitting machines and the value thereof.
24. Number of clocks and watches and the value thereof.
25. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
26. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
27. Office furniture and the value thereof.
28. The value of gold and silver plate.
29. The value of diamonds and jewelry.
30. Every annuity or royalty, the description and value thereof.
31. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
32. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
33. The value of material and manufactured articles which such person is required to list as a manufacturer.
34. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
35. Number of steam engines and boilers and value thereof.
36. The amount of moneys of bank, banker, broker, stock jobber or any other person.
37. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
38. The amount and value of bonds and stocks other than United States bonds.
39. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.
40. The value of property of companies and corporations other than property hereinbefore enumerated.
41. The value of stock and furniture of saloons, hotels and eating houses.
42. The value of every billiard, pigeon hole, bagatelle, and other similar table, together with the number thereof.
43. Every franchise, the description and value thereof.
44. The value of all other property not enumerated as above. [Acts of 1895, p. 38.]

Art. 7563. [5119] **Assessment of property not rendered.**—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

1. The name of the owner; if unknown, say “unknown.”
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. [Id. p. 269, sec. 14.]

Art. 7564. [5120] **Boards of equalization.**—The commissioners’ courts of the several counties of this state shall convene and sit as boards of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc. for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

2. They shall have power to correct errors in assessments.

3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same, if same be found correct.

5. Whenever said board shall find it their duty to raise the assessment of any person’s property, it shall be their duty to order the county clerk to give the person written notice who rendered the same, that they desire to raise the value of the same. It shall be their duty to cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice’s precinct, one of which must be at the court house door.

6. The assessors of taxes shall furnish to the board of equalization, on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath or affirmation as required by law, together with the assessment of said person’s property made by him through other information; and the board of equalization shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. [Acts of 1879, p. 44; amend. 1895, Sen. Jour., No. 108, p. 486; amended act 1909, p. 373.]

Art. 7565. [5120a] **Assessment of real property for previous years.**—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each and every year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor, unless he has ascertained by the certificate of the comptroller of public accounts the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. [Acts of 1888, p. 4; Id. 1895, Sen. Jour., p. 486.]

Art. 7566. [5121] **Assessment of back taxes on personal property.**—If the assessor of taxes shall discover in his county any property, or, outside of his county but belonging to a resident of the county, and personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each and every year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. [Acts of 1887, p. 127.]

Art. 7567. [5121a] **Unlisted property; supplemental roll.**—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them for the purpose of ascertaining the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall, and it is hereby made their duty to, assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the comptroller, three copies of such supplemental roll, one copy to be delivered to the comptroller of public accounts, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the county commissioners' court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the county commissioners' court, in like manner as upon the tax roll of the tax assessor. The collectors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full and correct assessment of all taxable property assessed by them under this act. The oath shall be the same as is administered by tax assessors under existing law. The collector of taxes shall receive the following compensation for his services on all assessments made by him under this act, to-wit: For assessing the state and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in article 5133 [7583]. [Acts of 1895, p. 103.]

Art. 7568. [5122] **Assessor to follow instructions.**—The assessors of taxes, in the execution of their duties, shall use the forms and follow the instructions which shall from time to time be prescribed by the comptroller of public accounts, and furnished to them by the county judge in pursuance of law. [Acts of 1876, p. 265.]

Art. 7569. [5123] **Equalization of assessments.**—Hereafter when any person, firm or corporation renders his, their or its property in this state for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once

place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and, if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and, if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor he shall so notify the assessor, and if desiring so to do may make oath before the assessor that the valuation so fixed by said officer on said property is excessive; then it shall be the duty of such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property as is hereinafter provided; and in this connection it is provided that such officer or court shall take into consideration what said property could have been sold for any time within six months next before the rendition of said property. [Id. p. 270, sec. 17. Amended act 1907, p. 459.]

Art. 7570. [5124] **Boards may equalize without complaint.**—The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the state, to increase or diminish the same and to affix a proper valuation thereto, as provided for in article 7569 of this chapter; and, when any assessor in this state shall have furnished said court with the rendition as provided for in article 7569 of this chapter, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in article 7569 of this chapter; and their action in such case or cases shall be final. [Id.]

Art. 7571. [5124a] **Penalty for neglect of duty by assessor.**—If any tax assessor in this state shall fail, refuse or neglect to place upon any rendition as provided for in article 7569 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners' court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or, if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the part of such officer, and shall be cause for his removal from office. [Act 1907, p. 459.]

Art. 7572. [5124b] **Oath of assessor.**—Every tax assessor and deputy tax assessor in this state, in addition to the oath prescribed by the constitution of this state, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, _____, tax assessor (or deputy tax assessor, as the case may be) in and for _____ county, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation lying in said county that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such

property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the constitution and laws of this state relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the constitution and laws of this state. So help me God." This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. [Id.]

Art. 7573. [5124c] **Oath of board.**—When a commissioners' court in this state convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, _____, a member of the board of equalization of _____ county, for the year A. D. _____, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the constitution and laws of this state relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the constitution and laws of this state. So help me God." Said oath shall be filed and recorded in the commissioners' court record as a part of the proceedings of that term of court. [Id.]

Art. 7574. [5124d] **Neglect of duty cause for removal from office; attorney general to file suit.**—If, in passing upon the value of any property by a commissioners' court sitting as a board of equalization in this state, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or members of any commissioners' court in this state shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this state, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact

is brought to the knowledge of the attorney general of this state that any tax assessor, deputy tax assessor, county judge, or member of the commissioners' court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer or officers thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by the attorney general of the state or under his direction. [Id. art. 5124e, R. S. 1895.]

Art. 7575. [5125] **Assessor to furnish list of delinquents.**—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or to qualify, or to sign the oath or affirmation, as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. And should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath or affirmation, as the case may be, to the assessor of taxes, who shall present the said list to the grand jury of his county next impaneled after the board of equalization has furnished him with the list above required. [Acts 1876, p. 270, sec. 18.]

Art. 7576. [5126] **And submit lists to board of equalization.**—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June, or as soon thereafter as practicable, for their inspection, approval, correction or equalization; and, after the board of equalization shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls or books of all the real and personal property listed to him, in the form and manner prescribed by the comptroller of the state. [Id. sec. 20.]

Art. 7577. [5127] **Shall make out rolls in triplicate.**—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the comptroller of public accounts, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. [Id. sec. 19.]

Art. 7578. [5128] **Also rolls of unrendered property.**—The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the comptroller of the state. [Id. p. 271, sec. 21.]

Art. 7579. [5129] **And add up columns.**—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement

showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. [Id. sec. 22.]

Art. 7580. [5130] **Return and oath.**—The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas, }
 County. }

I,, assessor of county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in (fill the blank with the name of the county) county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law; and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe. [Id. sec. 23; Amend. Act 1897, p. 204.]

Art. 7581. [5131] **All lists, etc., filed in county clerk's office.**—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. [Acts 1870, p. 271, sec. 24.]

Art. 7582. [5132] **Rolls, how distributed.**—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the comptroller of public accounts, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title: [Id. sec. 25.]

Art. 7583. **Compensation.**—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the state and county tax, on all sums for the first two million dollars or less, five cents for each one hundred dollars of property assessed; and on all sums in excess of two million dollars and less than five million dollars, two and one-fourth cents on each one hundred dollars; and on all sums in excess of five million dollars, one and seven-tenths cents on each one hundred dollars; one-half of the above fees shall be paid by the state and one-half by the county; and for assessing the poll tax, five cents for each poll, which shall be paid by the state. The commissioners' court may allow to the assessor of taxes such sums of money, to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by the county to him for assessing. [Acts of 1883, p. 33. Amended Act 1, S. S., 1897, p. 8, sec. 8.]

Art. 7584. [5134] **How paid by state.**—The comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the state for assessing the state taxes, to be paid out of the first money collected for that year. [Id. sec. 27.]

Art. 7585. [5135] **By the county.**—The commissioners' court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. [Id. sec. 28.]

Art. 7586. [5136] **Penalties for neglect of duty.**—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners' court in the time and manner provided for in this chapter, it shall be competent for the commissioners' court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners' court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners' court shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. [Id. sec. 29. See Acts of 1879, ch. 47.]

Art. 7587. [5137] **Lands of non-residents in unorganized counties, etc.**—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the comptroller of public accounts in accordance with such regulations as he may adopt and establish for that purpose. [Const., art. 8, sec. 12.]

PROPERTY IN UNORGANIZED COUNTIES.

Art. 7588. [5138] **Lands in unorganized counties.**—All lands and other property situated in the unorganized counties of this state, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this state. [Acts of 1879, p. 141.]

Art. 7589. [5139] **Duties of comptroller in relation thereto.**—The comptroller of the state is authorized, empowered and required to assess and collect the state and county taxes on all lands in this state which are situated in unorganized counties thereof and owned by non-residents thereof, in the manner hereinafter provided. [Id. sec. 2. Amended Acts 1897, p. 43.]

Art. 7590. [5140] **Same.**—The comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. [Id. sec. 3.]

Art. 7591. [5141] **Same.**—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such unorganized county,

and place such value upon the lands thus found to be unrendered as he, as a sworn officer, may deem just and fair; provided, nothing in this law shall be so construed as to prevent the comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. [Id. sec. 4.]

Art. 7592. [5142] **Same.**—After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the comptroller. [Id. sec. 5.]

Art. 7593. [5143] **May appeal from comptroller's assessment.**—Assessment of lands rendered to the comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the comptroller thinks the valuation too low he shall object, and, if the comptroller and the party rendering the land can not agree, then the comptroller shall assess the same at such value as he as a sworn officer may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equalization, which for such purposes shall consist of the governor, attorney general and the secretary of state, and their decision shall be final. [Id. sec. 6.]

Art. 7594. [5144] **May levy upon and sell, when.**—Three months after the completion of the unrendered list of each unorganized county respectively, the comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the state for four consecutive weeks; said notice to state that on a certain day therein named the comptroller will proceed to sell the land therein described, or so much thereof as may be necessary, to pay the state and county taxes due, and the cost of advertising the same. [Id. sec. 7.]

Art. 7595. [5145] **Sale.**—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the comptroller's office, in the city of Austin, between the hours of eight o'clock a. m. and four o'clock p. m. of each day. [Id. sec. 8.]

Art. 7596. [5146] **May be bought by state, when.**—Should there be no purchaser of said lands, then the comptroller shall bid the same in to the state for the taxes due thereon and the costs of sale, and make a deed to the state to the same, including in one deed all lands bid in for the state or any one else. [Id. sec. 9.]

Art. 7597. [5147] **Redemption.**—Should the lands bid in by the comptroller for the state not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. [Id. sec. 10.]

Art. 7598. [5148] **Tax deed.**—The comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. [Id. sec. 11.]

Art. 7599. [5149] **List of purchasers to be kept in office.**—The comptroller shall keep a list of the purchaser or purchasers of all such lands in his office, showing the name and postoffice of the purchaser or purchasers, together with the amount and description of the land sold and the amount for which it was sold, and the date of sale. [Id. sec. 12.]

Art. 7600. [5150] **Deed shall vest good title, when.**—The deed given to the purchaser or purchasers by the comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the comptroller, when called upon, to the purchaser or purchasers thereof. [Id. sec. 13.]

Art. 7601. [5151] **County taxes to be paid, when.**—All county taxes collected under the provisions of article 5147 [7597] shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id. sec. 14.]

Art. 7602. [5152] **Comptroller to keep taxes of unorganized counties until.**—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by the comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall, upon the demand of the treasurer of the former unorganized county, when the same shall have organized, pay said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id. sec. 15; amended act 1897, p. 43.]

Art. 7603. [5152a] **Same.**—Where the amount to the credit of any unorganized county now exceeds five thousand dollars the comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. [Act 1897, p. 43.]

Art. 7604. [5153] **Special deposit to be made by comptroller.**—All money received by the comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the state treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the comptroller under the provisions of this law be deposited in the state treasury as a special fund, subject to the order of the comptroller, to be paid to the county treasurers as provided in this chapter. [Id. sec. 16.]

CHAPTER THIRTEEN.

OF THE COLLECTION OF TAXES; ELECTION AND QUALIFICATION OF THE COLLECTOR.

	Article.		Article.
Collector; election and term of office.....	7605	List to be posted.....	7635
Vacancies, how filled.....	7606	May be continued from day to day.....	7636
Sheriff, collector when.....	7607	Homesteads liable only for.....	7637
Bond and oath.....	7608	Sales of land, how made.....	7638
New bond, etc.....	7609	Tax deed, and its requisites.....	7639
Bond for county taxes.....	7610	Sales to be reported to commissioners' court.....	7640
All bonds to be first approved.....	7611	Redemption of land sold for taxes.....	7641
May appoint deputies.....	7612	Redemption of land within two years.....	7642
Rolls to be warrant, etc.....	7613	Redemption from private purchasers.....	7643
Collector for all taxes.....	7614	Receipt of collector, notice when.....	7644
Collections, when to begin.....	7615	Relief, when.....	7645
Shall keep office at county seat.....	7616	Same.....	7646
Tax receipts and requisites.....	7617	Certificate of redemption from collector, notice when.....	7647
Quarterly reports, requisites of.....	7618	Lands to be bid in for state, when.....	7648
Duties of clerk and collector.....	7619	May redeem, how.....	7649
Report not to be approved, unless.....	7620	If not redeemed.....	7650
List of delinquents and insolvents to be made out.....	7621	May redeem by paying costs.....	7651
Collector to endeavor to collect.....	7622	Commissioners' court to sit as board of inquiry, when.....	7652
Non-residents.....	7623	Collector to file complaint, when.....	7653
Forced collections to begin, when.....	7624	Compensation.....	7654
Personal property may be pointed out.....	7625	On occupation taxes.....	7655
When property about to be removed from county.....	7626	Compensation for one levy only, when.....	7656
Tax lien superior to assignment, attachment, inheritance or devise, except.....	7627	Taxation upon lands in unorganized counties.....	7657
Executions upon property in other counties than that where taxes are due.....	7628	Payments of moneys.....	7658
Tax collector not allowed credit for delinquents, when.....	7629	Same.....	7659
All property liable for taxes.....	7630	Notification to pay.....	7660
Sales of property, how made.....	7631	District and county attorneys to sue for taxes on personal property.....	7661
If property is insufficient.....	7632	Limitation not available to delinquent taxpayer.....	7662
Sales of real property, when made.....	7633		
Advertisement of real property for sale.....	7634		

Article 7605. [5154] **Election and term of collector.**—In each county having ten thousand inhabitants, to be determined by the last preceding census of the United States, there shall be elected by the qualified voters, at the same time and under the same law regulating the election of state and county officers, a collector of taxes, who shall hold his office for two years and until his successor is elected and qualified. [Const., art. 8, sec. 16. Act Aug. 21, 1876, p. 259, sec. 1.]

Art. 7606. [5155] **Vacancies, how filled.**—Should the office of collector of taxes from any cause become vacant before the expiration of said term, it shall be the duty of the commissioners' court in the county in which such vacancy shall occur, to appoint a collector of taxes, who shall be qualified in the same manner and subject to like bonds as the collector of taxes elected; and the collector of taxes so appointed shall hold his office for and during the unexpired term of his predecessor and until his successor shall have been qualified; and the collector of taxes so appointed shall have all the rights and perform all the duties required by law of the collector of taxes elected. [Id.]

Art. 7607. [5156] **Sheriff a collector, when.**—In each county having less than ten thousand inhabitants, the sheriff of such county shall be the collector of taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected. [Const., art. 8, sec. 16. Id. sec. 2.]

Art. 7608. [5157] **Bond and oath.**—Every collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give a bond based upon unincumbered real estate of the sureties subject to execution, payable to the governor and his successors in office, in a sum which shall be equal to the whole amount of the state tax of the county as shown by the last preceding

assessment, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, which shall be further subject to the approval of the comptroller, and shall take and subscribe the oath prescribed by the constitution, which, together with said bonds, shall be recorded in the office of the clerk of the county court of said county and be forwarded by the county judge of the county to the comptroller to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. [Id. sec. 3.]

Art. 7609. [5158] **New bond.**—The collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the commissioners' court or comptroller of public accounts, it may be advisable. Should any collector of taxes fail to give a new bond and additional security, when required, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 7610. [5159] **Bond for county taxes.**—Collectors of taxes shall give a like bond, with like conditions, to the county judges of their respective counties and their successors in office, in a sum not less than the whole amount of the county tax of the county, as shown by the last preceding assessment, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county; which bond shall be recorded and deposited in the office of the clerk of the county court. A new bond and additional security may be required; and, for a failure to give such new bond or additional security, the collector of taxes may be removed from office in the manner prescribed by law. [Id. p. 260, sec. 4.]

Art. 7611. [5160] **All bonds to be first approved.**—No collector of taxes shall enter upon the discharge of the duties of the office until all the bonds required of him by law for the collection of any taxes, state, county or special, shall have been given and approved.

Art. 7612. [5161] **May appoint deputies.**—Each collector of taxes may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity; and the collectors, in all cases, shall be liable and accountable for his proceedings and misconduct in office. [Id. sec. 9.]

Art. 7613. [5162] **Rolls to be a warrant.**—When the collector of taxes of any county shall have received the assessment rolls or books of the county, he shall receipt to the commissioners' court for the same; and said rolls or books shall be full and sufficient authority for the county collector of taxes to receive and collect the taxes therein levied. [Id. sec. 5.]

Art. 7614. [5163] **Collector for all taxes.**—The collector of taxes shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the state or county, school, poorhouse or other purpose; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. [Id. sec. 6.]

Art. 7615. [5164] **Collections, when to begin.**—The collector of taxes of each county shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or magistrate's precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid;

and it shall be the duty of said collector, or his deputy, to attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days; and, if the collector shall, from any cause, fail to meet the taxpayers at the time and place specified in the first notice, he shall, in like manner, give a second notice. [Id. sec. 7.]

Art. 7616. [5165] **Shall keep office at county seat.**—The collector of taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of December of the same year for which the assessment is made. [Acts of 1887, p. 127.]

Art. 7617. [5166] **Tax receipt and its requisites.**—The collector of taxes or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of state ad valorem tax, amount of state poll tax, the amount of county ad valorem tax, the amount of county poll tax, and the year or years for which such tax was levied; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee; the said receipt shall have a duplicate stub showing the name of the person, the date, the amount of each separate tax and the date of payment. The collector of taxes shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words, "Collector of taxes, ——— County" [the blank to be filled with the name of the county], and shall impress said seal to each receipt given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. [Acts of 1876, p. 261, sec. 10.]

Art. 7618. [5167] **Quarterly reports; requisites of; duties of collector.**—

1. At the end of each month, the collector of taxes shall, on forms to be furnished by the comptroller of public accounts, make an itemized report under oath to the comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all state taxes collected.

2. He shall present such report, together with the tax receipt stubs, to the county clerk, who shall, within two days, compare said report with said stubs; and, if same agree in every particular as regards names, dates, and amounts, he (the clerk) shall certify to its correctness, for which examination and certificate he shall be paid by the commissioners' court twenty-five cents for each certificate and twenty-five cents for each two hundred taxpayers on said report.

3. The collector of taxes shall then immediately forward his reports so certified to the comptroller, and shall pay over to the state treasurer all moneys collected by him for the state during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected; and, to enable him to do so, he may, at his own risk, send the same to the state treasurer at the least cost to the state, on which he shall be allowed credit by the comptroller upon filing receipts showing actual amount of exchange paid; provided, that the state treasurer shall accept no payment other than money orders or direct cash payments, which may be made through express companies, banks, or any other source. The state treasurer, whenever he may receive a remittance from a collector of taxes, shall promptly pay the money so remitted to the state treasury, on the deposit warrant of the comptroller, and the money when so deposited shall be a credit to the said collector of taxes.

4. The collector of taxes shall pay over to the state treasurer all balances in his hands belonging to the state, and finally adjust and settle his account with the comptroller on or before the first day of May of each year; and, to enable him to do so, the commissioners' court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance of a delinquent and insolvent list to the collector, in accordance with article 7621, shall not absolve any taxpayer or property thereon from the payment of taxes; but it shall be the duty of the collector to use all necessary diligence to collect the amounts due thereon, after it is allowed by the commissioners' court; and he shall issue special tax receipts therefor, to be furnished by the comptroller; which blank receipts shall be numbered and charged to the collector, who shall account for same at his next annual settlement, in the same manner as occupation tax receipts; he shall also make itemized monthly reports of such collections, using special blanks for that purpose.

6. To enforce the prompt and speedy collection and remittance of taxes, and to provide for the proper accounting of same, the comptroller shall prescribe and furnish the forms to be used by collectors of taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. It shall be his imperative duty to enforce a strict observance of all the provisions of these articles.

7. It shall be the duty of the comptroller to notify the district attorney of the district, or the county attorney of the county, in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any of the provisions of this article. [Acts of 1893, p. 90.]

Art. 7619. [5168] **Duties of clerk and collector.**—1. The collector of taxes shall at the end of each month make like reports to the commissioners' court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the state. The county clerk shall likewise, within two days after the presentation of said report by the collector, examine said report and stubs, and certify to their correctness as regards names, dates and amounts; for which examination and certificate he shall be paid by the collector of taxes fifty cents each month, which amount shall be allowed to the collector by the commissioners' court.

2. The clerk shall file said report intended for the commissioners' court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners' court.

3. The collector of taxes shall immediately pay over to the county treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners' court, the collector of taxes shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the state and county, collected by him during the previous three months. Said statement must show that all taxes due the state have been promptly remitted to the state treasury at the end of each month, and all taxes due the county have been paid over promptly to the county treasurer, and shall file proper vouchers and receipts showing same.

5. The commissioners' court shall examine such statement and vouchers, together with the itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the collector of taxes has properly accounted for all taxes collected, as provided above, the commissioners' court shall enter

an order approving said report, and the order approving same shall be recorded in the minutes, as other proceedings of said court.

6. The collector of taxes shall finally adjust and settle his account with the commissioners' court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the state. [Id.]

Art. 7620. [5169] **Report not to be approved, unless.**—If any collector of taxes shall have failed at the end of each month, or within three days thereof, to promptly remit to the state treasurer the amount due by him to the state, or pay over to the county treasurer the amount due by him to the county, the commissioners' court, at the next regular meeting, shall ascertain the facts; and, if the collector of taxes fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners' court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the state and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in articles 7658 and 7659 of the Revised Statutes, and notify such collector, as is provided for in article [article 7660], under penalty for failure to do so, in section 4 of said article [as provided for in the Penal Code.] Whenever the collector of taxes shall fail or refuse to remit to the state treasurer the amounts due the state, when requested, the comptroller shall notify him under articles [7658]; 7659, 7660 and 7661, and for such failure be subject to the penalties provided in the Penal Code. [Acts of 1893, p. 90.]

Art. 7621. [5170] **List of delinquents and insolvents to be made out.**—The collector of taxes shall make out on forms, to be furnished for that purpose by the comptroller of public accounts, between April 1 and 15 of each year, lists of delinquent or insolvent taxpayers, the caption of which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the court house door of the county, and one list at the court house door, or where court is usually held, in each justice precinct in his county; and the collector of taxes, upon the certificate of the commissioners' court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners' court, as above provided for. [Id.]

Art. 7622. [5171] **Collector to endeavor to collect delinquent list.**—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but it shall be the duty of the collector to use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. [Id. p. 262, sec. 13.]

Art. 7623. [5172] **Non-residents.**—Non-residents of counties, owing state or county taxes, are hereby authorized to pay the same to the comptroller of public accounts; provided, that all taxes due by said non-residents shall be paid at the comptroller's office on or before the first day of January next after the assessment of such taxes; provided, further, that the collectors of taxes shall be entitled to the commissions on all moneys paid by non-residents to the comptroller of public accounts, due their counties respectively. [Acts of 1879, p. 41.]

Art. 7624. [5173] Forced collections to begin, when.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the comptroller, the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the collector of taxes by the comptroller. The comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. [Acts of 1887, p. 127.]

Art. 7625. [5174] Personal property may be pointed out.—If any person shall point out to the collector of taxes sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. [Id.]

Art. 7626. [5175] When property about to be removed from county.—If it comes to the knowledge of the collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes, unless the owner of such property shall give bond, with sufficient security, payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [Id.]

Art. 7627. [5175a] Tax lien superior to assignment, attachment, inheritance or devise, except.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachment or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or party, or against any of his estate remains unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that, when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness; and such unpaid taxes shall be paid by the assignee, when said property has been assigned by the sheriff out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found. [Report joint committee, 1895, No. 111, Sen. Jour., p. 486.]

Art. 7628. Execution on property in other counties than that where tax is due.—Whenever it shall appear to the collector of taxes in any county in this state that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, it shall be the duty of such collector to make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and to forward the same to the collector of taxes of any county or counties

where he shall have reason to believe said delinquent has property of any description, and, if said property is in any of the unorganized counties of this state, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale, in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [Act 1905, p. 317.]

Art. 7629. **Tax collector not allowed credit for delinquents, when.**—No tax collector in this state shall be allowed credit for lists of delinquent or insolvent taxpayers, as provided by article 7621 of the Revised Statutes of this state, until he makes oath in writing that he has exhausted all resources to collect said delinquent taxes under this chapter and under articles 7624, 7625, 7626 and 7627. [Id.]

Art. 7630. [5176] **All property liable for taxes.**—All real and personal property held or owned by any person in this state shall be liable for all state and county taxes due by the owner thereof, including taxes on real estate, personal property and poll tax; and the collector of taxes shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding. [Acts of 1879, p. 46.]

Art. 7631. [5177] **Sales of property, how made.**—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the court house door, and at two other public places in the county; and such sale shall take place at the court house door of the county in which the assessment is made, by public auction. [Acts of 1876, p. 259, sec. 15.]

Art. 7632. [5178] **If property is insufficient.**—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale; and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. [Id.]

Art. 7633. [5179] **Sales of real property, when made.**—If the delinquent is not possessed of a sufficiency of personal property in the county, subject to seizure and sale, to satisfy all taxes due by him, the collector of taxes shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and the same sell in accordance with the provisions of the succeeding article. [Id. sec. 16.]

Art. 7634. [5180] **Advertisements of real property for sale, etc.**—In making sales of real property for taxes, the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised, to be taxed as other costs of sale against such land; provided, the cost of advertising in a newspaper shall be deducted from the fees allowed the collector for advertising; and provided, that the comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the state; and, if there be no newspaper published in the county, or, there being a newspaper published in the county, and the publisher thereof refuses to publish the advertisement at the price herein fixed, then advertisement shall be made by posting the same

for thirty days previous to the day of sale, at the court house door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner, if known, and if unknown say "unknown," together with time, place and terms of sale; said sale to be for cash, to the highest bidder, at public outcry, at the court house door, and between legal hours, on the first Tuesday of the month. [Acts of 1881, p. 15.]

Art. 7635. [5181] **List to be posted.**—Prior to the sale of any real property for taxes in any county in this state, the collector of taxes shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: One copy at the court house door of the county, and a copy at two other public places in the county where the lands or lots are situated. [Acts of 1879, S. S., p. 46.]

Art. 7636. [5182] **May be continued from day to day.**—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the collector of taxes shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not paid before the completion of the tax sales, the collector shall resell the property, and continue such sale until the same is complete. [Acts of 1876, p. 289.]

Art. 7637. [5183] **Homesteads liable only for their own taxes.**—No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead. [Id.]

Art. 7638. [5184] **Sales of land, how made.**—The collector of taxes, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser, begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. [Id. p. 263, sec. 17.]

Art. 7639. [5185] **The tax deed and its requisites.**—The collector of taxes shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and costs and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as hereinafter provided; which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for the taxes was made, provided, the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold he shall convey, subject to the right of redemption provided for in Article 7641, all the right and interest which the former owner had therein at the time when the assessment was made. [Const., art. 8, sec. 13; Id. sec. 18.]

Art. 7640. [5186] **Sales to be reported to commissioners' court.**—When the collector of taxes shall have made sale of any real estate under this chapter, it shall be his duty to make immediate return of said sale to the commissioners' court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said

sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. [Id.]

Art. 7641. [5187] **Redemption of land sold for taxes.**—The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale, redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representative, double the amount of money paid for the land. [Id. sec. 19.]

Art. 7642. **Redemption within two years, when.**—The owner or any one having an interest in lands or lots heretofore sold to the state or any city or town under the decree of court in any suit or suits brought for the collection of the taxes thereon, or by a collector of taxes or otherwise, shall have the right within two years from August 3, A. D. 1909, to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And, where lands or lots shall hereafter be sold to the state, or to any city or town, for taxes under decree of court in any suit or suits brought for collection of taxes thereon, or by a collector of taxes or otherwise, the owner having an interest in such lands or lots shall have the right to redeem the same within two years after such sale upon payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all the taxes, interest, penalties, cost on or against said land or lots at the time of redemption. [Act 1909, p. 400, sec. 1.]

Art. 7643. [5188] **Redemption from private purchasers.**—Any person having the right to redeem any land sold at tax sale may do so by payment, within the time prescribed by law, to the collector of taxes of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit before some officer authorized by law to administer oaths, that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser can not agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes. [Act 1879, S. S., p. 29.]

Art. 7644. [5189] **Receipt of collector notice when.**—It shall be the duty of any collector of taxes, to whom payment is made under the provisions of this chapter, to give a receipt therefor, signed by him officially, in the presence of two witnesses; which said receipt, when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and the collector of taxes shall, on demand, pay over to the purchaser at said tax sale the money thus received by him. [Id. sec. 2.]

Art. 7645. [5190] **Relief, when.**—Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements hereinafter indicated. [Acts of 1881, p. 107.]

Art. 7646. [5991] **Same.**—If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the state, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated a sworn statement to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land, and be accompanied with the certificate of the assessor

that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that said tax has been canceled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous he shall be entitled to the warrant of the comptroller for the amount so paid, in the same manner as is provided in article 7647 of this chapter, in cases of redemption from individual purchasers; provided further, that the tax collector shall make no charge whatever for the duties herein mentioned. [Acts of 1881, p. 107, sec. 2.]

Art. 7647. [5192] **Certificate of redemption from collector.**—When the owner of such lands shall have redeemed the same from a private purchaser, it shall be the duty of the tax collector to furnish him a certificate to that effect; and, upon presentment of said certificate to the comptroller, the comptroller shall issue to him a warrant upon the treasury of the state for the amount of such tax. This warrant shall be receivable for all taxes to the state. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents, to be paid by the applicant. [Id. sec. 3.]

Art. 7648. [5193] **Lands to be bid in for state, when.**—Should the collector of taxes fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the state for the taxes and penalties due and all costs accruing thereon, and execute a deed to the state; and one deed shall include all tracts of land bid off to the state at such tax sale, and make due return thereof, under such forms and directions as the comptroller may furnish and direct; and, after sale and purchase by the state of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the state. Said collector shall, on final settlement of his accounts with the commissioners' court and the comptroller of public accounts, be entitled to a credit for the amount of taxes due the state and county, respectively, for which the land and lots were bid off to the state. [Acts of 1879, S. S., p 36, sec. 1.]

Art. 7649. [5194] **May redeem, how.**—The owner, or his agent, of any lands that may have been conveyed to the state under the provisions of the foregoing article, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the state; and it shall be the duty of such collector to execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the comptroller of public accounts, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. [Id. sec. 2.]

Art. 7650. [5195] **If not redeemed.**—In case said land shall not have been redeemed as provided in article 7648 [7649], then the same may be sold as provided by article 7648. [Id. sec. 3.]

Art. 7651. [5196] **May redeem by paying costs, etc.**—The owner of real estate which has been bought in by the state for taxes, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller, if in an unorganized county, of the amount designated by the comptroller as due thereon with costs of advertisement; and provided, further, that if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the

sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled; which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Id. sec. 7.]

Art. 7652. [5197] **Commissioners' court to sit as a board of inquiry, when.**—The commissioners' courts of the several counties in this state shall, at the regular terms of said courts, sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the state for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his or her lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said commissioners' court shall issue to the said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon the presentation of said certificate to the comptroller of public accounts, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the state may have acquired in and to said land by reason of such tax sale. [Acts of 1889, p. 31.]

Art. 7653. [5202] **Collector to file complaint, when.**—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaged in or pursuing any occupation on which, under the laws of this state, a tax is imposed, who fails or refuses to pay the same. [Acts of 1887, p. 127.]

Art. 7654. **Compensation.**—There shall be paid for the collection of taxes, as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the state, and four per cent on the next ten thousand dollars collected for the state, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum; and, in counties owing subsidies to railroads, the collectors shall receive only one per cent for collecting such railroad tax; and, in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales. [Acts of 1883, p. 101, sec. 1; amended Act 1897, 1 S. S., p. 8, sec. 9.]

Art. 7655. [5207] **For occupation tax.**—And on all occupations and license taxes collected, five per cent. [Acts 1883, p. 101, sec. 2.]

Art. 7656. [5208] **Compensation for one levy only, etc.**—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more. And, for any greater charge under this article, the collector shall be deemed guilty of extortion and be punished as provided in the Penal Code.

Art. 7657. [5209] **Taxes upon lands of non-residents in unorganized counties.**—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the comptroller of public

accounts, under such regulations as he may adopt for that purpose. [Const., art. 8, sec. 12.]

Art. 7658. [5210] **Payment of moneys.**—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the state, and pay the same over to the state treasurer whenever and as often as they may be directed so to do by the comptroller of public accounts; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Acts of 1879, S. S., p. 5.]

Art. 7659. [5211] **Same.**—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same. [Id. sec. 2.]

Art. 7660. [5212] **Notification to pay, etc.**—The notification and direction provided for in the two preceding articles may be verbal, written, or by telegram; and, if written or by telegram, proof of the deposit in the postoffice or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. [Id. sec. 3.]

Art. 7661. [5212a] **Duty of district and county attorneys to sue for taxes on personal property.**—Hereafter it shall be the duty of the district or county attorney of the respective counties of this state, by order of the commissioners' court, to institute suit in the name of the state for the recovery of all money due the state and county as taxes due and unpaid on unrendered personal property; and, in all suits where judgments are obtained under this act, the person owning the property on which there are taxes due the state and county shall be liable for all costs; provided, such suits may be brought for all taxes so due and unpaid for which such delinquent taxpayer may be in arrears for and since the year 1886; and provided, further, the state and county shall be exempt from liability for any costs growing out of such action; provided, all suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation; provided, that no suit shall be brought until after demand is made by the collector for taxes due; and provided, further, that no suit shall be brought for an amount less than twenty-five dollars. [Report joint committee, Sen. Jour., 1895, p. 486, No. 113.]

Art. 7662. [5212b] **Limitation not available to delinquent taxpayer.**—No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the state or any county, city or state [town]. [Acts of 1895, S. S.]

CHAPTER FOURTEEN.

OF THE ASSESSMENT AND COLLECTION OF BACK TAXES ON UN-RENDERED LANDS.

Article.		Article.	
7663	Back taxes on unrendered lands.....	7673	Lands sold, how.....
7664	Comptroller to prepare lists.....	7674	Sale may be continued, etc.....
7665	And forward to boards of equalization.....	7675	Deed executed, when and how.....
7666	Board to value such lands.....	7676	Same.....
7667	And cause three rolls to be made.....	7677	Effect of deed, etc.....
7668	Collector to give notice.....	7678	Report of sales.....
7669	And enforce collection, when.....	7679	Proceeds of sale paid to whom.....
7670	Comptroller to make out lists of lands sold to state.....	7680	Collections applied, how.....
7671	Sale, when and how made.....	7681	Costs deducted by collector.....
7672	Advertisement of sale and redemption by owner.....	7682	Unsold lands reported to comptroller.....

Article 7663. [5213] **Back taxes on unrendered lands.**—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. [Act. Aug. 19, 1876, p. 214, sec. 1.]

Art. 7664. [5214] **Comptroller to prepare list each year.**—On the first day of July of each year, the comptroller of public accounts shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of state and county taxes for such year. [Id. sec. 2.]

Art. 7665. [5215] **And forward same to boards of equalization.**—Upon completion of such lists, the comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in ——— county for the year ———, as shown by the records of his office. [Id.]

Art. 7666. [5216] **The board to value such lands.**—Upon receipt of such list or lists by the board of equalization of such county, it shall be their duty to value each and every tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. [Id. sec. 3.]

Art. 7667. [5217] **And cause three rolls to be made.**—When the board of equalization shall have completed the valuation, they shall cause to be made out three separate rolls, in such manner as may be prescribed by the comptroller; they shall place one in the hands of the collector of taxes, forward one to the comptroller of the state, and file one in the office of the county clerk for the inspection of the public. [Id. sec. 4.]

Art. 7668. [5218] **Collector to give notice.**—Upon receipt of the rolls by the collector of taxes, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. [Id. p. 215, sec. 5.]

Art. 7669. [5219] **And enforce collections after sixty days.**—After the expiration of said sixty days, if the taxes on any such lands are not paid, the collector of taxes shall proceed to enforce the collection of said taxes in the mode provided in the preceding chapter for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. [Id. sec. 6.]

Art. 7670. [5220] **Comptroller to make out list of lands sold to state, etc.**—It shall be the duty of the comptroller of public accounts, on or before the first day of each year, to make out and forward to the collector of taxes in each county of the state a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the state for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment, to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the state, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. [Acts of 1879, p. 79, sec. 1.]

Art. 7671. [5221] **Sale, when and how made.**—It shall be the duty of each collector of taxes, within ninety days after receipt of said list, to call to his aid the county surveyor of his county, and, near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided. [Id. sec. 2.]

Art. 7672. [5222] **Advertisement of sale and redemption by owner.**—The collector of taxes shall, prior to the sale of any real estate that has been previously bid off to the state at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the court house door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the comptroller as due thereon, together with all costs of advertisements and sale; and provided, further, that no sales shall be made under the provisions of this chapter until six months after the same goes into effect; and provided, further, that the former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller, if in an unorganized county, of the amount designated by the comptroller as due thereon, with costs of advertisement; and provided, further, that, if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Acts of 1884, S. S., p. 31. Id. sec. 3.]

Art. 7673. [5223] **Land sold, how.**—At the time and place appointed for said sale, the collector of taxes shall offer for sale each separate parcel of the

real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. [Acts of 1879, p. 79, sec. 4.]

Art. 7674. [5224] **Sale may be continued, etc.**—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. [Id. sec. 5.]

Art. 7675. [5225] **Deed executed, when and how.**—When a sale has been made of any real estate as herein provided, the collector of taxes, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold, if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey. [Id. sec. 6.]

Art. 7676. [5226] **Same.**—When a survey has been made, as provided in the preceding article, and a copy of the field-notes, certified to as true and correct by the county surveyor, filed with the collector of taxes, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinbefore named, contain the field-notes certified by the county surveyor. [Id. sec. 7.]

Art. 7677. [5227] **Effect of deed, etc.**—Deeds made, executed and delivered by collectors of taxes under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only by frauds; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. [Id. sec. 8.]

Art. 7678. [5228] **Report of sales.**—Within thirty days after sales made under the provisions of this chapter, the collector of taxes shall make a report to the commissioners' court of his county, and also to the comptroller of public accounts, giving in said reports such description of the real estate sold as is given in the comptroller's list, and stating the amounts due the state, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. [Id. sec. 9.]

Art. 7679. [5229] **Proceeds of sale paid to whom.**—Collectors of taxes shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the treasury of the state within the said sixty days, in such manner as may be directed by the comptroller of public accounts. [Id. sec. 10.]

Art. 7680. [5230] **Collections applied, how.**—Taxes collected by state or county, by sales made under the provisions of this chapter, shall be placed to

the credit of the different funds for which originally assessed under the direction respectively of the comptroller of public accounts and the commissioners' court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the comptroller, be placed in the treasury of the state as a special tax sale fund, and be subject to be reclaimed by the owner or owners of the land on proof as required in case of escheated estates. [Acts of 1884, p. 31.]

Art 7681. [5231] **Costs deducted by collector, etc.**—The collector of taxes shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed and delivered under the provisions of this chapter. [Acts of 1879, p. 79, sec. 12.]

Art. 7682. [5232] **Unsold land reported to comptroller.**—If, after the expiration of ninety days after the receipt by the collector of taxes of the comptroller's list, any real estate described in said list shall remain unsold, it shall be the duty of the said collector to make separate reports of such fact to the commissioners' court of his county and the comptroller of public accounts respectively; and the said parcels of real estate shall be embraced in the next list furnished by the comptroller of public accounts to the collector of taxes. [Id. sec. 13.]

CHAPTER FIFTEEN.

DELINQUENT TAXES.

Article.	Article.
Land and improvements subject to taxation	Assessor to list unpaid taxes annually
Delinquent taxes a lien on land	Law available to cities and towns
Tax collector to list delinquent lands	Exemptions from this chapter
County clerk to record delinquent lists	Delinquent owners may redeem before sale
Delinquent tax lists to be published	May redeem in two years by paying double
Suits to foreclose tax liens on delinquent lands	May redeem from state, when and how
Proceedings in suits to foreclose tax liens	Proceedings against unknown and non-resident owners
Sheriff to execute deeds	Similar proceedings by cities and towns
Attorneys to represent state, fees, etc.	Lands to be platted and numbered

Article 7683. **All land and improvements subject to taxation.**—For the purpose of taxation, real property shall include all lands within the state, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [Acts 1895, p. 50; amended act 1897, p. 132.]

Art. 7684. **Delinquent taxes a lien on land.**—All lands or lots which have been returned delinquent or reported sold to the state, or to any city or town, for taxes due thereon since the first day of January, A. D. 1885, or which may hereafter be returned delinquent or reported sold to the state, or

to any city or town, shall be subject to the provisions of this act; and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [Id. sec. 2.]

Art. 7685. **Lands delinquent to be listed by tax collector.**—It shall be the duty of the commissioners' court of each county in this state immediately upon the taking effect of this chapter to cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners' court), a list of all lands, lots or parts of lots sold to the state for taxes since the first day of January, 1885, and which have not been redeemed, in their respective counties and unorganized counties attached thereto, and to have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the state for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that, when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the state of Texas, or, as required in section 12 of this act [article 7694 of this chapter], such as may be furnished by the commissioner of the general land office, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all the taxes therein mentioned, and reporting as delinquent or sold to the state any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is a sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners' court shall cause a duplicate of same to be sent to the comptroller; provided, that, where the records are incomplete in any county, it shall be the duty of the comptroller to furnish such county with a certified copy of the delinquent list for any year or years. [Id. sec. 3.]

Art. 7686. **Delinquent tax lists to be recorded by county clerks.**—On receipt of such delinquent tax record containing a complete list of the lands or lots that have been reported delinquent or sold to the state for taxes for any year or number of years since January 1, 1885, and containing also the data and information mentioned in article 7685 of this chapter, it shall be the duty of the county clerk of each of the counties of this state, respectively, to certify the same to the commissioners' court for examination and correction, and shall thereafter cause the same to be recorded in a book, which book shall be labeled the "Delinquent Tax Record of County." The delinquent tax record shall be arranged numerically as to abstract num-

bers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. [Id. sec. 4.]

Art. 7687. **Delinquent tax list to be published.**—Upon the completion of said delinquent tax record by any county in this state, it shall be the duty of the commissioners' court to cause the same to be published in some newspaper published in the county, for three consecutive weeks; but, if no newspaper is published in the county, such list may be published in a newspaper outside of the county, to be designated by the commissioners' court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against such tract or parcel of land so advertised; which fee, when collected, shall be paid into the county treasury; and the commissioners' court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised; and said publication, and any other publications in a newspaper provided for in this act, may be proved by the affidavit of the printer of the newspaper in which the publication was made, his foreman, or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which the publication was made; provided, that all corrections made in said record, under this article, be noted in the minutes of the commissioners' court, and shall be certified by the county clerk to the comptroller, who shall note the same upon his delinquent tax record; provided, that in the event such delinquent tax record be not published correctly in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication. [Id. sec. 5.]

Art. 7688. **Suits to foreclose tax liens on delinquent lands.**—Twenty days after the publication of such notice, or as soon thereafter as practicable, the commissioners' court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which said unorganized county may be attached for judicial purposes, and are to be sold under the provisions of this act, for all the taxes, interest, penalty, and costs, and shall cause suit to be filed in the name of the state of Texas, in the district court of said county, or if unorganized, then in the district court of the county to which said unorganized county is attached for judicial purposes, stating therein, by apt reference to lists or schedules annexed thereto, a description of all lands or lots in such county upon which taxes and penalty have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof, that such lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which the state may be entitled under the law and facts. All suits to enforce the collection of taxes, as provided in this chapter, shall take precedence and have priority over all other suits pending in the district court. The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in said petition are true to the best knowledge and belief of affiant; and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney. The county collector, county clerk and county assessor shall furnish all affidavits, certified copies of the records of their respective offices, and such other evidence

as may be in their possession by virtue of such office, as may be applied for by the county attorney. [Id. sec. 6.]

Art. 7689. **Proceedings in suits to foreclose tax lien.**—The proper persons shall be made parties defendant in such suits, and shall be served with process and other proceedings had therein as provided by law for suits of like character in the district courts of this state; and, in case of foreclosure, an order of sale shall issue, and the land sold thereunder as in other cases of foreclosure; but, if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions, then such officer shall sell the lands in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy the judgment, interest, penalties and costs; and, after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued, to be retained by him subject to the order of the court for the period of two years, after which time the court may order the same to be paid to the state treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the state treasurer, within ten years after the sale of said lands or lots, after which the same shall be governed by the law regulating escheats; provided, that no suit shall be brought to enforce such lien upon any land that a sufficient description to identify the same can not first be had; and provided, further, that, if there shall be no bidder for such land, that the county attorney shall bid said property off to the state for the amount of all taxes, penalties, interest and costs adjudged against said property; and, in the absence of the county attorney, the sheriff is authorized to bid to the state, when there are no bidders, and it shall be the duty of the district clerk to immediately make report of such sale in duplicate, one to the comptroller of public accounts, and one to the commissioners' court, on blanks to be prescribed and furnished by the comptroller. And, in all such cases where the property is bid off to the state, it shall be the duty of the sheriff to make and execute deeds to the state, using forms to be prescribed and furnished by the comptroller, showing in each case the amount of taxes, interest, penalty and costs for which sold, and the clerk's fee for recording deeds as herein-after provided. He shall cause such deeds to be recorded in the records of deeds, by the county clerk of his county, and when so recorded shall forward the same to the comptroller; and the county clerk shall be entitled to a fee of one dollar for recording each such deed to the state, to be taxed as other costs. And, when lands thus sold to the state shall be redeemed, it shall be the duty of the collector of taxes, when any such redemption is made, to make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the state and county the taxes, interest and penalties due each respectively. [Id. sec. 7.]

Art. 7690. **Sheriff to execute deeds.**—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, it shall be lawful for the sheriff selling the same, or any of his successors in office, to make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this state to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. [Id. sec. 8.]

Art. 7691. Attorneys to represent state; fees, etc.—The county attorney, or district attorney in counties where there is no county attorney, shall represent the state and county in all suits against delinquent taxpayers that are provided for in this act, and all sums collected shall be paid immediately to the county collector. In no case shall the compensation for said county attorney be greater than three dollars for the first tract in one suit, and one dollar for each additional tract, if more than one tract is embraced in same suit to recover taxes, interest, penalty and costs; provided, that those county attorneys, who may have heretofore or may hereafter institute said suits, shall be entitled to an equal division with their successors in office of the fees allowed herein on all suits instituted by them, where the judgment has not been obtained prior to the vacation of their office. The collector of taxes, for preparing the delinquent list and separating the property previously sold to the state from that reported to be sold as delinquent for the preceding year, and certifying the same to the commissioners' court shall be entitled to a fee of one dollar for each correct assessment of the land to be sold, said fee to be taxed as costs against the delinquent. The sheriff shall be entitled to a fee of one dollar for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes, which fee shall be taxed as costs of suit; and the district clerk shall be entitled to a fee of one dollar and fifty cents in each case, to be taxed as costs of suit. And the county clerk for making out and recording the data of each delinquent assessment, and for certifying the same to the commissioners' court for correction, and for noting the same in the minutes of the commissioners' court, and for certifying the same, with corrections, to the comptroller, and noting the same on his delinquent tax record, shall receive the sum of one dollar, to be taxed as costs against the land in each suit; provided, that in no case shall the state or county be liable for such fees, but in each case they shall be taxed as costs against the land to be sold under judgment for taxes and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon to the state are paid; provided, that where two or more unimproved city or town lots belonging to the same person and situated in the same city or town shall all be included in the same suit and costs, except those of advertising, which shall be twenty-five cents for every ten lots, or any number less than ten, taxed against them collectively just as if they were one tract or lot; and provided, further, that where suits have been brought by the state against delinquents to recover tax due by them to the state and county, the said delinquent may pay the amount of the tax, interest, penalties and all accrued costs to the county collector during the pendency of such suit; and the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit; and the district clerk shall receive only one dollar, and the sheriff only one dollar in each case; but these fees shall be in lieu of the fees provided for such officers where suits are brought as hereinbefore provided. [Id. sec. 9.]

Art. 7692. Assessor to list unpaid taxes annually, etc.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law until the thirty-first day of January next succeeding the return of the assessment rolls of the county to the comptroller, a penalty of ten per cent on the entire amount of such taxes shall accrue; which penalty, when collected, shall be paid proportionately to the state and county; and the collector of taxes shall, by virtue of his tax rolls, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with the penalty above provided, interest and all costs accruing thereon. If no personal property be found for seizure and sale, as above provided, the collector shall, on the thirty-first day of March

of each year for which the state and county taxes, for the preceding year only, remain unpaid, make up a list of the lands and lots on which the taxes for such preceding year are delinquent, charging against the same all taxes and penalties assessed against the owner thereof. Said list shall be made in triplicate and shall be presented to the commissioners' court for examination and correction of any errors that may appear; and, when so examined and corrected by the commissioners' court, such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk, and one copy retained and preserved by the collector, and one copy forwarded to the comptroller with his annual settlement reports. When such list of lands and lots, delinquent for the preceding year only, is corrected, as provided for in this article, then such list shall be immediately advertised, as provided for in section 5 of this act [article 7687 of this chapter], and, after such advertisement, suit shall be instituted against delinquents for all taxes and penalties due, in the district court as above provided; and such list, as furnished by the tax collector, and corrected by the commissioners' court, and the assessment rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers or courts charged with any duty thereunder as to the regularity of listing, assessing, levying all taxes therein mentioned, and reporting as delinquent any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property. In the counties where the delinquent tax record for former years has not been furnished, as provided for in article 7685, the collector of taxes shall also at the same time, make in triplicate a list of all lands and lots that have been previously sold to the state for taxes of former years, which have not been redeemed and on which the taxes are delinquent for the preceding year, and shall present the same to the commissioners' court for examination and correction of any error that may appear; and, when so examined and corrected by the commissioners' court, such lists, in triplicate, shall be approved by said court, and one copy thereof shall be filed with the county clerk, one retained and preserved by the collector, and one copy forwarded to the comptroller with his annual settlement reports. [Id. sec. 10.]

Art. 7693. Law available to incorporated cities and towns.—Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. [Id. sec. 11.]

Art. 7694. Exemptions from this chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been doubly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the state and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the commissioner of the general land office shall furnish the county judge of any county compiling its own delinquent tax record, officially, with such information as may be necessary to enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the land office. [Id. sec. 12.]

Art. 7695. Delinquent owners may redeem before sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the state for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent, as provided for in article 7692 of this chapter; provided, such penalty has accrued under the provisions and since the passage and taking effect of this chapter. [Id. sec. 13.]

Art. 7696. May redeem in two years by paying double.—Where lands are sold under the provisions of this chapter, the owner, or any one having an interest therein, shall have the right to redeem said land, or his interest therein, within two years from the date of said sale upon the payment of double the amount paid for the land. [Id. sec. 14.]

Art. 7697. May redeem from state, when and how.—The owner or any one having an interest in lands or lots heretofore sold to the state, or any city or town, under decree of court in any suit or suits brought for the collection of the taxes thereon, or by a collector of taxes or otherwise, shall have the right within two years from the twelfth day of August, 1909, to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And, where lands or lots shall hereafter be sold to the state, or to any city or town, for taxes under decree of court, in any suit or suits brought for collection of taxes thereon, or by a collector of taxes or otherwise, the owner having an interest in such lands or lots shall have the right to redeem the same within two years after such sale, upon payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all the taxes, interest, penalties, cost on or against said land or lots at the time of redemption. [Act 1909, 2 S. S., p. 400.]

Art. 7698. Proceedings against delinquents, unknown or non-resident.—Wherever the owner or owners of any lands or lots returned delinquent or reported sold to the state, or that may hereafter be reported sold or returned delinquent for the taxes due thereon for any year or number of years, are non-residents of the state, or the name of the owner or owners of said land or lots be unknown, then, upon affidavit setting out that the owner or owners are non-residents, or that the owner or owners are unknown to the attorney for the state, and after inquiry can not be ascertained, said parties shall be cited and made parties defendant by notice in the name of the state and county, directed to all persons owning or having or claiming any interest in the following described land delinquent to the state of Texas and county of _____, for taxes, to-wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition), which said land is delinquent for taxes for the following amounts, \$_____ for state taxes, and \$_____ for county taxes, and you are hereby notified that suit has been brought by the state for the collection of said taxes, and you are commanded to appear and defend such suit at the _____ term of the district court of _____ county, and state of Texas, and show cause why judgment shall not be rendered condemning said land (or lot), and ordering sale and foreclosure thereof for said taxes and costs of suit, which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of two and one-half cents per line (seven words to count a line) for each

insertion may be attached for publishing the citation as above provided for. If the publication of such citation can not be had for the compensation provided for in this article, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the court house door. It shall be lawful in all cases to set forth in the petition the name of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition; and such suit, after such publication, shall be proceeded with as in other cases; and, whether any party or parties make defense or not on the trial of said case, the state and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit; and a sale of said land or lot shall be had and be as binding as where defendants were personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts; but the state shall have judgment and foreclosure of tax lien for any year or years sued for where the defendant can not offer receipt or other positive proof showing the payment of the claim for the taxes. [Acts 1897, p. 132, sec. 15.]

Art. 7699. Similar proceedings by city or town.—In any incorporated city or town, in which any lots or blocks of land situated within the corporate limits of said city or town have been returned delinquent or reported sold to said city or town for the taxes due thereon, the city council may prepare lists of delinquents in the same manner as is provided for in article 7685, and; when such lists shall be certified to as correct by the mayor of said city or town, the city council may direct the city attorney to file suit in the district court of the county in which said city or town is situated, for the recovery of the taxes due on said property, together with penalty, interest and costs of suit; which suits may be brought in the same manner as is provided in article 7687 of this chapter, for the bringing of suits by the county attorney. [Id. sec. 16.]

Art. 7700. Lands to be platted and numbered.—In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners' court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes; and such maps, or a certified copy of same or any part thereof, shall be admissible as evidence in all courts; provided, that the cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which the said commissioners' court ordered the said surveys and plat made; provided, that the cost of any map of a town or city shall be paid by such town or city when ordered by the town or city. [Id. sec. 17.]

CHAPTER SIXTEEN.

EVIDENCE OF TITLE TO REDEEM LAND.

Evidence of title to redeem land.....	Article. 7701
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Article 7701. **Evidence of title to redeem land.**—In all cases where lands in this state have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the constitution of this state, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which the sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to disavow title from the sovereignty, nor shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein contained shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who had previously redeemed such lands all amounts paid by him with legal interest. [Act 1905, p. 118.]

CHAPTER SEVENTEEN.

ASSESSMENT AND COLLECTION OF TAXES IN CERTAIN CASES.

Article.	Article.
Property omitted from tax rolls, etc.	Delinquent tax record to be published..... 7709
list of..... 7702	Property listed by comptroller, when... 7710
Property listed to be assessed, how..... 7703	List to be posted..... 7711
List to operate a lien on property..... 7704	Lands not rendered to be assessed,
To be advertised..... 7705	how..... 7712
Assessments reduced, when..... 7706	Duty of commissioners' court..... 7713
Commissioners' court may contract for	Supplemental tax rolls to be prepared... 7714
collection..... 7707	Fees of assessor..... 7715
Bulk assessments validated, when..... 7708	

Article 7702. **Property omitted from tax rolls, etc., list of.**—Whenever the commissioners' court of any county in this state shall discover, through notice from the tax collector or otherwise, that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties, and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid, and should be canceled and re-assessed, or have been declared invalid, and thereby canceled by any district court in a suit to enforce the collection of taxes; provided, that no re-assessment of any property shall be held against any innocent purchaser of the same, if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. [Act 1905, p. 318, sec. 1.]

Art. 7703. **Property listed to be assessed, how.**—When said list has been made up in the manner prescribed in article 7701 [7702] the commissioners' court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners' court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor, who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the state comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under article 7675, Revised Statutes, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners' court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector of this state, given during his term of office, that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such

rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this act for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. [Id. sec. 2.]

Art. 7704. **List to operate a lien on property.**—The said list, when complete in all respects, as directed in the preceding articles, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers' costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the state comptroller, and a copy filed with the county clerk. [Id. sec. 3.]

Art. 7705. **To be advertised.**—The commissioners' court shall proceed to have such list of properties advertised in the manner provided in article 7687; after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. [Id. sec. 4.]

Art. 7706. **Assessments reduced, when.**—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners' court of any county shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the comptroller of the state, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs, as provided by law. [Id. sec. 5.]

Art. 7707. **Commissioners' court may contract for collection.**—If the commissioners' court of any county in this state shall deem it expedient to contract with any person to enforce the collection of any delinquent state and county taxes, or to make up a list of properties referred to in this chapter, and to enforce the collection of taxes thereon for a per cent of the taxes, penalty and interest actually collected and paid to the collector of taxes, the state comptroller shall be authorized to join in said contract and allow the same per cent for state taxes that is contracted to be paid by the commissioners' court for the collection of county taxes, which shall not exceed ten per cent, except in case of absolute necessity to employ an attorney to push the filing and prosecution of tax suits, and to pay for report of an abstract company as to the owner of property assessed as unknown or unrendered, and as to the holder of any liens against the same, in which case fifteen per cent additional may be allowed. It shall be the duty of the county attorneys of the several counties, or of the district attorney where there is no county attorney, to actively assist the person with whom the contract is made, by filing and pushing to a speedy conclusion all necessary suits for the collection of delinquent taxes under any contract; provided, that where any district or county attorney shall fail or refuse and in good faith to prosecute such suits, he shall not be entitled to any fees from such suits; provided, that, where any district or county attorney fails or refuses to bring these suits when requested to do so by the commissioners' court, or by the person having a contract herein provided for, then the contractor shall be authorized to employ some other attorney to file these suits in the name of the state, in the same manner provided by law now to enforce the collection of delinquent taxes. [Id. sec. 6.]

Art. 7708. Bulk assessments validated, when.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalid by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as “bulk assessments,” or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations, and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called “bulk assessments”) can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor’s block book as the original assessment, instead of listing as in rendered assessments, and then entering upon the tax rolls. [Id. sec. 7.]

Art. 7709. Delinquent tax record to be published.—The various counties of this state which have not heretofore made and published a delinquent tax record, under the provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. [Id. sec. 8.]

Art. 7710. Property listed by comptroller, when.—Whenever it shall appear to the comptroller of public accounts of the state, from an inspection of the tax rolls of any county of the state, or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, it shall be his duty and he is hereby required to make a list of such lands and send the same to the tax collector of such county by registered letter, properly addressed, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. [Act 1905, p. 321, sec. 1.]

Art. 7711. List to be posted.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [Id. sec. 2.]

Art. 7712. Lands not rendered to be assessed, how.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of article 7711, for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, and he is hereby required, immediately upon the expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the comptroller, listing the same

in the name of unknown owners, and charging up to said lands the taxes, state and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in article 7530, Revised Civil Statutes. If any of said lands are lands purchased from the state as belonging to the school fund, the university, or any of the asylums of the state, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented. [Id. sec. 3.]

Art. 7713. **Duty of commissioners' court.**—The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners' court in special session, as a board of equalization, for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments, in so far as the provisions of the statute with regard thereto are applicable. It shall be the duty of the commissioners' court without delay to act upon said supplemental assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, to approve the same, and to approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners' court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. [Id. sec. 4.]

Art. 7714. **Supplemental tax rolls to be prepared.**—After such supplemental assessment lists, as are herein provided for, have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners' court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. [Id. sec. 5.]

Art. 7715. **Fees of assessor.**—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. This chapter is cumulative of all other laws upon the same subject. [Id. sec. 7.]

CHAPTER EIGHTEEN.

OF MUNICIPAL TAXES TO PAY SUBSIDIES IN AID OF RAILROADS
AND OTHER INTERNAL IMPROVEMENTS.

	Article.		Article.
Such taxes, how applied.....	7716	Taxes paid in what.....	7719
To be collected by city officers.....	7717	To be paid over every month.....	7720
Bond of the officers.....	7718	If insufficient, additional levy to be made.....	7721

Article 7716. [5233] **Such taxes, how applied.**—All taxes levied, assessed and collected for the purpose of paying the interest and principal of bonds heretofore issued by cities or towns to aid in the construction of railroads and other works of internal improvement, shall be applied solely to the objects for which they were levied, under the direction of the comptroller, as follows: First, to the payment of expenses of assessing and collecting the same; second, to the payment of the annual interest of such bonds, and not less than two per cent of the principal; and, if there be any excess on hand after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds. [Act Aug. 18, 1876, p. 174, sec. 1.]

Art. 7717. [5234] **To be collected by city officers.**—All such taxes shall be assessed and collected by the same officers whose duty it is to assess and collect the other municipal taxes, who shall receive the same rates of commission allowed for assessing and collecting the ad valorem tax of such city. The same remedies shall be used to enforce the assessment, collection and paying over such taxes as are or may hereafter be provided by law to enforce the assessment, collection and paying over of other municipal taxes. [Id. sec. 2.]

Art. 7718. [5235] **Bond of the officer.**—The officer whose duty it is to collect the aforesaid taxes shall give bond, with two or more sufficient sureties, to be approved by the mayor and board of aldermen of such city, in a sum fifty per cent greater than the estimated annual amount of said taxes; which bond shall be payable to the state, and shall be conditioned for the faithful assessing, collecting and paying over of said tax into the state treasury, as provided by law; and said assessor shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes. [Id. sec. 3.]

Art. 7719. [5236] **Taxes may be paid in what.**—It shall be lawful for the collector to receive in payment of the taxes herein specified current money or the matured coupons of the bonds for the payment of which such tax may have been levied. [Id. sec. 4.]

Art. 7720. [5237] **To be paid over every month.**—The collector of taxes levied under the provisions of this chapter shall pay over to the state treasurer, at the beginning of each and every month, all moneys or coupons he may have collected during the preceding month, deducting his legal commissions on the amount so paid, and shall make a report of his collections to the mayor and city council at its first regular meeting in each month. [Id. sec. 5.]

Art. 7721. [5238] **If insufficient, additional levy to be made.**—If it shall be ascertained, at any time, that the tax which has been levied for the payment of the city bonds issued under the provisions of law is insufficient to pay the annual interest and two per cent annually of the principal of such bonds, besides the expenses of assessing, collecting and paying over such tax, it shall be the duty of the comptroller to inform the mayor of said city of the fact; and it shall be the duty of the city council, and they shall, upon such information, levy such additional tax, and cause the same to be col-

lected, as will be sufficient to make such payments; which levy shall be continued in force until the whole amount of principal and interest of said bonds shall have been fully paid. [Id. sec. 6.]

CHAPTER NINETEEN.

NEW COUNTIES.

	Article.		Article.
When new counties are created.....	7722	Compensation of collector.....	7725
Transcripts of unpaid assessments.....	7723	Compensation for transcribing rolls.....	7726
To be verified.....	7724		

Article 7722. [5239] **When new counties are created, etc.**—Where any county now or hereafter created out of a part of any one or more organized counties, or when any unorganized county may be organized by the election and qualification of its officers, it shall be the duty of the person in charge of the assessor's roll in the county or counties from which such new county or any part of it, has been taken, or to which such unorganized county has been attached for judicial purposes, to allow such person as the commissioners' court of the newly organized county may appoint for that purpose access to the rolls for the purpose of making the transcripts hereinafter provided for. [Acts of 1885, p. 107, sec. 1.]

Art. 7723. [5240] **Transcripts of unpaid assessments.**—It shall be the duty of the person so appointed to make from such assessor's rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the county included within the limits of the new county, or, as the case may be, in the limits of the former unorganized county. [Id. sec. 2.]

Art. 7724. [5241] **To be verified.**—The collector of the county from which such territory has been taken, or to which such unorganized county has been attached, shall examine and verify the transcripts herein provided for and attest their correctness over his official signature. For such service he shall receive twenty dollars from the county for which the transcript has been made, to be paid on the order of its commissioners' court. He shall also have the commissioners' court of his county to approve the transcript rolls, and shall deliver one of them to the collector of the new county; the other he shall forward to the comptroller; and, when received by the comptroller, it shall authorize him to give the proper credit to the collector of the old county and to charge the same to the collector of the new county. [Id. sec. 3.]

Art. 7725. [5242] **Compensation of collector.**—The collector of such new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of the other counties in this state. [Id. sec. 4.]

Art. 7726. [5243] **Compensation for transcribing rolls.**—The person selected by the commissioners' court of the new county to make such transcripts shall receive for his services such compensation as he may agree on with such commissioners' court. [Id. sec. 5.]

TITLE 127.

TIMBER.

	Article.		Article.
Log brands.....	7727	Written report to be filed with county	
To be recorded.....	7728	clerk, when.....	7729
		Evidence of ownership, how proved.....	7730

Article 7727. [5244] **Log brands.**—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. [Acts of 1879, p. 81, sec. 1.]

Art. 7728. [5245] **To be recorded.**—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. [Id. sec. 2.]

Art. 7729. [5246] **Written report to be filed with county clerk.**—Any persons who float any logs or timber in this state shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same; provided, that this law shall not apply to pickets, posts, rails or firewood. [Id. sec. 3.]

Art. 7730. [5247] **Evidence of ownership, how proved.**—A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. [Id. sec. 4.]

TITLE 128.

TRESPASS TO TRY TITLE.

Chapter.

1. Pleadings and Practice.

Chapter.

2. Claim for Improvements.

CHAPTER ONE.

THE PLEADINGS AND PRACTICE.

Article.	Article.
Method of trying title to land, etc.....7731	Abstracts shall state what.....7745
Rules in other cases observed how far...7732	Amended abstract.....7746
The petition shall state what.....7733	Surveyor appointed, etc.....7747
Indorsement on petition.....7734	Survey unnecessary when.....7748
Warrantor, etc., may be made a party..7735	Common source of title, proof of.....7749
Landlord may become defendant.....7736	Judgment by default.....7750
The possessor shall be defendant.....7737	Proof ex parte, when made.....7751
May join as defendants, whom.....7738	When defendant claims part only.....7752
May file plea of not guilty only.....7739	Where plaintiff proves part.....7753
What proof may be made under such	May recover a part, etc., when.....7754
plea.....7740	The judgment, etc.....7755
Answer taken as admitting possession..7741	Damages, etc., when recovered.....7756
What is sufficient title, etc.....7742	Considered with claim for improvements,
Either party may demand abstract of	when.....7757
title.....7743	Final judgment conclusive.....7758
Abstract must be filed in twenty days..7744	Former laws shall govern, when.....7759

Article 7731. [5248] **Method of trying titles to land, etc.**—All fictitious proceedings in the action of ejectment are abolished, and the method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. [Act Feb. 5, 1840, sec. 1. P. D. 5292.]

Art. 7732. [5249] **Rules in other cases observed how far.**—The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court, and conformably to the principles of trial by ejectment, except as herein otherwise expressly provided. [Id. sec. 2. P. D. 5293.]

Art. 7733. [5250] **The petition shall state what.**—The petition shall state:

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and shall also state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, he shall state the same and the amount thereof.

4. That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought. [Id. sec. 1. P. D. 5292.]

Art. 7734. [5251] **Indorsement on petition.**—The plaintiff shall indorse on his petition that the action is brought as well to try the title as for damages. [Id. sec. 2. P. D. 5293.]

Art. 7735. [5252] **Warrantor, etc., may be made a party.**—When a party is sued for lands, the real owner or warrantor may make himself, or may be

made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

Art. 7736. [5253] **Landlord may become defendant.**—When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him. [Id. sec. 5. P. D. 5296.]

Art. 7737. [5254] **The possessor shall be defendant.**—The defendant in the action shall be the person in possession, if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

Art. 7738. [5255] **May join as defendants, whom.**—The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

Art. 7739. [5256] **May file plea of "not guilty" only.**—The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements he shall state the facts entitling him to the same as provided in the succeeding chapter. [Act Feb. 2, 1844. Id. sec. 5. P. D. 5307.]

Art. 7740. [5257] **What proof may be made under such plea.**—Under such plea of "not guilty," the defendant may give in evidence any lawful defense to the action, except the defense of limitation, which shall be specially pleaded. [Id.]

Art. 7741. [5258] **Answer taken as admitting possession.**—Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only. [Act Feb. 5, 1840, sec. 6. P. D. 5297.]

Art. 7742. [5259] **What is sufficient title, etc.**—All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this state which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title. [Act Feb. 5, 1841, sec. 23. P. D. 5303.]

Art. 7743. [5260] **Either party may demand abstract of title.**—After answer filed, either party may, by notice in writing, duly served on the opposite party, or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

Art. 7744. [5261] **Abstract must be filed in twenty days, etc.**—Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and, in default thereof, no evidence of the claim or title of such opposite party shall be given on trial.

Art. 7745. [5262] **Abstract shall state what.**—The abstract mentioned in the two preceding articles shall state:

1. The nature of each document or written instrument intended to be used as evidence, and its date; or,
2. If a contract or conveyance, its date, the parties thereto and the date of the proof or acknowledgment, and before what officer the same was made; and,
3. Where recorded, stating the book and page of the record.
4. If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed, it shall be sufficient to state the nature of such instrument and its loss or destruction.

Art. 7746. [5263] **Amended abstract.**—The court may allow either party to file an amended abstract of titles, under the same rules which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall, at the trial, be confined to the matters contained in the abstract of titles.

Art. 7747. [5264] **Surveyor appointed, etc.**—The presiding judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action, appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court; and, if said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial. [Act Feb. 5, 1840, sec. 3. P. D. 5294.]

Art. 7748. [5265] **Survey unnecessary when.**—Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim or title, an order of survey shall be unnecessary. [Id. sec. 6. P. D. 5308.]

Art. 7749. [5266] **Common source of title, proof of.**—It shall not be necessary for the plaintiff to deraign title beyond a common source, and proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source; but before any such certified copies shall be read in evidence they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as in other cases; provided, that such certified copies shall not be evidence of title in the defendant, unless offered in evidence by him; and the plaintiff shall not be precluded from making any legal objection to such certified copies, or the originals thereof, when introduced by the defendant. [Act Sept. 28, 1871, p. 3, sec. 1. P. D. 6829.]

Art. 7750. [5267] **Judgment by default.**—If the defendant, who has been personally served with citation according to law, fails to appear and answer by himself or attorney within the time prescribed by law for other actions in the district court, the proper judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, according to the petition, and for all costs, without any proof of title by the plaintiff.

Art. 7751. [5268] **Proof ex parte, when made.**—If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

Art. 7752. [5269] **When defendant claims part only.**—Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

Art. 7753. [5270] **When plaintiff proves part.**—Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

Art. 7754. [5271] **May recover a part, etc., when.**—When there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or damages, according to the rights of the parties.

Art. 7755. [5272] **The judgment, etc.**—Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for

the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

Art. 7756. [5273] **Damages, etc., when recovered.**—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises, and, if special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation, or for injuries done over two years prior to the commencement of the suit. [Id. sec. 1.]

Art. 7757. [5274] **Considered with claim for improvements, when.**—When the defendant or person in possession has claimed an allowance for improvements in accordance with the provisions of the succeeding chapter, the claim for use and occupation and damages mentioned in the preceding article shall be considered and acted on in connection with such claim by the defendant or person in possession.

Art. 7758. [5275] **Final judgment conclusive.**—Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

Art. 7759. [5276] **Former laws shall govern, when.**—Nothing under this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law, or laws, under which the same accrued, or by which the same were regulated or in any manner affected. [Id. sec. 6. P. D. 5297.]

CHAPTER TWO.

CLAIM FOR IMPROVEMENTS.

Suggestion of improvements in good faith7760 Issue as to.....7761 Rents and profits to be offset against.....7762 Judgment for excess, etc.....7763 Writ of possession not to issue for a year, unless, etc.....7764	Article. On failure of plaintiff, defendant may pay, etc., and keep premises.....7765 Defendant failing to pay, etc., within six months, writ to issue.....7766 Judgment7767 Duty of clerk receiving payment, etc....7768	Article. On failure of plaintiff, defendant may pay, etc., and keep premises.....7765 Defendant failing to pay, etc., within six months, writ to issue.....7766 Judgment7767 Duty of clerk receiving payment, etc....7768
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Article 7760. [5277] **Suggestion of improvements in good faith.**—The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims, have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim. [Act Feb. 5, 1840, P. D. 5300.]

Art. 7761. [5278] **Issue as to.**—Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony—

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid. [Id.]

Art. 7762. [5279] **Rents and profits to be offset against.**—If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

Art. 7763. [5280] **Judgment for excess, etc.**—If it shall appear from the finding of the court or jury, under the two preceding articles, that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but, should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

Art. 7764. [5281] **Writ of possession not to issue, unless, etc.**—In any action of trespass to try title, when the lands or tenements have been adjudged

to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon. [Act Feb. 5, 1840, sec. 9. P. D. 5301.]

Art. 7765. [5282] On failure of plaintiff, defendant may pay, etc., and keep premises.—If the plaintiff shall neglect for the term of one year to pay over the amount of said judgment in favor of the defendant, with the interest thereon, as directed in the preceding article, and the defendant shall, within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements without regard to the improvements, as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

Art. 7766. [5283] Defendant failing to pay, etc., within six months, writ may issue, etc.—If the defendant, or his legal representatives, shall not, within six months aforesaid, pay over to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

Art. 7767. [5284] Judgment.—The judgment or decree of the court shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in the three preceding articles, so far as they may be applicable to the case before the court.

Art. 7768. [5285] Duty of clerk on receiving payment, etc.—Whenever payment shall be made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, it shall be the duty of such clerk to enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay over the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

TITLE 129.

TRIAL OF RIGHT OF PROPERTY.

Article.	[] [] []	Article.
Claimant must make affidavit.....	7769	Judgment of non-suit against plaintiff
And give bond.....	7770	when
Bond, condition of.....	7771	Proceedings, how conducted.....
Property to be delivered to claimant.....	7772	Burden of proof on plaintiff, when.....
Return of oath and bond.....	7773	Burden of proof on defendant, when.....
Form of bond.....	7774	Damages
Form immaterial.....	7775	Where value of property exceeds judg-
Return of oath, bond and copy of writ		ment
when levy made in county other than		Copy of writ evidence, when.....
that where writ issued.....	7776	Judgment upon failure to establish title.....
Return of original writ.....	7777	Execution shall issue.....
Jurisdiction	7778	Execution not to issue within ten days.....
Cause, how docketed.....	7779	Return of property by claimant within
Issue to be made, etc.....	7780	ten days.....
Requisites of issue.....	7781	Claim operates as release of damages.....
Judgment by default against defendant,		Levy may be made on other property.....
when	7782	

Article 7769. [5286] **Claimant must make affidavit.**—Whenever any sheriff or other lawful officer shall levy a writ of execution, sequestration, attachment or other like writ upon any personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make oath in writing, before any officer authorized to administer oaths, that such claim is made in good faith, and present such oath in writing to the officer who made such levy. [Act March 18, 1846, p. 140, sec. 1. P. D. 5310.]

Art. 7770. [5287] **Bond.**—He shall also execute and deliver to the officer who made such levy his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed to be assessed by such officer; provided, however, that, when more than one writ has been levied, said bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs; but said writs may be levied on the same by giving notice to the claimant; and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities. [Acts of 1887, p. 104.]

Art. 7771. [5288] **Condition of bond.**—The bond shall be conditioned that the party making such claim, in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

Art. 7772. [5289] **Property to be delivered to claimant.**—It shall be the duty of the officer receiving such oath and bond to deliver the property so claimed to the person so claiming it. [Id.]

Art. 7773. [5290] **Return of oath and bond.**—Whenever any person shall claim property and shall make the oath and give the bond, as provided for in this chapter, if the writ under which said levy was made was issued by any justice of the peace or court of the county where such levy was made, the

sheriff or other officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given, stating by whom, and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper justice or court having jurisdiction to try such claim, as hereinafter provided. [Id. sec. 2. P. D. 5311.]

Art. 7774. [5291] **Form of bond.**—The form of such bond shall be substantially as follows:

“Whereas, by virtue of a writ of _____ [here describe the writ] issued out of the _____ court (or by _____, justice of the peace for precinct No. _____, _____ county) in favor of _____ [here insert name of plaintiff] versus _____ [here insert name of defendant], and tested on the _____ day of _____, A. D. 19____, _____ [here insert name and title of officer seizing], has seized and taken the following described personal property, viz.: _____ [here describe the property], the value of which property has been assessed by said officer at _____ dollars. And, whereas, _____ [here insert name of claimant] has claimed said property and presented to said officer his oath in writing that such claim is made in good faith; now therefore we _____ [here insert name of claimant], as principal, and _____ and _____ as sureties, acknowledge ourselves bound to pay to the said _____ [insert name of plaintiff] the sum of _____ dollars, being double the value of said property, conditioned that the said _____ [here insert name of claimant], in case he fails to establish his right to said property, will return the same to the said _____ [insert the name of the officer] or his successor in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase or fruits of the same from the date of this bond and costs, or in case he fails to return said property and pay for the use, hire, increase or fruits thereof, that he will pay the plaintiff the value of the same with legal interest thereon from date, and shall also pay all damages and costs that may be awarded against him.

“Witness our hands this the _____ day of _____, A. D. 19____.

“_____”
 “_____”

“Approved: _____ sheriff (or constable) of _____ county.”

Art. 7775. [5292] **Form immaterial.**—Any other form of bond which shall be a substantial compliance with the requirements of article 5291 [7774] shall be a sufficient bond.

Art. 7776. [5293] **Return of oath, bond and copy of writ when levy made in county other than that where writ issued.**—Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by any justice of the peace or court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath, with a copy of the writ, to the justice or court of the county in which such levy was made having jurisdiction according to the value of the property as assessed by said officer.

Art. 7777. [5294] **Return of original writ.**—The sheriff or other officer taking such bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the justice or court from which it is issued.

Art. 7778. [5295] **Jurisdiction.**—Cases arising under this chapter shall be tried as follows:

1. Where the assessed value of the property does not exceed two hundred dollars, the writ shall be returned to a justice of the peace, as before provided.

2. Where the value assessed is more than two hundred dollars and does not exceed five hundred dollars, the writ shall be returned to the proper county court.

3. When the assessed value is more than five hundred dollars, the writ shall be returned to the proper district court. [Const., art. 5, secs. 8, 16, 19.]

Art. 7779. [5296] **Cause, how docketed.**—Whenever any oath and bond for the trial of the right of property shall be returned, as provided for in this chapter, it shall be the duty of the clerk of the court, or of such justice of the peace, to docket the same in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as defendant. [Act March 18, 1848, p. 140, sec. 3. P. D. 5312.]

Art. 7780. [5297] **Issue to be made up, etc.**—At the first term of the court thereafter, if both parties appear, the court or justice shall direct an issue to be made up in writing between the parties and tried as in other cases. [Id.]

Art. 7781. [5298] **Requisites of issue.**—Said issue shall consist of a brief statement of the authority and right by which the plaintiff seeks to subject the property levied on to his execution, and of the nature of the claim of the defendant thereto.

Art. 7782. [5299] **Judgment by default against defendant, when.**—If the plaintiff appears and the defendant fails to appear or neglects or refuses to join issue under the direction of the court or justice, within the time prescribed for pleading, the plaintiff shall have judgment by default, as in other cases. [Id.]

Art. 7783. [5300] **Judgment of non-suit against plaintiff, when.**—If the plaintiff does not appear at the said first term, the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the said first term; but, if he does not then appear on or before the appearance day of said term, he shall be non-suited. [Id.]

Art. 7784. [5301] **Proceedings, how conducted.**—The proceedings and practice on the trial shall be as nearly as practicable the same as in other cases before such court or justice.

Art. 7785. [5302] **Burden of proof on plaintiff, when.**—In all cases arising under this title, if the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff. [Id.]

Art. 7786. [5303] **Burden of proof on defendant, when.**—If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant. [Id.]

Art. 7787. [5304] **Damages.**—In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property. [P. D. 5314.]

Art. 7788. [5305] **Where value of property exceeds judgment.**—When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ. [Id.]

Art. 7789. [5306] **Copy of writ evidence, when.**—In all trials of the right of property, under the provisions of this title, in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be. [P. D. 5315.]

Art. 7790. [5307] **Judgment upon failure to establish title, etc.**—In all cases where any claimant of property, under the provisions of this title, shall

fail to establish his right thereto, judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim. [Acts of 1887, p. 104.]

Art. 7791. [5308] **Execution shall issue.**—In case such judgment should not be satisfied by a return of the property as provided in article 5310 [7793] then execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment exceed such claim or sum; and in such cases the excess of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but, if such judgment be for a less amount than the sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment. [Id.]

Art. 7792. [5309] **Execution not to issue within ten days.**—On such judgment, no execution shall issue for ten days.

Art. 7793. [5310] **Return of property by claimant within ten days.**—If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same, together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

Art. 7794. [5311] **Claim operates a release of damages.**—A claim made to property, under the provisions of this chapter, shall operate as a release of all damages by the claimant against the officer who levied upon said property. [P. D. 5317.]

Art. 7795. [5312] **Levy may be made on other property.**—Proceedings for the trial of the right of property, under the provisions of this title, shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant. [P. D. 5318.]

TITLE 130.

TRUSTS—CONSPIRACIES AGAINST TRADE.

Chapter.

1. Definitions, Forfeitures and Other Provisions.

Chapter.

2. Evidence in Trust Cases.

CHAPTER ONE.

DEFINITIONS, FORFEITURES AND OTHER PROVISIONS.

Article.	Article.
"Trusts" defined	Foreign corporations prohibited from
7796	doing business and may be enjoined...7803
"Monopoly" defined	Quo warranto proceedings.....7804
7797	Successor to defaulting foreign corpor-
Conspiracies against trade, what con-	ation prohibited from doing business.7805
stitutes	Penalties; venue of suits; fees of attor-
7798	ney general, etc. ....7806
Acts and things mentioned declared il-	All agreements in violation void.....7807
legal	Actions under this chapter have pre-
7799	cedence
Charters forfeited.....	7808
7800	Recovery against one does not bar re-
Attorney general to institute quo war-	covery against others.....7809
ranto proceedings.....	
7801	
Successors to defaulting corporation pro-	
hibited from doing business.....	
7802	

Article 7796. "Trusts" defined.—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of

any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation, whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the state of Texas, or any portion thereof. [Act 1903, p. 119, sec. 1.]

Art. 7797. "**Monopoly**" defined.—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id. sec. 2.]

Art. 7798. **Conspiracies against trade, what constitutes.**—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or association of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. [Id. sec. 3.]

Art. 7799. **Acts and things mentioned declared illegal.**—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. [Id. sec. 4.]

Art. 7800. **Charters forfeited.**—Any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. [Id. sec. 5.]

Art. 7801. **Attorney general to institute quo warranto proceedings.**—For a violation of any of the provisions of this chapter, or any anti-trust laws of this state, by any corporation, it shall be the duty of the attorney general, upon his motion and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, or at the county seat of any county in the state which the attorney general may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence; and for such purposes, venue is hereby given to each district court in the state of Texas. [Id. sec. 6; amended Acts 1909, p. 281.]

Art. 7802. **Successors to defaulting corporations prohibited from doing business.**—When a corporation organized under the laws of this state shall have been convicted of a violation of any of the provisions of this chapter, and its charter and franchise has been forfeited, as provided in article 7800, no other corporation to which the defaulting corporation may have trans-

ferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Act 1903, p. 119, sec. 7.]

Art. 7803. **Foreign corporations prohibited from doing business.**—Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and is prohibited from doing any business within this state; and it shall be the duty of the attorney general to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the state of Texas. [Id. sec. 8.]

Art. 7804. **Quo warranto proceedings.**—The provisions of title 114, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. [Id. sec. 9.]

Art. 7805. **Successor to defaulting foreign corporation prohibited from doing business.**—When any foreign corporation has been convicted of a violation of any of the provisions of this chapter, and its right to do business in this state has been forfeited, as provided in article 7803 of this chapter, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Id. sec. 10.]

Art. 7806. **Penalties; venue; fees of attorney general.**—Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the state of Texas in the district court of any county in the state of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to prosecute for the recovery of the same; and the fees of the district or county attorney for representing the state in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this state, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent on all sums in excess of the first fifty thousand dollars, to be retained by him when collected; and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this chapter as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court, nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this state, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause; and in case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; provided, further, that in case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. [Id. sec. 11; amended Acts 1909, p. 281.]

Art. 7807. **All agreements in violation of, void.**—Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforceable either in law or equity. [Act 1903, p. 119, sec. 12.]

Art. 7808. **Actions under this chapter to have precedence.**—All actions authorized and brought under this chapter shall have precedence, on motion of the prosecuting attorney or the attorney general, of all other business, civil and criminal, except criminal cases where the defendants are in jail. [Id. sec. 16.]

Art. 7809. **Recovery against one does not bar recovery against others.**—Recovery against any person or persons for any violation of the provisions of this chapter shall not bar recovery against any other person or persons for the same offense. [Acts 1907, p. 456, sec. 20.]

CHAPTER TWO.

EVIDENCE IN TRUST CASES.

	Article.		Article.
Evidence preliminary to prosecutions, how secured.....	7810	Notice to attorneys, failure to produce evidence; judgment by default, when..	7814
Witnesses examined; books and papers produced, etc.; defendants produce witnesses, books, etc.....	7811	Special commission to take testimony, when; powers of and compensation....	7815
Evidence, how taken.....	7812	Ten days' notice to require witnesses to appear	7816
Judgment by default on failure to produce papers, documents, etc.....	7813	Witnesses testifying not subject to prosecution	7817
		Provisions of this chapter cumulative....	7818

Article 7810. **Evidence preliminary to prosecutions, how secured.**—Upon the application of the attorney general, or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of the preceding chapter, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of said chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn; and the county judge, or justice of the peace, as the case may be, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, such sworn statement shall be delivered to the attorney general, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this article, or who shall testify as a witness for the state in the course of any statutory proceeding to secure testimony for the enforcement of the provisions of the preceding chapter.

or in the course of any judicial proceeding to enforce the provisions of said chapter shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. [Acts 1907, p. 221, sec. 15.]

Art. 7811. **Witnesses examined; books and papers produced.**—Whenever any suit shall be instituted, or is pending in any court of competent jurisdiction in this state by the attorney general, or by any district or county attorney acting under his direction, against any corporation or corporations, individual or individuals, or association of individuals, or joint stock associations, or co-partnerships under any law of this state, against trusts, monopolies, or conspiracies in restraint of trade, or under any laws of this state regulating or controlling corporations, domestic or foreign, the attorney general, district or county attorney, as the case may be, may, in addition to the means now provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence, in the manner herein provided. [Acts 1907, p. 16, sec. 1.]

Art. 7812. **Evidence, how taken.**—Whenever any action is commenced or is pending, as contemplated in the preceding article of this chapter, by the attorney general, or by any district or county attorney acting under his direction, and said officer representing the state, either upon the trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employe of any foreign or domestic corporation or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired, resides either within or without the state of Texas, the said officer shall file in said court where the action is brought, either in term time or in vacation, or with any special commissioner, who may be appointed by the court to take testimony, as provided for in this act, a statement in writing setting forth the name or names and residence of the person or persons whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and place where, either within or without this state, he desires such person to appear and testify, or to produce books, papers and documents, if any are desired; and thereupon the judge of said court, or the commissioner, as the case may be, before whom said testimony is being or shall be taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record in said cause, or the agent, officer, or employe of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, individual or individuals, or to any member of such co-partnership, or to any individual or individuals, who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employe, aforesaid, or member or members of any co-partnership, or individual, as herein provided, that the testimony of the person or persons named in said notice is desired, and requiring said attorney or attorneys of record, or such officer, agent or employe aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses, whose testimony or evidence it is desired to take, at the place named in said notice, at the time fixed therein, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided; provided, that, if the taking of such evidence be not concluded on the day and date specified in said notice, the court or the commissioner, as the case may be, may continue the taking of same from day to day, or adjourn from day to day, at the same place, until the taking of such evidence has been concluded. [Id. sec. 2.]

Art. 7813. Judgment by default on failure to produce books, papers, etc.— Whenever any officer, director, agent or employe of any foreign or domestic corporation, or joint stock association, authorized to do business in this state, or any member of any co-partnership, or any individual, against whom suit has been filed, or is pending, as provided for in this chapter, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership, or individual, shall be notified in accordance with the provisions of this chapter that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership, or individual, are wanted before the court, or special commissioner, as provided in this chapter, it shall be the duty of such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents belonging to any such defendant, or under such defendant's control, as may be specified in said notice, in court or before said special commissioner, at the time and place so specified; and, in the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this article, it shall be the duty of the court, upon the motion of the officer representing the state, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, and render judgment by default against any such defendant. [Id. sec. 3.]

Art. 7814. Notice to attorneys on failure to produce documents; judgment by default, when.— Whenever any attorney or attorneys of record, or any agent, officer, or employe of any corporation or joint stock association, proceeded against as herein provided, shall be notified that any officer, director, agent or employe of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership or any individual, who are defendants in any such action, are desired as witnesses, or to produce books, papers or documents before any court, or before any special commissioner appointed to take testimony in said proceeding, as herein provided, it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employe to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired; and, if the person or persons whose testimony is desired as herein provided, shall fail to appear, or appearing shall refuse to testify, or shall fail to produce whatever books, papers or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the attorney general, district or county attorney, as the case may be, on proof of such refusal, failure or dereliction, to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director or employe, as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association; and said court shall, in the event of any such refusal or failure, proceed to render judgment by default against any such defendant; provided, however, that if any such defendant shall file a sworn denial in writing, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of

defendant, the court shall hear evidence upon that issue; and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this chapter, within such defendant's power to perform, then in that event the answer, motion, reply, demurrer, or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend, who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice; provided, further, that, in any proceeding had before a special commissioner as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpoena issued by authority of this act shall receive as compensation one dollar per day for each day of his attendance, and four cents per mile traveled, computed upon the shortest practicable route; any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness, and shall be taxed up as costs, and collected as other costs in civil cases. [Id. sec. 4.]

Art. 7815. Special commission to take testimony; powers of; compensation.—The court, or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor made by the attorney general, or district or county attorney acting under his direction, shall appoint some well qualified disinterested person as special commissioner to take testimony in any such case, at any point either within or without the state, as designated in such application, or where requested by either party to said cause of action, upon the issues joined in said cause. Such special commissioner shall have full power and authority to issue notices provided for in article 7812 of this chapter, and to issue subpoenas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court, to administer oaths to witnesses, to have all witnesses examined orally, which testimony shall be reduced to writing and may be taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking oath prescribed by the constitution of this state for officers, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him; and said commissioner shall note all objections to testimony, and shall not exclude any testimony; and all questions as to the materiality or admissibility of same shall be reserved for the court trying the case; and such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected in the same manner as now provided by law for district clerks in civil cases. [Id. sec. 5.]

Art. 7816. Ten days' notice to require witnesses to appear.—When any notice is issued and served, as provided for in this chapter, ten full days exclusive of the day of service shall elapse before any witness so requested

shall be compelled to appear and testify, or produce any books, papers or documents called for; and, if the taking of testimony shall not be concluded on the date named in said notice, the witness or witnesses shall remain in attendance from day to day until same is completed or said witness is finally discharged by the court, or commissioner, as the case may be; service of said notice and the return thereon may be made by any sheriff or constable of this state, or by any disinterested person competent to make oath of the fact, and shall be made by said person executing the same by delivering to the person or persons, attorney or attorneys to be served, a true copy of such notice, and return of such service shall be indorsed on or attached to the original notice; it shall state when the same was served and the manner of service, and upon whom served, and shall be signed; and, if served by any person other than an officer, shall be sworn to by the party making the service before some officer authorized by law to take affidavits; and such affidavit shall be certified under the hand and official seal of such officer. [Id. sec. 6.]

Art. 7817. **Witnesses testifying not subject to prosecution.**—Any witness for the state, who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise. [Id. sec. 7.]

Art. 7818. **Provisions of this chapter cumulative.**—The provisions of this chapter shall be cumulative of all laws of this state, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. [Id. sec. 8.]

TITLE 131.

WAREHOUSES AND WAREHOUSEMEN.

Article.	Article.
Who and what are public warehouses and warehousemen.....	Must deliver property immediately on production of receipt.....
7819	7823
Certificate and bond of public warehousemen.....	Limitations of liability in receipts prohibited.....
7820	7824
Form, functions and record of warehouse receipts; duplicates, when issued.....	Force and effect of warehouse receipts; negotiable, etc.....
7821	7825
No receipt without actual storage of goods.....	Liability for damages.....
7822	7826
	Limiting the operation of this law.....
	7827

Article 7819. Who and what are public warehousemen and warehouses.—

All persons, firms, companies or corporations who shall receive cotton, tobacco, wheat, rye, oats, rice, whisky, oil, or any kind of produce, wares, merchandise or any description of personal property in store for hire, under the provisions of this chapter, shall be deemed and taken to be public warehousemen; and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this chapter, shall be deemed and taken to be public warehouses; provided, that a public warehouse for the storage of cotton may, within the meaning of this chapter, include a lot or parcel of land inclosed with a lawful fence, the gates or entrances to which shall be kept securely locked at night. [Acts 1901, p. 251, sec. 1.]

Art. 7820. Certificate and bond of public warehousemen.—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse, shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the state of Texas; which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual, or a member of the firm, interested as owner or principal in the management of the same; or, if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; which application shall be received and filed by such clerk and preserved in his office; and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this chapter, and shall be revokable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same a bond payable to the state of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman; which said bond shall be filed and preserved in the office of such clerk. [Id. sec. 2.]

Art. 7821. Form and record of warehouse receipts; duplicates, when issued.

—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue, over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity,

number and marks of the property stored, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt properly endorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in the order of their issue; and, when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well-bound book, which shall be, at all reasonable hours, open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "Duplicate;" and provided, that no such duplicate receipt shall be issued by the public warehouseman until adequate security, acceptable to the warehouseman, be deposited with or to the order of said warehouseman to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. [Id. sec. 3.]

Art. 7822. No receipts without actual storage of goods.—No public warehouse receipt shall be issued, except upon the actual previous delivery of the goods into the public warehouse or on the premises and under the control of the public warehouseman by whom it purports to be issued, and the name of the warehouse shall invariably be specified in such receipt. [Id. sec. 4.]

Art. 7823. Must deliver property immediately upon production of receipt.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman, who shall issue a receipt for goods, shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued until the said receipt shall have been surrendered and canceled, except in case of lost receipts, as provided for in article 7821; and, in default of the strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse upon any receipt, such receipt shall be plainly marked in ink across its face with the word, "canceled," with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation. [Id. sec. 5.]

Art. 7824. Limitations of liability in receipts prohibited.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this state, excepting, "not accountable for leaking or depreciation," or words of like import and meaning. [Id. sec. 6.]

Art. 7825. Force and effect of warehouse receipts; negotiable, etc.—The receipts issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by endorsement in blank, or by special endorsement, and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privileges of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words, "not negotiable," plainly written or stamped on the face thereof, shall be

exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse, but, upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided; which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt, for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles and provisions of this chapter. [Id. sec. 7.]

Art. 7826. **Liability for damages.**—Every and all persons aggrieved by the violation of any of the provisions of this chapter shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this chapter, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violating shall have been convicted of criminal offense under this chapter or not. [Id. sec. 8.]

Art. 7827. **Limiting the operation of this law.**—Nothing in this chapter shall be construed to apply to private warehouses, or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws; provided, that such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face in large characters the words: “Not a public warehouse receipt.” [Id. sec. 9.]

TITLE 132.

WEIGHERS—PUBLIC.

[For fees, see "Fees of Office."']

	Article.		Article.
Appointment and term of office.....	7828	Factor or commission merchant not to	
Oath and bond.....	7829	employ, etc.....	7833
Duties.....	7830	Owner may weigh, etc.....	7834
Deputies.....	7831	Weighers liable for damages, when.....	7835
Shall keep accurate scales.....	7832		

Article 7828. [4308] **Appointment and term of office.**—The governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all of the counties in this state in which there are no city or cities in which the governor is authorized to appoint public weighers, the commissioners' court of said county, when presented with a petition signed by a majority of the qualified voters of any justice precinct in their county, praying for the appointment or election of public weighers for said precinct, shall appoint, or order to be elected at the next general election, one or more suitable persons for public weighers for said justice precinct, the number of weighers for any one precinct to be determined by said court; and, should they appoint a public weigher for said justice precinct, he shall hold his office until the next general election, when there shall be elected for said justice precinct his successor, a public weigher, in the manner and form governing the election of other precinct officers; provided, the majority of the qualified voters shall be determined by a comparison with the whole number of votes cast at the last general election in such justice precinct for the office of governor; and it is further provided, that no person shall be elected or appointed a public weigher, unless he shall be a qualified elector in the city or justice precinct for which he is appointed or elected. All public weighers appointed by the governor or elected for justice precinct shall hold their office for the term of two years and until their successors are appointed or elected, as the case may be, and qualified, subject to removal for misconduct or incompetency in office; provided, no person shall be appointed or elected public weigher, or deputy public weigher, who is interested in the purchase or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employe; provided, further, that the commissioners' court may unite two or more justice precincts for the purpose of electing public weighers; provided, further, that, when the people of any county or subdivision thereof that has an elective weigher, may wish to abolish said office of public weigher, the commissioners' court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for governor at the last preceding election in the county or weigher's precinct, as the case may be, order an election to decide whether such office of public weigher of the county, or subdivision named in the petition, shall be abolished or not. Said election shall be held in the same manner as other elections; and, if a majority of the votes of the county, or subdivision of the county ordering said election, shall be cast in favor of abolishing any office of public weigher, the commissioners' court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years; and no election shall be held for this purpose until two years after said office of public weigher has been created. [Acts 1883, p. 83. Amended Acts 1899, p. 264.]

Art. 7829. [4309] **Oath and bond.**—Every person appointed or elected public weigher shall take the oath of office prescribed by the constitution for other officers, and shall execute a bond with good and sufficient sureties in the sum of five thousand dollars, to be approved by the commissioners' court of his county, and payable to the county judge, or his successors in office, conditioned upon the faithful and impartial performance of the duties of the office; provided, the bond for the public weigher for a justice precinct shall be two thousand five hundred dollars where not over five thousand bales of cotton are received for sale or shipment; provided, further, that the commissioners' court shall be authorized to accept as surety on such bond any surety company or corporation having a permit in this state to execute indemnity bonds. [Acts 1903, p. 216.]

Art. 7830. [4310] **Duties.**—When a person is appointed or elected public weigher, and shall have qualified as provided in article 7829, he shall enter upon the duties of his office and weigh, without unnecessary delay, all cotton, wool, sugar, hay, pecans, or grain, required to be weighed by him. He shall prepare a convenient place or places of easy access to the public in which to perform his duties. He shall mark upon the bales of cotton, hogshead or barrels of sugar, and bales of wool, or on tags attached thereto, the weights thereof in figures, and shall deliver to the owner, or his agent, of all cotton, wool, hay, sugar, pecans, or grain a certificate or a statement at the option of the owner in writing with ink or an indelible pencil, setting forth the weights of such cotton, wool, sugar, hay, pecans, or grain weighed by him, over his official signature. And where a certificate is issued it shall be negotiable by delivery and indorsement of the owner; and it shall be the duty of the public weigher issuing such certificate, if the produce for which the same was given is left with him on storage, to keep the produce for which the same was issued in his possession, and not remove or permit to be removed such produce until such certificate is returned and delivered to him; and he shall immediately stamp or mark in writing with ink such certificate, "canceled," and shall make a corresponding memorandum upon his book; provided, that, where the holder of such certificate desires to ship or receive from the possession of the public weigher a portion of the produce for which such certificate was given, he may deliver to the public weigher the certificate; whereupon it shall be the duty of the public weigher to deliver such portion of the produce, and, in lieu of the original certificate, he shall give the holder a new certificate for the balance remaining in his possession, and shall cause the original certificate to be canceled, and make the memorandum above provided for. He shall keep in a well-bound book a record of each bale of cotton, sack of wool, or barrel or hogshead of sugar, hay, grain, or pecans weighed by him, numbering the same, giving the gin's marks of cotton bales and number, with the name of the seller and purchaser thereof; which book shall be open at all reasonable hours for the inspection of the public; and he shall, upon application therefor by any one, issue certified copies of such certificate, for which he may charge the sum of ten cents, including certificate thereto. The provisions of this article shall also apply to private weighers who are engaged in weighing for the public, as well as to public weighers. [Id.]

Art. 7831. [4311] **Deputies.**—The public weighers who shall have been appointed or elected under the provisions of this title, after they have taken the oath of office, and their bonds shall have been approved and recorded in the same manner as the bonds of county officers, shall have power and authority to appoint as many deputies as may be necessary to enable them to expeditiously weigh all cotton, wool, sugar, hay and grain offered to be weighed in the cities and justice precincts for which they are elected or appointed; provided, that no public weigher shall appoint deputies for any place or places not situated in the city or justice precinct for which he is elected or ap-

pointed. The public weigher for any justice precinct shall, on request of twenty bona fide citizens of any town, railroad station or other place in his precinct, who are engaged in the buying or selling of cotton, wool, sugar, hay, or grain, appoint a deputy for such town, railroad station, or other place. The deputies of public weighers shall take the oath required of their principals; and their principals may require of them a bond with good and sufficient sureties, in the sum of fifteen hundred dollars, to be approved by said principals, and conditioned for the faithful performance of their duties; and the said principals shall have the right to recover, in any court having jurisdiction, satisfaction on said bonds for any damages sustained by reason of said deputy or deputies failing to properly perform the duties of their office. [Acts 1899, p. 264.]

Art. 7832. [4312] **Shall keep accurate scales.**—All public weighers appointed or elected under the provisions of this chapter shall keep accurate and well adjusted scales and balances and give accurate weights, and shall have the same tested and certified to as provided by law. Such public weighers shall be held responsible for their official acts and the official acts of their deputies, and shall be liable at suit for all damages that may have accrued to any person or persons by reason of their failure to perform their official duties, or the violation of any of the provisions of this chapter; and their bonds shall not be void upon the first recovery, but may be sued on from time to time, in the name of the person or persons injured until the whole thereof is recovered. [Id.]

Art. 7833. [4314] **Factor or commission merchant not to employ.**—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies, to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified; and any person or persons violating the provisions of this article shall be liable at the suit of the public weigher of such city or justice precinct to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed, to be recovered in any court having jurisdiction thereof. [Id.]

Art. 7834. [4316] **Owner may weigh, etc.**—Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain, or pecans in person; provided, that in places where there are no public weighers appointed or elected any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond with at least two good and sufficient sureties, in the sum of twenty-five hundred dollars, approved and payable as in the case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner; provided, that this article shall not apply to merchant flouring mills. [Acts 1905, p. 117.]

Art. 7835. [4316a] **Weigher liable for damages, when.**—Any weigher who qualifies under the preceding article, and shall violate any of the provisions or fail to comply with any of such provisions, shall be liable at the suit of any person injured upon his bond for damages that may have accrued to such person by such violation or failure. [Id.]

TITLE 133.

WEIGHTS AND MEASURES.

[See "Mill Products," Title 92.]

	Article.		Article.
Legal standard weights and measures.....	7836	Counties to pay for same.....	7841
Weights of grain, etc.....	7837	License to make and vend.....	7842
Governor to procure standards.....	7838	Testing and stamping.....	7843
And furnish to counties.....	7839	False weights and measures.....	7844
Commissioner of agriculture, etc., may sell, etc.....	7840	Private informer may recover, when....	7845
		Forfeitures merely cumulative.....	7846

Article 7836. [5322] **Legal standard.**—The standard of weights and measures adopted and used by the government of the United States is hereby declared the only legal standard of weights and measures in this state. [Act May 7, 1846, p. 180, sec. 4. P. D. 5352.]

Art. 7837. [5323] **Weights of corn, etc.**—The following shall be the legal number of pounds per bushel: Wheat, sixty pounds; corn, shelled, fifty-six pounds; corn in the ear, shucked, seventy pounds, unshucked, in the ear, seventy-two pounds; oats, thirty-two pounds; barley, forty-eight pounds; rye, fifty-six pounds, buckwheat, forty-two pounds; white beans, sixty pounds; Irish potatoes, sixty pounds; sweet potatoes, fifty-five pounds; onions, fifty-seven pounds; turnips, fifty-five pounds; dried apples, twenty-eight pounds; dried peaches, twenty-eight pounds; bran, twenty pounds; Hungarian grass seed, forty-eight pounds; hemp seed, forty-four pounds; flax seed, fifty-six pounds; stone coal, eighty pounds; charcoal, twenty-two pounds; salt, fifty pounds; clover seed, sixty pounds; timothy seed, forty-five pounds; cotton seed, thirty-two pounds; millet seed, fifty pounds; peaches, fifty pounds; tomatoes, fifty-five pounds; apples, forty-five pounds. [Acts of 1883, p. 73. Amended Acts 1901, p. 271.]

Art. 7838. [5324] **Governor to procure standards.**—The governor shall procure, if necessary, at the expense of the state, a set of weights and measures in conformity with the standard used by the government of the United States, and cause the same to be deposited with the treasurer of the state, by him to be safely kept. [Act Feb. 13, 1858, p. 200, sec. 1. P. D. 5353.]

Art. 7839. [5325] **And furnish copies to counties.**—The governor is authorized to cause correct copies of such weights and measures to be made under such appropriate seal as he may adopt, and to deliver, or cause to be delivered, after the inspection and approval of some competent person by him appointed for that purpose, a full set of such weights and measures to the county judges of the several counties, on their application, and at the cost and expense of their respective counties. [Id. sec. 2. P. D. 5354.]

Art. 7840. [5326] **Commissioner of agriculture may sell.**—The commissioner of agriculture is authorized to sell sets, or parts of sets, of standard weights and measures heretofore manufactured in accordance with the preceding article of the Revised Statutes, at the cost of manufacturing. [Acts of 1889, p. 32.]

Art. 7841. [5327] **Counties to pay for same.**—When such copies have been made, it shall be the duty of the several commissioners' courts to appropriate a sufficient amount of money to enable the county judges of the respective counties to pay for and procure a full set thereof for the use of their counties, and said county judges shall take charge of and keep the same. [Id. sec. 4. P. D. 5356.]

Art. 7842. [5328] **License to make and vend.**—The commissioners' courts of the several counties are authorized and directed to grant a license to such suitable person or persons as they may think proper to make and vend weights and measures agreeing with the standard furnished by the governor, under such rules and regulations as they may think proper to prescribe; provided, however, that no such weights and measures shall be sold or distributed, unless the same have been first examined and approved by the commissioners' court, or some competent person under their direction and approval. [Act May 7, 1846, p. 180, sec. 3. P. D. 5351.]

Art. 7843. [5329] **Testing and stamping.**—Any person desirous of having his weights and measures tested may have the same done by applying to the county judge, who, if he finds them correct, shall seal them with a seal to be provided by the commissioners' court for that purpose, on which shall be the capital letter "T," and also the letter with which the name of the county begins. [Act Feb. 13, 1858, p. 200, sec. 5. P. D. 5357.]

Art. 7844. [5330] **False weights and measures.**—Any person who shall sell by any weight, balance or measure that does not correspond to and agree with such copies, or who shall keep the same for the purpose of buying or selling thereby, shall forfeit and pay the sum of ten dollars for every month he may continue to keep the same, one-half of which shall go to the county in which such offense shall have been committed, and the other to the county judge, and it shall be his duty to sue for the penalty incurred by the commission of every such offense before some court of competent jurisdiction. [Id. sec. 7. P. D. 5359.]

Art. 7845. [5331] **Private informer may recover, when.**—If the county judge shall fail to sue for any such penalty within three months after the same shall have been incurred, any other person may sue therefor and recover one-half thereof for his own use and the other half for the use of the county. [Id. sec. 8. P. D. 5360.]

Art. 7846. [5332] **Forfeitures merely cumulative.**—Nothing in the two preceding articles contained shall be construed to affect any provision of the Penal Code relating to the use of false weights and measures, nor shall a recovery of any forfeiture by civil action relieve an offender from criminal prosecution, or an action for damages resulting therefrom.

TITLE 134.

WELLS—OIL, GAS AND WATER.

Article.	Article.
Wells, how cased.....7847	Duty of persons where salt water ap-
Abandoned wells to be filled, conse-	pears in wells.....7852
quences of failure.....7848	District court, jurisdiction and super-
Gas to be confined until utilized.....7849	vision; may appoint superintendents,
Limitations as to use of gas for illumi-	make regulations, etc.....7853
nating purposes.....7850	Suits and penalties, how brought.....7854
Penalties and disposition of fines.....7851	

Article 7847. Wells, how cased.—The owner or operator of any well being constructed for the production of petroleum oil, natural gas, or mineral water, shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. [Acts 1899, p. 68.]

Art. 7848. Abandoned wells to be filled.—The owner or operator of any well constructed for either or any of the purposes named in the preceding article, when about to abandon or cease operating the same, and before drawing the casing therefrom, shall securely fill such well with rock, sediment or with mortar, composed of two parts sand and one part cement or other suitable material to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expense thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. [Id. sec. 2.]

Art. 7849. Gas to be confined until utilized.—Any person, co-partnership, or corporation in possession, either as owner, lessee, agent or manager, of any well producing natural gas, in order to prevent the said gas from wasting by escape, shall, within ten days after penetrating the gas bearing rock in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light or fuel or power; provided, that this shall not apply to any well that is operated for oil. [Id. sec. 3.]

Art. 7850. Limitations on use of gas for illuminating purposes.—It shall be unlawful for any person, co-partnership or corporation to use natural gas for illuminating purposes by what are known as flambeau lights; but nothing herein shall prohibit the use of "Jumbo" burners, or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open

air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. [Id. sec. 4.]

Art. 7851. **Penalties; disposition of fines.**—Any person, co-partnership, or corporation violating any of the provisions of this chapter shall be liable to a penalty of one hundred dollars, to be recovered with the cost of suit in a civil action, in the name of the state of Texas, in any court of competent jurisdiction in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the state of Texas, without security or liability of cost. The amount of said penalty when collected shall be paid, one-half into the school fund of the county in which said suit is brought, and one-half to said person at whose instance said suit shall be brought. [Id. sec. 5.]

Art. 7852. **Duties of persons where salt water appears in wells.**—If any person or persons in this state, in boring any well or wells for oil, gas or mineral waters, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well or wells already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water can not be cased off, immediately abandon all work upon such well and plug and fill up the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap-rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. If any well shall be abandoned from any cause, the same shall be securely plugged and sealed. [Acts 1905, p. 228. sec. 7.]

Art. 7853. **District courts; jurisdiction and supervision; may appoint superintendent, make regulations, etc.**—The district courts of each county in this state, and the judges thereof in vacation, shall have jurisdiction to enforce the provisions of this chapter; and they are hereby authorized and empowered, either in term time or in vacation, upon the application of any person or persons interested either as land owners, lessees of land or as well owners, in any oil or gas field in this state, in its discretion, to appoint some suitable person or persons as superintendent of such oil or gas field, and to require of such person a bond, the amount thereof to be fixed by the court, conditioned that such superintendent shall obey and carry out the rules, regulations, orders and decrees which may be from time to time prescribed and entered by said court for the protection of such oil or gas field, and the persons employed therein, from fire or other causes likely to be injurious to the properties and operations in such field, and with power and authority to enforce, under the orders of said court, a strict compliance by all persons with all the requirements of the laws of this state governing the boring and operation of oil or gas wells in oil or gas fields; and said courts are authorized and empowered to make from time to time such rules and regulations for the government of such oil and gas fields and the operations carried on therein, and the handling of the oil or gas products, as may, in the discretion of the court, be necessary or requisite for the protection of the several interests in said oil and gas field from fire or other probable injurious cause. The court may require of the persons who apply for the appointment of a superintendent of any oil or gas field or other protective order proper security

for the payment of any and all costs of court, including the salaries of any superintendents, or necessary employes under him, as well as for such other costs and expense as may be necessary to be expended in the protection of such oil or gas field and enforcement of the orders of said courts. [Id. sec. 8.]

Art. 7854. **Suits and penalties, how brought.**—Any person or persons, co-partnership, corporation, or association of persons, violating any of the provisions of this chapter, or who shall fail or refuse to obey any order or decree, rule or regulation, made or promulgated by said district courts requiring any act to be done or omitted shall be liable to penalty of not less than five hundred dollars nor more than five thousand dollars, to be ascertained by the verdict of the jury of the court trying the cause; said sum to be recovered with the costs of suit in a civil action brought for that purpose in the name of the state of Texas, in any court of competent jurisdiction, in the county in which the act complained of shall have been committed or omitted; and such suit may be brought at the instance of any resident of the state of Texas, without security or liability for costs; and the amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. [Id. sec. 9.]

TITLE 135.

WILLS.

[See "Estates of Decedents."]

Article.	Article.
Persons competent to make a will.....7855	The same.....7867
What may be devised, etc., by will....7856	Term "children" includes descendants...7868
Requisites of a will.....7857	Bequests to children, etc., not to lapse...7869
Will wholly written by testator.....7858	Bequest to subscribing witness.....7870
Revocation of written will.....7859	Will in such cases may be proved, how...7871
Nuncupative will.....7860	Husband or wife may authorize survivor to manage separate estate.....7872
Requisites of.....7861	Original wills, etc., to be deposited with county clerk, etc.....7873
Notice and proof.....7862	To be recorded, etc.....7874
Testimony to be committed to writing, etc.....7863	Foreign wills.....7875
Wills of soldiers, etc., disposing of chat- tels.....7864	Prima facie evidence, when.....7876
Posthumous children.....7865	Shall take effect, etc.....7877
Children born after making of will.....7866	Shall operate as notice.....7878

Article 7855. [5333] **Persons competent to make a will.**—Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed by law. [Act Jan. 28, 1840; July 24, 1856. P. D. 5361, 3868.]

Art. 7856. [5334] **What may be devised, etc., by will.**—Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in, or to any personal property whatever, subject to the limitations prescribed by law. [P. D. 5361-2.]

Art. 7857. [5335] **Requisites of a will.**—Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator. [Act Jan. 28, 1840. P. D. 5361.]

Art. 7858. [5336] **Will wholly written by testator.**—Where the will is wholly written by the testator the attestation of the subscribing witnesses, as required in the preceding article may be dispensed with. [Id.]

Art. 7859. [5337] **Revocation of written will.**—No will in writing, made in conformity with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, canceling or obliterating the same, or causing it to be done in his presence. [P. D. 5363.]

Art. 7860. [5338] **Nuncupative will.**—Any person who is competent to make a last will and testament, under article 7856 [7855] may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. [P. D. 5366.]

Art. 7861. [5339] **Requisites of.**—No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. [P. D. 5366.]

Art. 7862. [5340] **Notice and proof.**—No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so. [P. D. 5371.]

Art. 7863. [5341] **Testimony to be committed to writing, etc.**—After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony, or the substance thereof, shall have been committed to writing within six days after making the will. [P. D. 5367.]

Art. 7864. [5342] **Wills of soldiers, etc., disposing of chattels.**—Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title. [P. D. 5369.]

Art. 7865. [5343] **Posthumous children.**—When a testator shall have children born and his wife enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament. [P. D. 5363.]

Art. 7866. [5344] **Children born after making a will.**—If a testator having a child or children born at the time of making his last will and testament shall, at his death, leave a child or children born after the making of such last will and testament, the child or children so after-born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in article 7865. [P. D. 5364.]

Art. 7867. [5345] **The same.**—Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without having been married and before he shall have attained the age of twenty-one years. [P. D. 5363.]

Art. 7868. [5346] **Term "children" includes descendants.**—Under the name of "children," as used in this title, are included descendants of whatever degree they may be, it being understood they are only counted for the child they represent. [P. D. 5373.]

Art. 7869. [5347] **Bequests to children, etc., not to lapse.**—Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee, or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death; but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate. [P. D. 5365.]

Art. 7870. [5348] **Bequest to subscribing witness.**—Should any person be subscribing witness to a will, and be also a legatee or devisee therein, if the will can not be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not

exceed the value of the bequest to him in the will. [Act March 15, 1875, p. 179.]

Art. 7871. [5349] **Will in such case may be proved how.**—In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will is substantially true; in which event the bequest to such subscribing witnesses shall not be void. [Id.]

Art. 7872. [5350] **Husband or wife may authorize survivor to manage separate estate.**—The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; provided, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; and provided, further, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate. [Act Aug. 26, 1856, p. 51, sec. 8. P. D. 4653.]

Art. 7873. [5351] **Original wills, etc., to be deposited with county clerk, etc.**—All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed to some other court, by proper process, for inspection. [P. D. 5372.]

Art. 7874. [5352] **To be recorded, etc.**—Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose; and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence as the original might be. [Id.]

Art. 7875. [5353] **How foreign will may be proved.**—When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this state, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that, at any time within four years from the date of the record of such will in this state, the validity of such will may be contested in a proceeding instituted for that purpose, as the original might have been. [Acts of 1887, p. 38, sec. 1.]

Art. 7876. [5354] **Prima facie evidence, when.**—A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the state wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this state. [Id. sec. 2.]

Art. 7877. [5355] **Shall take effect, when.**—Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in article 7875, and delivered to the clerk of the proper

court to be recorded, shall take effect and be valid and effectual as a deed of conveyance of said property; and the record thereof shall have the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. [Id. sec. 3.]

Art. 7878. [5356] **Shall operate as notice, etc.**—The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as notice to all persons of the existence of such will and testament, and of the title or titles conferred thereby. [Id. sec. 4.]

TITLE 136.

WOOL GROWING INTERESTS.

	Article.	Article.
Inspector of sheep to be appointed, when	7879	Duties as to diseased cattle.....
Bond	7880	Same
Duties	7881	May be paid fees by wool growers.....
Compensation	7882	Exempting counties.....
		7883
		7884
		7885
		7886

Article 7879. [5357] **Inspector of sheep to be appointed, when.**—Whenever it appears from the assessor's rolls of any county that there are as many as five hundred sheep owned and assessed for taxes in any county in this state, it shall be the duty of the commissioners' court of said county, upon the application of one or more resident owners of sheep of said county, to appoint an inspector of sheep, who shall be a resident citizen of such county and well versed in the scab and diseases which usually affect sheep; and said inspector shall hold his office for two years, or until his successor is appointed and qualified. Said inspector may appoint one or more deputies, who shall likewise be well versed in scab and other diseases of sheep, who shall take the oath of office prescribed by the constitution, and may lawfully perform the same acts as the inspector of sheep; and the inspector may require of his deputies so appointed bonds payable to himself for the faithful performance of their duty as such deputies. [Acts of 1891, p. 140, sec. 1.]

Art. 7880. [5358] **Bond.**—Said inspector of sheep shall, within twenty days after receiving notice of his appointment, and before entering upon the duties of his office, execute a bond with two or more good and sufficient sureties, in a sum to be fixed by the commissioners' court, not less than one thousand nor more than five thousand dollars, payable to the county judge and his successors in office, conditioned that he will faithfully and impartially discharge and perform all the duties incumbent upon him as inspector of sheep. Said bond shall be approved by the commissioners' court and be recorded in the office of the county clerk of the county as other official bonds. [Id. sec. 2.]

Art. 7881. [5359] **Duties.**—It shall be the duty of the inspector of sheep, or his deputy, to carefully and minutely examine and inspect at any time sheep in his county, or which may be driven into or through his county, in which he has reason to believe, or is informed in writing by any one or more sheep owners of his county, or of any adjacent and contiguous county, is infected with scab or any other infectious or contagious disease; and, when one or more sheep affected with scab are found in any flock so inspected, the entire flock shall be condemned by said inspector or deputy and considered as affected with said disease. [Id. sec. 3.]

Art. 7882. [5360] **Compensation.**—The inspector shall be entitled to receive the sum of two cents per head, unless otherwise provided in this title, for all sheep inspected and condemned under the provisions of this title; provided, the inspector shall be entitled to receive only one cent per head of any number he may inspect for any one person in excess of two thousand head. In no one case shall his fee exceed fifty dollars; such fee to be paid by the owner or person in charge of the sheep so inspected and condemned; provided, that, when an inspector shall inspect any sheep and find no scab to exist in the flock of sheep so inspected, then the fees for such service shall be paid by the person at whose instance such inspection was made; and provided, further, that the inspector shall have a lien upon all sheep so inspected and condemned by him for his fees as provided in this article; provided, further, that, if any owner or person in charge of sheep affected with scab or other

contagious disease shall report the same in writing to said inspector or his deputy, and that he proposes to take means forthwith to cure such disease, it shall not be lawful for the inspector to inspect such flock within twenty days after such report; provided, that if, after the expiration of the twenty days aforesaid, the said sheep have not been thoroughly cured, then the said sheep shall be subject to inspection as hereinbefore provided. [Id. sec. 4.]

Art. 7883. [5361] **Duties as to diseased sheep.**—It shall be the duty of the inspector of sheep, or his deputy, to arrest and take in charge any flock or flocks of sheep, the property of owners who do not reside in his county, or have no certain or fixed ranch therein, found traveling through his county, and found after inspection to be affected with scab, and to hold and dip said sheep at the cost of the owner or person in charge of such flock or flocks until the same shall be cured; and said inspector shall be entitled to recover from the owner or person in charge of such flock or flocks of sheep so held by him the sum of two dollars per day as compensation for holding such sheep, in excess of inspection fees provided for in article 7882, and said inspector shall have a lien upon all sheep so held by him until all fees and expenses for holding and dipping incurred by him are paid; provided, that said inspector shall not in any case hold said flock or flocks of sheep exceeding twenty days. [Id. sec. 5.]

Art. 7884. [5362] **Same.**—Whenever any flock of sheep in any county in this state has been inspected, as provided for in this chapter, and found to be affected with scab, it shall be the duty of the owner or person in charge of such flock to thoroughly cure the same within twenty days from said inspection. [Id. sec. 6.]

Art. 7885. [5363] **May be paid fees by wool growers.**—Whenever in any county in this state there shall not be sufficient scab or other contagious and infectious diseases among the sheep to pay the sheep inspector a fair remuneration, under the fees provided by this chapter, it shall be lawful for any association of wool growers in such county to pay such inspector such additional sums of money as to them may seem right and proper in order to keep such inspector in the performance of the duties of his office. [Id. sec. 9.]

Art. 7886. [5364] **Exempted counties.**—The counties of Grayson, Freestone, Gonzales, Morris, Titus, Cass, Marion, Bowie, Red River, Trinity, San Jacinto, Polk, Anderson, Van Zandt, Cameron, Collin, Colorado, Grimes, Houston, Webb, Hunt, Hopkins, Ellis, Dallas, Rockwall, Denton, Fannin, Henderson, Brazos, Smith, Panola, Gregg, Lamar, Wood, Rains, Limestone, Cooke, Brown, Comanche, Cherokee, Mills, Montgomery, Shelby, Lee, Burleson, Rusk, Lavaca, Milam, Upshur, Robertson, Camp, Parker, Franklin, Navarro, Karnes, Wilson, Atascosa, San Augustine, Sabine, Fayette, Austin, Leon, Madison, Hill, Bosque, Waller, Fort Bend, Washington, Guadalupe, Caldwell, Hays, Tarrant, Johnson, Clay, Montague, Erath, Hood, Somervell, Bastrop, Harris, Harrison, Camp, Orange, Jefferson, Hardin, Liberty, Chambers, Newton, Tyler, Jasper, Kaufman, Nacogdoches, DeWitt, Victoria, Jackson, Refugio and Goliad, are exempt from the provisions of this title. [Amended Act 1901, p. 271.]

TITLE 137.

WRECKS.

Chapter.

1. Of Wreck-Masters.

Chapter.

2. Of Cotton Salvage.

CHAPTER ONE.

OF WRECK-MASTERS.

Article.	Article.
Appointment of wreck-master.....7887	To keep a record, etc.....7892
Bond and oath.....7888	Additional record and reports.....7893
His duties.....7889	Fees and perquisites.....7894
To be controlled by pilot commissioners.7890	Special duty to prosecute.....7895
To take possession of wrecked property and sell.....7891	

Article 7887. [5365] **Appointment of wreck-masters.**—The governor shall appoint not less than one and not more than three persons of good character in each maritime county of the state as wreck-masters for such county. [Act April 30, 1846, p. 158, sec. 1. P. D. 5375.]

Art. 7888. [5366] **Bond and oath.**—Each person so appointed shall, before entering upon the duties of his office, give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge of the county for which he is appointed, and to be approved by such officer, conditioned that the person so appointed shall faithfully discharge the duties of his office; which bond shall be deposited with the clerk of the county court of such county. The appointee shall also take the oath prescribed by the constitution for all officers; which oath shall be indorsed on said bond before the same is filed. [Id.]

Art. 7889. [5367] **His duties.**—It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or the portion of such county allotted to him, to repair at once to the place where such wreck has occurred, and, if the property so wrecked be found abandoned, to attend to the salvaging thereof, to use his best endeavors for the preservation of the same, and to attend generally to the interests of the owners of such property or whom it may concern; and the wreck-master shall have the command and direction of all persons engaged in saving and preserving such property. [Id. sec. 2. P. D. 5376.]

Art. 7890. [5368] **To be controlled by pilot commissioners.**—Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be; but, in case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county. [Id. sec. 3. P. D. 5377.]

Art. 7891. [5369] **To take possession of wrecked property and sell.**—Each wreck-master shall take into his custody and safely keep all wrecked property salvaged by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction; and, after the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvagers, to all of whom he shall faithfully account. [Id. sec. 5. P. D. 5379.]

Art. 7892. [5370] **To keep a record, etc.**—Each wreck-master shall keep a true account of all property salvaged by him, or under his direction, with the circumstances under which it was salvaged, and the names of the person engaged in salvaging, the time that each was so employed and other circumstances needful for the proper apportionment of salvage. [Id. sec. 4. P. D. 5378.]

Art. 7893. [5371] **Additional record and reports.**—He shall also keep a true account, in a book to be kept for that purpose, of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same; and, within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters and things provided for in this and the preceding article, to the commissioner of pilots or the county judge, as the case may be, and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending. [Id. sec. 4. P. D. 5378.]

Art. 7894. [5372] **Fees and perquisites.**—Wreck-masters shall receive a commission of five per cent upon the amount of all sales made by them, after deducting all expenses, not including salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority. [Id. sec. 5. P. D. 5379.]

Art. 7895. [5373] **Special duty to prosecute.**—It shall be the special duty of each wreck-master to prosecute before the proper tribunal any person who may be guilty of wasting, stealing or embezzling any property coming within the description of wrecked property. [Id. sec. 6. P. D. 5380.]

CHAPTER TWO.

OF COTTON SALVAGE.

Wrecked cotton to be advertised.....7896 And delivered to owner, when.....7897 If no owner appear, to be sold.....7898	Article. Article. And proceeds paid into state treasury...7899 If no wreck-master, county clerk to act.7900 Warrant to issue for suspected cotton..7901
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Article 7896. [5374] **Wrecked cotton to be advertised.**—It shall be the duty of the person taking up cotton afloat, abandoned in rivers, or in the waters of the gulf of Mexico on the coast of this state, or in the bays or bayous thereof, to place the same in a secure place out of the weather, and give early notice by advertisement, or by other means, at the port to which said cotton was destined, if within this state, and, if without the limits of the state, or its destination be unknown to the finder, then at the nearest port of entry in this state to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder. [Act Aug. 30, 1856, p. 76, sec. 1. P. D. 1030.]

Art. 7897. [5375] **And delivered to owner, when.**—It shall be the duty of the person finding, or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expense of advertisement, and five dollars upon each bale so saved and delivered. [Id. sec. 2. P. D. 1031.]

Art. 7898. [5376] **If no owner appear, to be sold.**—If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry

to the highest bidder; and the wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner or others concerned. [Id. sec. 3. P. D. 1032.]

Art. 7899. [5377] **And proceeds paid into state treasury.**—If, at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place; and said county treasurer shall immediately pay the same over to the treasurer of the state, who shall pay the same over to the person entitled thereto, on proof being made of the right of the claimant, in the manner provided for the recovery of money paid into the treasury of the state by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof. [Id.]

Art. 7900. [5378] **If no wreck-master, county clerk to act.**—In case there shall be no wreck-master in the county in which the cotton is deposited, then it shall be the duty of the clerk of the county court to perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall be entitled to receive the same compensation for his services as is allowed to wreck-masters under this chapter. [Id. sec. 4. P. D. 1033.]

Art. 7901. [5379] **Warrant to issue for suspected cotton.**—Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, it shall be the duty of such justice of the peace to issue his warrant and cause said cotton, or its proceeds, to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter. [Id. sec. 6. P. D. 1035.]

FINAL TITLE

GENERAL PROVISIONS.

	Section.		Section.
Revised Civil Statutes, how known and cited	2	No person, etc., released from any duty, etc.	12
To be liberally construed.....	3	Laws as to reservations for actual settlers and public buildings not repealed.	13
Repealing clause.....	4	Laws for the payment of unpaid school teachers and public libraries not repealed	14
Repeal does not affect, what.....	5	Certain laws of a local or private nature still in force.....	15
Same subject	6	Shall be construed as continuation of former laws, etc.....	16
Validating and legalizing statutes not repealed	7	Laws of the thirty-second legislature not affected	17
Laws relating to public debt, etc., not repealed	8	Not to be printed in pamphlet laws.....	18
Laws relating to university and school funds not repealed.....	9	Take effect, when.....	19
Laws creating, etc., counties and county seats not repealed.....	10	Emergency clause.....	20
Judicial districts and times of holding district courts.....	11		

Section 2. **Revised Civil Statutes, how known and cited.**—Be it further enacted, that these Revised Civil Statutes of the state of Texas shall be known and may be cited as the “Revised Statutes.”

Sec. 3. **To be liberally construed.**—That the rule of the common law that statutes in derogation thereof shall be strictly construed shall have no application to the Revised Statutes; but the said statutes shall constitute the law of this state respecting the subjects to which they relate; and the provisions thereof shall be liberally construed with a view to effect their objects and to promote justice.

Sec. 4. **Repealing clause.**—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Sec. 5. **Repeal does not affect, what.**—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes.

Sec. 6. **Same subject.**—That no offense committed and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

Sec. 7. **Validating and legalizing statutes not repealed.**—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all such validating or legalizing statutes whatsoever now in force in this state are hereby continued in force, and

the same shall be as effectual for all purposes after as before the Revised Statutes go into effect.

Sec. 8. **Laws relating to public debt, etc., not repealed.**—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Sec. 9. **Laws relating to university and school funds, etc., not repealed.**—That no law relating to the university or public school fund, or in relation to the agricultural and mechanical college fund, or the investment of any such funds, or making any reservation in favor of the same, shall be affected or impaired by the repealing clause of this title, except where altered or amended by the Revised Statutes.

Sec. 10. **Laws creating, etc., counties and county seats not repealed.**—That no statute, or part of a statute, creating, adding to or organizing any county, or establishing any county seat, in this state shall be affected or impaired by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this act. [Acts of 1879, chap. 157.]

Sec. 11. **Judicial districts, and times of holding district courts.**—That the laws now in force organizing the several district and other courts, and prescribing the times for holding the district courts therein, are continued in force.

Sec. 12. **No person, etc., released from any duty, etc.**—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by the repealing clause of this title.

Sec. 13. **Laws as to reservations for actual settlers and public buildings not repealed.**—That no law in reference to land reservations, or setting apart portions of such reservations for the benefit of actual settlers, or for the construction or repairing of the public buildings of the state, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Sec. 14. **Laws for the payment of unpaid school teachers, etc., and as to public libraries, not repealed.**—That no law providing for the payment of unpaid school teachers in the public schools, or giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Sec. 15. **Certain local laws not repealed.**—That all laws, civil or criminal, of a local nature operating in particular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the said repealing clause.

Sec. 16. **Shall be construed as continuation of former law, etc.**—That the provisions of the Revised Statutes, so far as they are substantially the same as the statutes of this state in force at the time when the Revised Statutes shall go into effect, or of the common law in force in this state at said time, shall be construed as continuations thereof, and not as new enactments of the same.

Sec. 17. **Laws of the thirty-second legislature not affected.**—That no laws, general or special, enacted by the thirty-second legislature, shall be in any way affected by the repealing clause of this title; but any and all such laws shall continue to be the law of this state, this act of revision to the contrary notwithstanding.

Sec. 18. **Revised Statutes not to be printed in pamphlet laws.**—That the Revised Statutes shall not be printed in the pamphlet laws of the first ses-

sion of the thirty-second legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

Sec. 19. **When to take effect.**—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and eleven.

Sec. 20. It is provided, however, that the annotations printed under the several articles of these Revised Civil Statutes shall not be construed to be any part of said Statutes, but shall be so printed merely for convenience as references.

Sec. 21. Nothing in this act shall be construed or held to repeal or in anywise affect the validity of any law or act passed by this legislature in its regular session.

Sec. 22. **Emergency clause.**—The importance and great length of this act, the length of time required for its publication, and the near approach of the end of the present session of the legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house should be and the same is hereby suspended.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, C. C. McDonald, Secretary of State of the State of Texas, do hereby certify that the foregoing act entitled: "An Act to adopt and establish the Revised Civil Statutes of the State of Texas and declaring an emergency" and known as Senate Bill No. 288 of the Regular Session of the Thirty-second Legislature, was submitted to the Governor for his approval on March the 11th, A. D. 1911, and was approved by him on April the 1st, A. D. 1911, and was received and filed in the Department of State on April the 1st, A. D. 1911, and by the terms of said act became effective on September the 1st, A. D. 1911, at 12 o'clock meridian.

I further certify that I have carefully compared the foregoing act with the original copy now on file in this department and the same is true and correct.

IN TESTIMONY WHEREOF I have hereunto signed my name
officially and caused to be impressed hereon
[SEAL] the Seal of State at my office in the City of
Austin, Texas, this 9th day of May, A. D.
1912.

C. C. McDONALD,
Secretary of State.

INDEX

A

	Article	Page		Article	Page
ABATEMENT—			ACCIDENT INSURANCE—		
Of suits in district and county courts....	1886-1901	420	continued.		
ABSOLUTE LEASE DISTRICT—			Life, health and accident insurance companies	4724-4774	961
Regulation as to leases in	5453	1145	ACCOUNTANTS—		
ABSTRACTS—			Liens of.....	5644-5649	1194
Commissioner of general land office to correct, etc.	5389	1123	ACKNOWLEDGMENTS—		
From United States Courts may be recorded, etc.	5620	1187	Taken before commissioner of deeds.....	1100	261
Of judgments, clerks to make	5611	1186	To deeds.....	1109	264
Of title, evidence when..	3705	763	To charters of private corporations	1123	273
Of title, may be demanded in trespass to try title	7743	1682	To deeds, county clerks may take	1751	395
ACCIDENT INSURANCE—			Acknowledgment and proof of deeds, etc., for record	6797-6820	1459
Mutual Assessment Accident insurance home companies	4794-4808	983	Before whom acknowledgment may be made in this state.....	6797	1459
Incorporation of.....	4794	983	Without this state and within the United States	6798	1459
Charter, requirements of.	4795	983	Without the United States	6799	1459
Application to accompany charter, and what it shall show.....	4796	983	Acknowledgment, how made	6800	1459
Complete and ready for business, when.....	4797	983	Party must be known or proven	6801	1459
What constitutes business of mutual assessment companies.....	4798	984	Acknowledgment of married woman, when and how taken.....	6802	1459
What such companies may or may not do...	4799	984	Certificate of officer.....	6803	1460
Notice of by-laws how given	4800	984	Form of certificate of acknowledgment	6804	1460
Books and papers subject to inspection of members	4801	984	Form of acknowledgment by a married woman..	6805	1460
Commissioner to examine financial condition annually	4802	984	Proof of instrument by witness	6806	1460
Statement to be filed, filing fees, etc.....	4803	984	Witness must be personally known to the officer	6807	1460
Certificate of membership; reserve fund.....	4804	985	Form of certificate of proof by witness.....	6808	1461
Notices of assessment must show, what.....	4805	986	Handwriting may be proved, when.....	6809	1461
May change name of beneficiary	4806	986	Evidence may prove what	6810	1461
Policy shall specify what; liability on.....	4807	986	Proof, how made when grantor has made his mark	6811	1461
Charter forfeited for not complying with provisions of this chapter...	4808	986	Proofs, how made and certified	6812	1462
General Provisions...	4943-4972	1034	Officers are authorized to administer oaths, etc...	6813	1462
			Subpoena shall issue when	6814	1462
			May compel attendance and answers of witness	6815	1462

		Article	Page			Article	Page
ACKNOWLEDGMENTS—				ADMINISTRATORS—			
continued.				Actions against, certain			
Statement of the acknowl-				testimony not allowed.	3690	760	
edgment, etc., to be re-				Appeal bond of.....	2106	452	
corded	6816	1462		Application for let-			
What statement for rec-				ters	3247-3266	687	
ord shall contain.....	6817	1462		Appointed when, under in-			
Statement shall further				heritance tax law.....	7491	1620	
recite	6818	1462		Bulk sales by, not void,			
The book to be a public				etc.	3973	820	
record	6819	1463		Certain rights and duties			
Action for damages will				of	3350-3357	704	
lie by person injured..	6820	1463		Commissions allowed	3621-3630	750	
Statement of, to be re-				Duties of, in final settle-			
corded	6816	1462		ment of estates... 3563-3573		740	
ACROBATIC PERFORMANCES—				Duties, etc., of, in parti-			
Occupation tax on.....	7355	1573		tion and distribution of			
ACTIONS—See "Suits."				estates of deced-			
ACTS—				ents			
Of legislature, certified				3527-3562	734		
copies evidence	3693	761		Evidence of appointment,			
ACTUAL SETTLERS—				etc., of.....			
Laws as to reservations				3711	765		
for not repealed.....		1720		Fidelity, etc., insurance			
To have preference of				companies may act as..	4928	1027	
public lands.....	5403	1125		General provisions relat-			
Applications for pur-				ing to.....	3218-3246	683	
chase of public lands..	5410	1128		Granting letters to..	3277-3296	692	
ADDRESS—				Issuance of letters to			
Certain officers remova-				3325-3329	700		
ble by.....	6018	1290		Judgments against.....	2004	437	
ADJUTANT GENERAL—				Limitation on bonds of..			
Department, duties,				5689	1204		
etc.	5785-5800	1230		May arbitrate	69	46	
Duty as to ranger force..	6766	1452		May be sued, where.....	1830	409	
Salary of.....	7054	1509		May bring suits for in-			
ADOPTION—				juries resulting in			
How heir adopted.....	1	3		death	4700	956	
Rights of adopted heir..	2	3		On death of, execution			
Parents may transfer au-				issued how.....	3721	768	
thority, etc., how.....	3	3		Payments of estates of de-			
Parents thereafter barred,				cedents into State			
etc.,	4	3		treasury	3574-3591	742	
Right of adopted child to				Power of probate court to			
support, etc.....	5	3		attach	3224	683	
Adopter may not transfer				Removal of.....	3393-3396	711	
authority, etc.....	6	4		Resignation of.....	3397-3403	712	
Authority of court.....	7	4		Rights of, governed by			
No white child to be				common law, except... 5493	1155		
adopted by negro, and				Scire facias to, etc.....	1887	420	
vice versa.....	8	4		Shall not purchase prop-			
Distribution of estate in				erty of estate.....	3504	728	
case of.....	2463	523		Suits by.....	1836	413	
ADMINISTRATION—				Sued in justice courts,			
Application for letters				where	2308	490	
of	3247-3266	687		To pay claims in what			
Of community property				order	3458	721	
of estates of de-				Shall not purchase claims			
cedents	3592-3614	745		against estate.....	3471	723	
Of estates of decedents,				May hire or rent prop-			
transfer of.....	3615-3620	748		erty of estate... 3472-3478		724	
				May sell estate of deced-			
				ents			
				To report sales of estates			
				of decedents..... 3508-3517			
				Withdrawal of estates			
				from			
				3384-3392			
				709			
				ADMISSION FEES—			
				To University of Texas,			
				limited			
				2641			
				563			

	Article	Page
ADULTERATED FOODS—		
Manufacture and sale of, prohibited	4586	934
ADULTERATION—		
Of commercial feed stuffs	5902	1261
AD VALOREM TAX—		
For cities and towns	923-937	225
County	7357	1575
AFFIDAVITS—		
Of claimants of personal property levied on....	257	81
In cases of certiorari to the justice court....	745	189
Of foreign corporations applying for permit....	1315	315
Of commissioners' courts as to amount of cash in county treasury....	1450	340
To claims against estates of decedents.....	3439	718
To claims against estates of wards.....	4209	862
Insurance company to file, before certificate issued	4964	1038
In application for writ of sequestration	7095	1518
Of claimant for property, in trial of right of....	7769	1687
Of plaintiff in attachment proceedings	248	80
Affidavits, oaths and affir- mations	9-	14 5
Form of oath, etc.....	9	5
Oaths, etc., generally, who to administer....	10	5
Affidavit may be by agent or attorney	11	5
All affidavits must be in writing and signed....	12	5
Officers authorized to take affidavits	13	5
Other oaths, etc.....	14	5
AGENTS—		
May make affidavits, oaths, etc.....	11	5
To liquidate the business of state banks.....	445-517	120
Of carriers, authority to be posted, etc.....	718	184
To contract for county, may be appointed.....	1373	327
Of insurance companies, regulations as to.....	4943-4972	1034
Of insurance companies, who are.....	4961	1037
Of railroad companies, authority, etc.....	6637-6639	1416
Occupation tax on.....	7355	1573
AGREED CASES—		
When tried in district, and county courts....	1949	431

	Article	Page
AGREEMENTS—		
In cases of arbitration, to be in writing, etc....	57	45
None shortening period of limitation valid....	5713	1207
In violation of anti-trust law void.....	7807	1694
AGRICULTURAL AND ME- CHANICAL COLLEGE		
.....	2655-2681	564
Made branch of univer- sity	2655	564
Leading objects of same..	2656	564
Board of directors	2657	564
How appointed—term of office	2658	565
Vacancies, how filled....	2659	565
Quorum, what constitutes	2660	565
Expenses of directors, how paid	2661	565
Certificate of appointment, etc.	2662	565
Number of students re- ceiving free instruction	2663	565
Board shall appoint, etc..	2664	565
Board to employ expert entomologist	2665	565
Board to establish depart- ment of instruction in valuing, classifying and grading cotton.....	2666	565
To provide summer school for said department..	2667	566
Powers of board to make all necessary provisions for said department...	2668	566
Board to establish de- partment for instruc- tion in manufacture of cotton	2669	566
Duty of professor of chemistry as to com- mercial fertilizers and poisons	2670	566
To furnish analysis free to whom.....	2671	566
Fees from sale of labels to be appropriated, how	2672	566
Copy of official analysts admissible as evidence.	2673	566
May make by-laws, etc....	2674	566
By-laws, etc., to be printed	2675	566
Elementary agriculture to be taught.....	2676	567
Perpetual fund.....	2677	567
Accrued interest, how in- vested	2678	567
Duty of state board of education	2679	567
Money, how drawn from treasury, and for what purposes	2680	567
Duty of comptroller to is- sue warrants, when...	2681	567
Prairie View normal un- der control of.....	2718	574

	Article	Page		Article	Page
AGRICULTURAL AND MECHANICAL COLLEGE—continued.			ALIENS—continued.		
Duties of certain officers of, as to commercial feeding stuffs.....	5900	1260	Proceedings to escheat, by whom instituted and when; notice required	20	7
Pure feed funds, appropriated to.....	5903a	1261	Judgment and proceedings after judgment of escheat.....	21	7
AGRICULTURAL LANDS—			Wills of, may be proved how	7875	1712
Terms of repurchase of forfeited	5427	1135	ALIMONY	4640	945
Commissioner may withhold from lease, when..	5450	1144	ALLEYS—		
AGRICULTURAL STATIONS—			Control of city council over	854	211
Establishment of.....	4476	907	AMENDMENT—		
AGRICULTURE—			Of pleadings in district and county courts....	1825	408
Required to be taught in university	2646	563	Of articles of incorporation of railroads.....	6417	1377
Elements of to be taught in agricultural and mechanical college.....	2676	567	Of charters of railroads..	6730	1444
Elements of to be taught in girls industrial institute	2690	569	AMUSEMENTS—		
To be taught in Sam Houston normal.....	2695	570	Defining place of public amusement	22	8
Taught in north Texas normal	2705	572	Leases	23	8
Taught in southwest Texas normal.....	2710	575	ANALYSIS—		
Taught in west Texas normal	2717	574	Professor of chemistry of agricultural and mechanical college to furnish	2671	566
Commissioner of....	4435-4484	897	Of concentrated feeding stuffs	5900	1260
ALAMO—			ANATOMICAL BOARD 5756-5763	1221	
How controlled.....	6394	1370	Board, how constituted; duties of.....	5756	1221
ALDERMEN—			Regulations for delivering dead bodies.....	5757	1221
Election and term of office of.....	786	198	Distribution of bodies to various institutions... ..	5758	1222
Boards of for towns and villages	1051	252	Regulations for moving bodies; records to be kept	5759	1222
ALIENAGE—			Schools, colleges, etc., may dissect bodies... ..	5760	1223
No bar to inheritance... ..	2474	524	Parties receiving bodies to give bond.....	5761	1223
ALIENATION—			Expenses, by whom paid.	5762	1223
Of lands by railroad companies	5394	1124	Compensation of board..	5763	1223
ALIENS—			ANIMAL INSPECTORS—		
Alien ownership of land inhibited	15	6	Fees of.....	3877	802
Under certain circumstances and conditions permitted	16	6	General provisions... ..	3880-3926	804
Interest in liens and acquisitions of land under foreclosure and to collect debts permitted	17	6	ANIMALS—		
May hold for ten years, provided, etc.....	18	6	Marks and brands of	7151-7160	1528
May convey before escheat proceedings, good faith, etc.....	19	7	Protection of.....	7161-7169	1531
			Sale, slaughter and shipment of.....	7170-7184	1533
			Estray of.....	7185-7208	1536
			Mode of preventing certain from running at large	7209-7234	1540

	Article	Page
ANIMALS—continued.		
Mode of preventing horses from running at large.....	7235-7255	1545
Inspection of.....	7256-7311	1549
ANNEXATION—		
Of Texas, public lands retained at.....	5279	1103
ANSWERS—		
Of defendants in suits in district and county courts	1902-1910	422
ANTI-TRUST LAW....	7796-7818	1691
APPEALS—		
From awards in cases of arbitration.....	65	46
Defendant may replevy property pending.....	270	83
From judgments of district courts in cases of certiorari	741	189
In certiorari cases.....	761	191
From recorders' court to what court.....	921	224
In suits against public utility corporations...	1029	248
From verdicts in district and county courts....	1991	436
Costs on.....	2046	443
In the Galveston and Harris county criminal district courts	2228	475
Appeals from justice courts	2391-2397	503
Appeals may be taken...	2391	503
Taken to district court, when	2392	503
Notice, bond and other proceedings on appeal.	2393	503
Affidavit of inability to give bond.....	2394	503
When appeal perfected on affidavit.....	2395	504
Duty of justice in case of appeal	2396	504
Transcript, etc., to be transmitted to county court	2397	504
Courts, justice.....	2283-2400	486
Appeals and writs of error from district and county courts.....	2078-2117	449
Appeals, etc., to the courts of civil appeals, allowed in what cases..	2078	449
Appeal from interlocutory order appointing receiver or trustee, etc....	2079	449
Appeal from interlocutory order granting or dissolving temporary injunctions	2080	449
"Appellant" and "appellee" defined.....	2081	449

	Article	Page
APPEALS—continued.		
"Plaintiff in error" and "defendant in error" defined	2082	449
"Appellate court" and "court below" defined	2083	449
Appeal perfected, how...	2084	449
By parties of whom no appeal bond is required	2085	450
Writ of error sued out, when	2086	450
By petition.....	2087	450
Requisites of petition...	2088	450
Error bond.....	2089	450
Citation in error.....	2090	450
Form and requisites of citation	2091	450
Service and return of....	2092	450
Return, and what shall show	2093	451
Alias citation.....	2094	451
Service on the attorney of record.....	2095	451
Service in other modes..	2096	451
Cost bond on appeal or writ of error.....	2097	451
Appeal, etc., by pauper..	2098	451
Appeal, etc., perfected, when	2099	451
Appeal, etc., on cost bond or affidavit does not suspend execution....	2100	451
Supersedeas bond.....	2101	451
Supersedeas bond where judgment is for land or other property.....	2102	452
Judgment stayed and execution superseded....	2103	452
Amendment of appeal bond	2104	452
State, county, etc., not to give bond.....	2105	452
Of executors, etc.....	2106	452
Executor, etc., may take appeal or writ of error.	2107	452
Transcript to be made out and delivered.....	2108	452
To contain all proceedings, except, etc.....	2109	452
Citation and return omitted, when.....	2110	452
Omission of unimportant proceedings, when....	2111	452
Agreed statement of pleadings and proof...	2112	453
Transcript must contain, what	2113	453
Clerk's certificate and indorsement	2114	453
Briefs filed in court below, and notice given.	2115	453
Case appealed, etc., to remain on docket till, etc.	2116	453
Proceedings on return of mandate	2117	453
Courts, district and county	1812-2186	406

	Article	Page		Article	Page
APPEALS—continued.			APPORTIONMENT—		
Supersedeas order of removal of officer.....	6029	1292	Senatorial districts.....	24	10
From judgments of removals from office....	6050	1294	Returning officers.....	25	11
From assessments of commissioners' courts for drainage for public roads.....	7002	1499	Representative districts..	26	12
From orders of commissioners' court in assessments for drainage purposes.....	2495	530	Returning officers.....	27	16
From orders of commissioners' court in assessments for drainage purposes.....	2518	535	Congressional districts...	28	17
From orders of commissioners' court in assessments for drainage purposes.....	2550	540	Supreme judicial districts	29	18
In contested election cases	3065	651	Judicial districts.....	30	19
In contested primary elections.....	3153	668	Where apportionment law amended, rule as to return of writs, etc., jurors, appearance bonds, etc., and witnesses.....	31	40
In escheat cases.....	3198	678			
From orders of probate courts.....	3631-3639	751	APPRAISEMENT—		
In cases of forcible entry and detainer.....	3956	817	Of estates of decedents		
In guardianship suits, how taken.....	4055	837	.....	3330-3349	701
May be taken from action of court on claims against estates of wards	4221	863	Of estates of wards..	4113-4121	847
Right of, in suits concerning estates of wards			Of estates of divorced persons.....	4638	945
.....	4290-4301	873	Of estrayed animals.....	7186	1536
From writs of injunction	4644	948			
From orders of commissioners' courts relating to irrigation districts..	5015	1051	APPRAISERS—		
			Of community property of estates of decedents...	3596	745
			Of estates of decedents, costs allowed.....	3625	750
			Of estates of wards, compensation of.....	4284	872
			To be appointed under inheritance tax law.....	7492	1620
APPEARANCE DAY—			APPRENTICES—		
In district and county courts.....	1934	429	When minor may be apprenticed.....	32	41
			Minor shall not be apprenticed to what persons.....	33	41
APPEARANCES—			Duration of apprenticeship.....	34	41
In justice courts...	2330-2338	494	Shall not be apprenticed without notice.....	35	41
			In what county minor shall be apprenticed...	36	41
APPELLANT—			Obligations shall be entered into, and its conditions.....	37	41
To recover costs of appeal to court of civil appeals, when.....	1648	376	Minor 14 years of age may select, etc.....	38	42
Appellant and appellee defined.....	2081	449	Obligation shall be approved, filed and recorded.....	39	42
			Order of court apprenticing minor.....	40	42
APPELLATE COURT—			Certified copy of order sufficient authority, etc.	41	42
And court below defined.	2083	449	Moderate chastisement may be inflicted on minor.....	42	42
			Rights of person to whom minor is apprenticed.....	43	42
APPELLATE JUDGE—			Not lawful for the apprentice to reside out of the county, etc.....	44	42
Contest of election for..	3048	649			
APPELLATE JURISDICTION—					
Of county court.....	1767	398			
APPLICATIONS—					
For public roads.....	6890	1477			
For liquor dealers' license.....	7435	1601			

	Article	Page
APPRENTICES — continued.		
Apprentice kept out of county over thirty days without leave is discharged	45	42
Proceedings when apprentice runs away, etc...	46	42
Apprentice discharged when	47	43
County judge may cause person to whom minor is apprenticed to be cited, etc.....	48	43
Person to whom minor is apprenticed to be released, when.....	49	43
County judge shall inquire into treatment, etc.	50	43
Minor may again be apprenticed, when.....	51	43
Proceedings may be in term time or vacation, except, etc.....	52	43
Suit upon obligation....	53	43
Costs shall be paid by whom	54	43
No guardian of person when a minor is apprenticed	55	44
APPROPRIATIONS—		
To conform to fiscal year	3939	814
ARBITRATION—	56-81	45
Arbitration in general..	56-70	45
Right to arbitrate.....	56	45
Agreement to be in writing and name of arbitrators, etc.....	57	45
Agreement to be filed in court having jurisdiction	58	45
Day of trial to be designated by justice or clerk, etc.....	59	45
Oath of arbitrators.....	60	45
Continuances permissible	61	45
Procedure on trial.....	62	46
Award to be written out, filed and entered as judgment	63	46
Umpire to be selected in case of disagreement..	64	46
Appeal from an award..	65	46
Procedure in case of an appeal	66	46
Costs	67	46
Penalty for refusing to proceed	63	46
Corporations, executors, etc., may arbitrate....	69	46
Right to other mode of arbitration not affected	70	46
Arbitration of grievances between employer and employed	71-81	47
Board authorized.....	71	47

	Article	Page
ARBITRATION—continued.		
District judge to establish board, etc.....	72	47
If controversy involves different labor organizations, concurrent action necessary.....	73	47
Submission must be in writing and show what Arbitrators to take oath, etc.	74	48
Powers and duties of chairman and board ..	75	48
Adjudication terminates power of board, unless, etc.	76	48
Status quo to be preserved pending arbitration	77	48
Compensation of board, witnesses, etc.....	78	48
Award to take effect, when	79	49
Judgment to be entered, unless appeal, etc.....	80	49
ARBOR DAY—	4607	940
ARCHIVES—		
To be kept by secretary of state.....	4305	875
State librarian shall secure certain.....	5606	1183
Archives of the general land office	82-85	50
What shall be considered archives of the general land office.....	82	50
Effect to be given to archives deposited in the general land office.	83	51
Deeds, etc., which are not archives	84	51
How such deeds, etc., may be withdrawn ...	85	51
Of land office, how kept.	5283	1104
Other public archives. ...	86-90	51
Duty of secretary of state as to archives	86	51
Archives of congress of Republic of Texas, etc.	87	51
Historical archives.....	88	51
Archives of the comptroller's office.....	89	52
Certain books, records, etc., declared to be archives	90	52
ARGUMENT—		
Order of in district and county courts.....	1953	431
ARMS—		
Equipment, etc., of military companies ..	5849-5859	1243
Of military companies, articles of war governing	5860	1245

	Article	Page		Article	Page
ARMS—continued.				ASSESSMENT OF TAXES—	
For ranger force, furnished, how.....	6762	1452		continued.	
Commissioned officers to furnish	5818	1238		Commissioner of general land office to furnish abstracts to assessors.	7552 1636
ARRAY OF JURY—				Books to be furnished assessors	7553 1636
See "Jury."				How to be filed by assessors	7554 1637
Also, see "Challenges."				Blocks and lots in cities.	7555 1638
ARREST—				Duties of assessors as to same	7556 1639
Witnesses privileged from	3646	754		To be kept in office.....	7557 1639
Members of militia exempt from.....	5848	1243		Lands not on abstract to be put there, when and how	7558 1639
ARTESIAN WELLS—				Certificate from board of equalization	7559 1639
Regulations as to...	7847-7854	1707		Substitutes to be employed, when.....	7560 1639
ARTICLES OF INCORPORATION—				Unorganized counties....	7561 1639
Of railroad companies...	6408	1374		Manner and form of assessing	7562 1639
ARTICLES OF WAR—				Assessment of property not rendered.....	7563 1641
For state national guard.	5860	1245		Boards of equalization...	7564 1641
ARTISANS—				Assessment of real property for previous years..	7565 1642
Liens of.....	5644-5649	1194		Assessment of back taxes on personal property, how made.....	7566 1642
ASH PANS—				Unlisted property; supplemental roll.....	7567 1642
Railroads required to use certain kinds	6577	1402		Assessor to follow instructions	7568 1642
ASSAULT AND BATTERY—				Equalization of assessments	7569 1642
Costs in actions of.....	2043	443		Boards may equalize without complaint.....	7570 1643
ASSESSMENTS—				Penalty for neglect of duty by assessor.....	7571 1643
For drainage purposes...	2493	529		Oath of assessor.....	7572 1643
For drainage purposes...	2533	537		Oath of board.....	7573 1644
ASSESSMENT OF TAXES—				Neglect of duty cause for removal from office; attorney general to file suit.....	7574 1644
Election and qualification of the assessor... 7533-7604	1633			Assessor to furnish list of delinquents	7575 1645
Election and term of assessor	7533	1633		And submit lists to board of equalization.....	7576 1645
Vacancies, how filled....	7534	1633		Shall make out rolls in triplicate.....	7577 1645
Oath and bond.....	7535	1633		Also rolls of unrendered property	7578 1645
Purview of the bond....	7536	1634		And add up columns....	7579 1645
New bond.....	7537	1634		And return and oath....	7580 1646
Bond for county taxes...	7538	1634		All lists, etc., filed in the county clerk's office...	7581 1646
May appoint deputies....	7539	1634		Rolls, how distributed...	7582 1646
Authority of deputies....	7540	1634		Compensation	7583 1646
May administer oaths...	7541	1634		How paid by the State...	7584 1647
The oath.....	7542	1634		By the county.....	7585 1647
Where and how the oath may be made.....	7543	1634		Penalty for neglect of duty	7586 1647
Penalty for failure to attest oath.....	7544	1635		Lands of non-residents in unorganized counties..	7587 1647
Fraud upon the public revenue	7545	1635			
Taxpayer to make oath..	7546	1635			
When assessments to be made	7547	1635			
Irregular assessments...	7548	1636			
If taxpayer is absent....	7549	1636			
Or refuses to list.....	7550	1636			
Duty of assessor in such cases	7551	1636			

	Article	Page		Article	Page
ASSESSMENT OF TAXES—			ASSIGNEES—continued.		
continued.			Of non-negotiable instru-		
Lands of residents in . . .	7588	1647	ment also	584	153
Duties of comptroller in			Of land certificates, when		
relation thereto	7589	1647	patent to issue	5368	1119
Same	7590	1647	ASSIGNMENTS—		
Same	7591	1647	Banks shall not make vol-		
Same	7592	1648	untary general	551	145
May appeal from comp-			Of negotiable instruments		
troller's assessment . . .	7593	1648	put in issue, how	588	154
May levy upon and sell,			Of wages, right of	5647	1195
when	7594	1648	By partnership, void when	6144	1310
Sale	7595	1648	Assignments for creditors		
May be bought by state,			. . . . .	91-106	53
when	7596	1648	General assignments, how		
Redemption	7597	1648	made and construed;		
Tax deed	7598	1648	preferences void	91	53
List of purchasers to be			Assignment acknowl-		
kept in office	7599	1648	edged, etc., and record-		
Deeds shall vest good ti-			ed; inventory attached,		
tle, when	7600	1649	what shall contain and		
County taxes to be paid,			how verified	92	53
where	7601	1649	Assignment for creditors		
Comptroller to keep taxes			accepting, etc., and dis-		
of unorganized county.	7602	1649	charging assignor	93	54
Same	7603	1649	Notice of assignee's ap-		
Special deposit to be made			pointment, when and		
by comptroller	7604	1649	how given	94	54
Assessment and collec-			How and when consenting		
tion of taxes in cer-			creditors may accept . .	95	54
tain cases	7702-7715	1674	Where assignee shall re-		
Property omitted from tax			side, and his prelimi-		
rolls, etc., list of	7702	1674	nary duties and bond		
Property listed to be as-			approved by county or		
sessed, how	7703	1674	district judge	96	54
List to operate a lien on			Fraud, etc., will not de-		
property	7704	1675	feat assignment	97	55
To be advertised	7705	1675	Proof of claim, when and		
Assessments reduced,			how made	98	55
when	7706	1675	Surplus in assignee's		
Commissioners' court may			hands subject to gar-		
contract for collection.	7707	1675	nishment	99	55
Bulk assessments vali-			Property fraudulently		
dated, when	7708	1676	sold by assignor passes		
Delinquent tax record to			by the assignment and		
be published	7709	1676	may be recovered by		
Property listed by comp-			assignee, etc.	100	55
troller, when	7710	1676	Failure to attach inven-		
List to be posted	7711	1676	tory presumption of		
Lands not rendered to be			fraud, but does not viti-		
assessed, how	7712	1676	ate assignment; assign-		
Duty of commissioners'			or, etc., may be exam-		
court	7713	1677	ined	101	55
Supplemental tax rolls to			Verified claim shall be al-		
be prepared	7714	1677	lowed by assignee, un-		
Fees of assessor	7715	1677	less contested	102	56
Same	3871	801	Unmatured claims dis-		
ASSESSORS—			counted and collateral		
Of taxes, fees of	3871	801	securities estimated		
Same	7715	1617	and deduction for same	103	56
General provisions	3880-3926	804	Assignee may be removed		
See "Tax Assessors."			and vacancy from any		
ASSIGNEES—			cause filled, how	104	56
Of negotiable instrument			Dividend declared, when		
may sue in his own . . .	582	153	and how, and allowance		
			to assignee	105	57

	Article	Page
ASSIGNMENTS—continued.		
Final report and discharge of assignee....	106	57
ASSIGNMENTS OF ERROR—		
In courts of civil appeals, requisites of.....	1612	369
ASSIGNOR—		
Of negotiable instrument liable to assignee.....	586	154
Suits against.....	1842	413
ASSISTANT ADJUTANT GENERAL—		
Appointment, etc.....	5796	1232
ASSISTANT ATTORNEY GENERAL—		
Appointment, etc.....	4432	896
Salary of.....	7060	1511
ASSISTANT DISTRICT ATTORNEYS—		
Appointment, etc.....	342	96
ASSUMED RISK—		
When not available as defense under fellow servants act.....	6645	1418
Rule as to.....	6650	1419
ASSYLUM LANDS—		
Sale and lease of....	5405-5459	1126
ASYLUMS	107-239	58
Blind asylum.....	188-189	71
Appointment of oculist and qualifications....	188	71
Removal of oculist.....	189	71
Confederate home.....	205-208	72
Board of trustees, term of office, duties, etc.....	205	72
Superintendent's term of office, duties, etc.....	206	73
Secretary to superintendent; appointment, duties, compensation, etc.	207	73
Applications for admission, etc.....	208	73
Deaf and dumb asylum.....	190-195	71
Pupils to learn printing..	190	71
Instructor, how appointed	191	71
His salary and removal..	192	71
Public printing at asylum	193	71
Provisions for all deaf, dumb and blind children	194	71
Who to apply for.....	195	71
Deaf, dumb and blind asylum for colored youths	209-210	74
Qualifications and term of office of the superintendent for the asylum for colored youths	209	74

	Article	Page
ASYLUMS—continued.		
Power and duties of board of trustees, and regulations for asylum.....	210	74
Deaf and dumb, and the blind, and other asylums	171-232	68
Boards of trustees.....	171	68
Boards, how appointed and constituted.....	172	68
Organization of the boards	173	69
Meetings of the boards..	174	69
Powers of the boards...	175	69
May make requisition for improvements, etc....	176	69
Statement and itemized account to be filed with comptroller	177	69
Duplicate receipts to be taken	178	69
Reports of the trustees..	179	69
Compensation of trustees	180	69
Superintendent, appointment and term of office	181	70
Oath and bond.....	182	70
Removal of superintendent	183	70
Powers of superintendent	184	70
Same subject.....	185	70
Reports of receipts and expenditures	186	70
Reports of superintendent	187	70
Epileptic colony	211-232	74
Asylum established and name	211	74
Manager appointed by the governor, power.....	212	74
Support and management	212	74
Who admitted to colony..	213	74
Transfer of epileptics from insane asylums..	214	75
Transfer of transcripts and histories.....	215	75
Transportation, etc., expenses, how paid.....	216	75
Classification of transferred patients.....	217	75
Classification of patients admitted	218	75
Indigent public patients defined; supported by state	219	75
Non-indigent public patients defined; maintained by state, but reimbursement; suit; duties of county attorney and superintendent...	220	75
Private patients admitted, how; maintained at own expense or that of relatives, etc.; contract and terms.....	221	76

	Article	Page
ASYLUMS—continued.		
Application for admission of public patients; requisites	222	76
Certificates to accompany application; requisites	223	76
County judge's duty if not satisfied	224	76
County judge's duty if applicant appears entitled	225	76
Where applicant appears not indigent.....	226	76
Compensation of county judge	227	77
Patients to be received when there is room; preference to indigents and to public patients..	228	77
Clothing to be supplied patients	229	77
Clothing and transportation of indigent patients paid by county; that of non-indigents by them	230	77
Clothing, etc., non-indigent to pay for.....	231	77
Escort, pay of.....	231	77
Object of colony.....	232	77
Home for lepers.....	233-239	78
Lepers to be isolated and removed to home for lepers	233	78
Warrant for seizure of leper, etc., expense of conveying, how paid...	234	78
Confinement and treatment of lepers; proviso as to non-residents...	235	78
Superintendent appointed, how and when; qualifications; term, salary..	236	78
Nurses, assistants and servants may be employed by; salaries...	237	78
Superintendent shall live at home, and manage, etc.	238	78
Payments, how made...	239	78
Lunatic asylums.....	107-165	58
Lunatic asylum recognized and continued...	107	58
1. Of the Board of Managers.		
Board of managers provided for.....	108	58
Board of managers, how constituted and appointed	109	58
Compensation of members of board.....	110	59
Organization of the boards	111	59

	Article	Page
ASYLUMS—continued.		
Meetings and record of the board.....	112	59
Powers of the board.....	113	59
Same subject.....	114	59
Monthly inspections....	115	59
Biennial reports of the board	116	60
Board to dispose of water	117	60
Same	118	60
2. Of the Superintendents.		
Their appointment, term, etc., qualifications....	119	60
Oath and bond.....	120	60
Bond, where filed, etc....	121	60
Removal of superintendent	122	60
Powers and duties of superintendent	123	60
Same subject.....	124	61
Accounts and reports of superintendent	125	61
Same subject.....	126	61
Annual inventory.....	127	61
3. Fiscal Management.		
Officer not to deal with asylum	128	61
Asylum money to remain in the treasury.....	129	61
Board may regulate expenditures	130	61
Funds from outside sources, how disposed of	131	61
Requisites of the order..	132	62
Duties of the treasurer...	133	62
4. Admission and Discharge of Patients.		
Who may be admitted...	134	62
Procedure for admission of private patients....	135	62
County judge must certify, etc.....	136	62
Indigent patients at state expense	137	62
Public patients, also, but state may be reimbursed	138	62
Private patients at their own expense.....	139	62
Preferences in admission	140	63
Idiots, etc., not to be admitted	141	63
Discharge of patients....	142	63
Same subject.....	143	63
Insane discharged convict, proceedings as to	144	63
County to pay expenses of conveying public patients to asylum.....	145	63
County to be reimbursed, when	146	63
Transportation home by the state.....	147	63
Escapes from the asylum	148	64

	Article	Page
ASYLUMS—continued.		
Fees for conveying patient back	149	64
5. Of Judicial Proceedings in Cases of Lunacy.		
Apprehension of lunatics	150	64
The writ and its requisites and its execution	151	64
Jury to be summoned...	152	64
Cause to be docketed, etc.	153	64
Jury impaneled and sworn	154	64
Special issues to be submitted	155	65
Verdict	156	65
Judgment	157	65
Reimbursement to the state from lunatics not indigent	158	65
Limitation as to amount in procedure.....	159	65
County attorney to represent state.....	160	65
Warrant to convey lunatic to asylum.....	161	65
Relative or friend may give bond, etc.....	162	66
Record to be made up and forwarded	163	66
Suitable clothes to be provided	164	66
Fees of officer in lunacy cases	165	66
Orphan asylum.....	196-204	71
Designation of institution	196	71
Superintendent appointed how; duties.....	197	71
Industrial manager, appointed how; duties and salary.....	198	72
Children admitted, when	199	72
List of children to be made, etc.....	200	72
Child removed from, how	201	72
Salary of superintendent..	202	72
Matron's salary, etc....	203	72
Board to dispose of artesian water.....	204	72
Pasteur hospital.....	166-170	67
Admission of patients; requirements as to...	166	67
Indigent and non-indigent patients, expenses, how met	167	67
Laws, etc., same as those of institutions with which connected.....	168	67
Fees of non-indigent patients, used how.....	169	67
Additional compensation to assistant physician..	170	67

	Article	Page
ASYLUMS—continued.		
Appropriation of public lands to.....	5387	1122
ATTACHMENT	240-270	79
Attachment issued, when and by whom.....	240	79
What further facts must appear	241	80
Not to issue until suit begun	242	80
May issue on debt not due, but, etc.....	243	80
Plaintiff must give bond and security.....	244	80
Bond to be approved and filed	245	80
Form of bond.....	246	80
Attachment abated for want of bond or affidavit	247	80
When affidavit and bond filed, writ to issue instanter	248	80
Several writs may issue..	249	81
Form of writ of attachment	250	81
Writ to be dated and tested and delivered to the sheriff, etc....	251	81
Writ to be levied immediately	252	81
Officer executing may demand indemnity.....	253	81
Property subject to attachment	254	81
Levy, how made.....	255	81
Personal property to remain in hands of officer, unless.....	256	81
Claimant's bond and affidavit	257	81
Replevy by the defendant	258	81
Sale of perishable property, etc.....	259	82
Procedure for sale of perishable property...	260	82
Sale of perishable property, how made.....	261	82
Return of sale of perishable property.....	262	82
Preservation of property not replevied or sold, etc.	263	82
Return of writ of attachment	264	82
Requisites of the return...	265	82
Report of disposition of property made after return of original writ..	266	82
Attachment creates a lien	267	82
Judgment of foreclosure..	268	83
Judgment when the property has been replevied	269	83
Order of court when attachment <i>quashed</i> ; pending appeal property may be replevied..	270	83

	Article	Page
ATTACHMENT—continued.		
Against garnishee for refusing to deliver effects	295	88
For property of estates of decedents	3240	685
Of witnesses	3659	756
For witnesses in military trials	5871	1255
To be recorded, when	6858	1470
Garnishment	271-308	84

	Article	Page
ATTORNEY GENERAL—		
With consent of, district and county attorneys may buy property for state	357	99
Duties, etc., as to state banks	445-517	120
Duties in case of derelictions of state banks	523	136
Duties of, in case of blacklisting	597	157
To examine county and municipal bonds	619	161
Comptroller to notify, of conversion, etc., of sinking fund of counties, etc.	702	177
Duty of in certain suits against public utility corporations	1030	248
His election and term	4411	894
Vacancies, how filled	4412	894
Shall represent state in higher courts	4413	894
And advise district attorneys	4414	894
Direct county attorneys to sue, etc.	4415	894
Shall require and make reports of suits	4416	894
Prepare forms for contracts	4417	894
Shall advise the governor	4418	894
Shall inspect accounts, where	4419	895
Represent state at sales	4420	895
To execute deeds, when	4421	895
May sell property, how	4422	895
Agent of county authorized to bid	4423	895
Sale of judgments against insolvents	4424	895
Register of official acts	4425	896
Shall pay over collections, when	4426	896
Enforce forfeitures or charters, when	4427	896
To inquire into charter rights, etc.	4428	896
No admission to prejudice state	4429	896
Office, where kept	4430	896
First office assistant to act, when	4431	896
Assistant attorney general	4432	896
Same	4433	896

	Article	Page
ATTORNEY GENERAL—		
continued.		
Governor to order suits, etc.	4434	897
Duty of, in case of private corporation holding land illegally	1180	284
To examine books, etc., of private corporations	1187-1192	286
May bring suit against corporations, for collection of fines, etc.	1195	288
To bring suits against insolvent corporations	1201-1204	290
To sue for forfeit of charter of bond investment companies, when	1310	314
State treasurer and comptroller to make rules as to state depositories	2432	513
To approve bonds for drainage districts	2557	542
To examine bonds for drainage districts	2597	552
Fees of	3841	788
General provisions	3880-3926	804
Duty of, in proceedings instituted by state board of health	4553	927
To approve charters of insurance companies	4726	962
Duties as to patents to public lands, etc.	5363	1118
To bring suits for recovery of public lands	5468	1150
Fees of in such cases	5474	1150
To organize house of representatives when	5516	1159
To examine bonds of improvement districts	5553	1171
Shall decide as to proper custody of certain books, etc.	5606	1183
To certify to validity of navigation bonds	5976	1281
Effect of such certificate	5977	1281
To institute proceedings against officials guilty of nepotism	6076	1297
To institute quo warranto proceedings, when	6398	1372
Articles of incorporation of railroad companies to be submitted to Railroad commission to report violation of law to	6409	1375
Salary of	6675	1429
To institute suits for gross receipts tax	7048a	1509
To institute suit for payment of franchise tax	7388	1585
	7404	1591

	Article	Page
ATTORNEY GENERAL—		
continued.		
To sue boards of equalization and tax assessors for official misconduct	7574	1644
To institute quo warranto proceedings against trusts, etc.....	7801	1692
Fees of.....	7806	1693
ATTORNEYS—		
May make affidavits, oaths, etc.....	11	5
Fees of in suits by cities for street improvement tax.....	1011	242
Notices to, in courts of civil appeals.....	1615	370
Parties to suit may appear by.....	1849	415
Shall pay costs, when....	2034	442
Recovery of fees of in district courts....	2178; 2179	464
For wards, in final settlement of their estates..	4276	871
Commissioners of improvement districts may employ.....	5579	1177
Attorneys at law	309-337	91
Boards of legal examiners; appointment, qualifications; oath, term, etc.	309	91
Duties of boards; sessions	310	91
Course of study prescribed by supreme court, for examination..	311	91
Application for license; certificate of residence, character, etc....	312	91
Examination	313	92
Applicant refused must apply again to same board	314	92
Examinations, how conducted	315	92
License granted to whom	316	92
License to holder of diploma from University of Texas, conditions; clerk to issue; oath....	317	92
Immigrant attorney granted license, how..	318	92
Boards to keep records..	319	92
Fees of examiners.....	320	93
Supreme court, entry of attorney's name on rolls of, how effected..	321	93
Oaths of attorneys.....	322	93
Persons convicted of felony shall not be licensed	323	93
Misbehavior or contempt, how punished.....	324	93
May be suspended or license revoked, when..	325	93

	Article	Page
ATTORNEYS—continued.		
Shall be cited to show cause, etc., when.....	326	93
Complaint, how made, etc	327	93
Citation, how issued and when served.....	328	93
Trial, how conducted....	329	93
Judgment of the court...	330	94
Barratry; forfeiture of license by, etc.....	331	94
Penalty for refusing to pay over money.....	332	94
Allowed to inspect papers	333	94
Officers not allowed to appear as attorneys....	334	94
Attorney for plaintiff may be required to show his authority as such..	335	94
Proceedings upon his failure to show authority	336	94
Cause shall not be continued or delayed by motion	337	95
General provisions applicable to both district and county attorneys...	352-369	99
Shall be licensed attorneys	352	99
Duties and powers of...	353	99
Residence of.....	354	99
Shall notify attorney general and comptroller of residence, etc....	355	99
Shall give opinion, etc., to officers.....	356	99
With consent of attorney general, to buy property for state.....	357	99
With consent of attorney general may sell property of state so purchased	358	99
With consent of commissioners' court may sell property of county so purchased	359	100
Shall give receipt for money collected.....	360	100
Shall report collections for state, etc.....	361	100
Shall report collections for county.....	362	100
Shall pay over money collected in thirty days, less commissions....	363	100
Shall keep register of official acts.....	364	100
Shall not receive fee, etc., to prosecute case....	365	101
Shall institute proceedings against officers, when, etc.....	366	101
To sue for penalty against railroads.....	367	101
To institute quo warranto proceedings.....	368	101

	Article	Page
ATTORNEYS—continued.		
Admissions made by shall not prejudice the state	369	101
District attorneys, election, etc.....	338-345	96
County attorneys, election, etc.....	346-351	97
AUCTIONEER—		
Occupation tax on.....	7355	1571
AUDITORS—		
County	1460-1498	342
Of prison system, appointment of.....	6193	1320

	Article	Page
AUDITORS—continued.		
Auditors for district and county courts.....	2124-2127	455
Auditor appointed, when..	2124	455
Report to be verified by affidavit	2125	455
Shall be admitted in evidence, but, etc.....	2126	455
Compensation	2127	455
AWARDS—		
In cases of arbitration to be written out, etc....	63	46
Of public lands, how made	5413	1129
Award and settlement...	5416	1131

B

BACK TAXES—		
Assessment of, on personal property	7566	1642
Assessment and collection of back taxes on unrendered lands..	7663-7682	1662
Back taxes on unrendered lands.....	7663	1662
Comptroller to prepare lists	7664	1662
And forward to boards of equalization	7665	1662
Board to value such lands	7666	1662
And cause three rolls to be made.....	7667	1662
Collector to give notice..	7668	1662
And enforce collection, when	7669	1662
Comptroller to make out lists of lands sold to state	7670	1663
Sale, when and how made	7671	1663
Advertisement of sale and redemption by owner	7672	1663
Lands sold, how.....	7673	1663
Sale may be continued, etc.	7674	1664
Deed executed, when and how	7675	1664
Same	7676	1664
Effect of deed, etc.....	7677	1664
Report of sales.....	7678	1664
Proceeds of sale paid to whom	7679	1664
Collections applied, how..	7680	1664
Costs deducted by collector	7681	1665
Unsold lands reported to comptroller	7682	1665
Assessment of in cities and towns.....	944	229
BAGGAGE—		
Railroad companies shall check, etc.....	6562	1399

BAIL—		
Judge of corporation court may admit to...	916	223
Supreme court may admit to.....	1529	352
BAIL BONDS—		
Justices of the peace may forfeit.....	2292	487
See "Bonds."		
BAILIFF—		
For the supreme court...	1520	350
BAKERIES—		
City council may regulate	842	210
BAKING POWDER—		
To be labeled, how.....	4592	936
BALING OF COTTON—		
.....	1322-1324	318
BALLOT BOXES—		
.....	2981	638
Regulations as to...	2991-3045	639
Inspection of.....	2996	641
BALL PARKS—		
Occupation tax on.....	7355	1574
BANKERS—		
Rendition of personal property by.....	7521	1628
BANKING COMMISSIONER—		
Fees of.....	3844	790
General provisions..	3880-3926	804
Appointment, duties, etc.	4485-4508	909
See "Commissioner of Insurance," etc.		
BANKS—		
Selection as state depositories	2417-2439	509

	Article	Page
BANKS AND BANKING—	370-574	102
Banks	370-379	102
Banks incorporated, how	370	102
Articles of association, requisites	371	102
To be signed, acknowledged, recorded, etc...	372	102
No certificate of incorporation valid unless, etc.	373	102
Board of directors.....	374	102
Capital stock prescribed; to be fully paid up....	375	103
Powers of corporation...	376	103
Cash reserve.....	377	103
Duties of directors, limitation upon borrowing, etc., by directors and officers.....	378	104
No branch bank to be maintained, etc., except, etc.....	379	104
Bank and trust companies	380-385	104
Bank and trust company incorporated how; definition	380	104
Articles of agreement; requisites	381	104
To be signed, acknowledged, recorded, etc...	382	105
Board of directors.....	383	105
Capital stock prescribed..	384	105
Powers of corporation...	385	105
Bank deposit guaranty law	445-517	120
What banking, etc., corporations may protect depositors under provisions of this chapter..	445	120
State banking board created, powers, etc.....	446	121
Such bank, etc., to have option of methods of securing deposits, must adopt one, when, etc...	447	121
Bank, etc., electing guaranty fund method, to pay what and when, for creation of fund.....	448	121
Fund paid to whom, and how; how paid out; no diversion; not state fund; duty of board...	449	122
Certain bank and trust companies to pay what, credit fund.....	450	122
Board to admit, etc., only such banks, etc., as they deem solvent, etc.; applications; grounds of refusal to be stated.....	451	122
National banks may avail of protection of guaranty fund; may withdraw, when.....	452	122

	Article	Page
BANKS AND BANKING—		
continued.		
Commissioner may wind up affairs of bank, by receiver, or etc.; bond; notice	453	122
No bank, etc., notified, shall have a lien or charge against assets for payment, etc., thereafter	454	123
Bank, etc., may resume business with consent of board when, etc....	455	123
General powers and duties of commissioner..	456	123
Shall collect debts, etc...	457	123
On order of court, etc., may sell, etc., had debts, or real estate, or personal property.....	458	123
May enforce liability of stockholders if, etc....	459	123
May appoint agents, etc., and give what authority	460	123
May employ counsel and expert assistance, etc..	461	123
May require security from agents, etc.....	462	123
Notices to claimants and creditors, statement therein	463	123
May reject claim if, etc., notice, etc.; action on...	464	124
Claims presented after expiration of time; rights of.....	465	124
Inventory of assets of bank; and list of claims; requisites; filing; open to inspection	466	124
Compensation of agents, etc., expenses.....	467	124
Disposition of moneys collected by commissioner	468	124
Dividends may be declared, when, and how	469	125
Guaranty fund to receive its portion of dividends, with interest, how paid	470	125
Objections to allowed claim	471	125
Provisions by court for unproved or unclaimed deposits	472	125
Bank aggrieved may enjoin proceedings by commissioner	473	125
Continued liquidation by commissioner decided by stockholders, when..	474	125
Continued liquidation by commissioner	475	126
Continued liquidation by agent of stockholders; selection; bond.....	476	126

	Article	Page
BANKS AND BANKING—		
continued.		
Transfer, etc., by commissioner, and his discharge from liability..	477	126
Duties of agent continuing liquidation.....	478	126
On death, etc., of agent, successor selected; powers, etc.....	479	126
Dividends and unclaimed deposits, unpaid, disposition of.....	480	126
Commissioner's report to show what.....	481	126
Commissioner to pay over moneys on order of board, etc., order of court if, etc.....	482	126
Interest on such moneys how applied; report to include amount, etc...	483	127
Bank may place affairs under commissioner, how, etc.....	484	127
Effect of posting notices by commissioner, etc., bars attachment, etc...	485	127
Depositors paid in full out of guaranty fund, etc., excepting interest bearing and secured deposits paid pro rata from assets.....	486	127
State to have first lien on assets, for benefit of guaranty fund; deposits not insured, etc., share in dividends of assets, etc.....	487	127
National bank receiver to refund amounts paid depositors out of guaranty fund.....	488	127
Savings department deposits not included in estimate of payment into guaranty fund.....	489	128
When depositors paid in full, pro rata of guaranty fund returned...	490	128
Bank, etc., electing bond security to file bond when and where; requirements, approval..	491	128
Bond to secure depositors at time of filing, and for twelve months thereafter	492	128
Requirements in case of personal security...	493	128
Who may make bonds, etc., and who not.....	494	128
Who may take advantage of bond security system; shall file bond; requirements; approval; certificate	495	128

	Article	Page
BANKS AND BANKING—		
continued.		
On default of bond, etc., secured bank, duty of commissioner, etc.....	496	129
Securities, etc., to pay commissioner full amount of bond, or etc., in trust for depositors; to be paid pro rata to depositors, etc.....	497	129
Texas corporation, surety, etc., refusing, etc., to pay, etc., charter subject to forfeiture, etc., attorney general's duty.	498	130
Foreign corporation, surety, etc., refusing, etc., to pay, permit subject to forfeiture; duty of secretary of state.....	499	130
Suit by attorney general, etc., in case of default on bond, etc.....	500	130
Venue of suit on bond, etc., limitation.....	501	130
Surety, etc., paying, subrogated to rights of depositors	502	130
Fees for examination of bank with view to bond	503	131
Form of guaranty bond..	504	131
Security may be divided into two or more bonds, etc.	505	131
Additional security where deposits excessive; penalty	506	131
Upon failure to give bond, etc., or avail of guaranty fund, suit to forfeit charter.....	507	132
New or additional security may be required, when; penalty for failure to give; powers of commissioner and attorney general.....	508	132
National bank may avail depositors of protection of bond security system	509	132
Certain banks and trust companies created by special acts may avail of provisions of this chapter	510	132
Banks, etc., to have certificate of authority posted	511	132
Certificate issued by commissioner to bank, etc., approved by board; form	512	132
Commissioner shall close banks when disapproved, etc., by board; procedure	513	133

	Article	Page
BANKS AND BANKING—		
continued.		
Secretary of state issuing charter, to deliver to commissioner; duty of latter	514	133
Advertisements and designations of banks, etc., regulated	515	133
If certain articles of this chapter held unconstitutional, etc., remainder unaffected.....	516	153
Provisions of certain chapters and articles cumulative	517	133
General provisions....	518-574	134
Commissioner of insurance and banking; bond; seal; not to be interested, etc., salary..	518	134
Commissioner may employ examiners.....	519	135
Examiners; qualifications; oath; bond; right of action on bond for false report; indictment, effect of.....	520	135
Appointment and compensation, etc., of examiners; accounts.....	521	135
Commissioner to examine banks quarterly, etc., power of commissioner and examiners to administer oaths; examination fees, how paid; proportion, etc.; when collected to be paid into treasury to credit general revenue fund; payments for salaries and expenses of examination, etc., in enforcing certain provisions of law, made how.....	522	135
Duties of commissioner in cases of certain derelictions, etc., of banks, etc.; duties of attorney general	523	136
Refusal to submit to inspection, etc., to be reported to attorney general; his duty.....	524	138
Directors to furnish statement under oath, etc., when required by commissioner, etc.....	525	138
Form of statement.....	526	138
Commissioner to demand statement at least twice a year, or oftener, etc., penalty	527	139
Publication of statement, etc., and posting.....	528	140
Books and records to be open for inspection of persons interested....	529	140

	Article	Page
BANKS AND BANKING—		
continued.		
Directors may appoint and remove officers, etc., authority of officers, etc.; acts without authority void.....	530	140
Reduction of capital stock permitted and regulated	531	140
Increase of capital stock permitted and regulated	532	140
Power to increase or diminish stock, and extend business.....	533	141
Notice of meeting to avail of privileges of this title, increase or diminish stock, etc....	534	141
Vote of majority of stock necessary to increase stock, etc.....	535	141
How to proceed at each meeting; statement to be made, etc., and recorded with secretary of state; certificate; effect	536	141
Executor, etc., and pledgor to represent and vote stock.....	537	142
Directors may invest money, on what securities	538	142
Loans limited.....	539	142
Company may qualify as guardian, executor, etc., or be sole guarantor or surety on bonds, upon what conditions; evidence of compliance..	540	143
Deposit primarily liable for said obligations, and solely until, etc...	541	143
Statutes applicable.....	542	144
Substitution of securities, when	543	144
Who else may enjoy privileges conferred by articles, and how.....	544	144
Company complying with provisions of article (540) not to exercise certain powers, unless..	545	144
Bank, etc., not to employ its moneys in trade, commerce, or industrial plants, provided, etc.....	546	144
Power to own real estate limited	547	144
Restrictions as to withdrawal of capital and dividends; liability of officers, etc.....	548	144
Dividends, regulation of; liability of directors for violation, provided, etc.	549	145

	Article	Page
BANKS AND BANKING—		
continued.		
Dividends regulated— surplus fund.....	550	145
Bank, etc., shall not make voluntary general as- signment, etc.; duty in failing condition; duty of commissioner; no at- tachment, etc.....	551	145.
Stockholders' liability for debts of bank, etc., de- fined	552	145
Responsibility of directors for certain losses.....	553	146
Receipt of deposits or crea- tion of debts after knowledge of insolv- ency, etc., liability of officers, etc., for.....	554	146
Suit for recovery of de- posits or debts received or created after insolv- ency, prima facie evi- dence	555	146
Who liable where stock held by executor, etc., or as security.....	556	146
No incorporated bank, etc., to do business, etc., otherwise in state, except, etc.; forfeitures for violations.....	557	146
Private individuals or firms in banking busi- ness, requirements as to	558	147
No foreign corporation, except national banks, shall do banking and discount business in this state.....	559	147
Corporations created, etc., charged with public use; banks, etc., cre- ated, etc., subject to state control and regu- lation by legislature..	560	147
Business of solvent corpo- ration may be closed, how	561	147
Who may accept provi- sions of this chapter, and how.....	562	148
Who may accept privi- leges of this chapter, and how.....	563	149
Increase of stock for ex- cessive ratio of depos- its to stock and surplus, required; penalty.....	564	149
Bank purchasing assets of another bank, must first increase stock as above	565	149
Savings department de- posits not included in estimate for increase of stock	566	150

	Article	Page
BANKS AND BANKING—		
continued.		
No bank, etc., to own over ten per cent of stock of another, or loan on its stock if, etc., unless, etc.....	567	150
Bank, etc., may loan or discount on security of cotton and cotton seed products, as national banks	568	150
Bank may not loan on se- curity of its own stock unless, etc.; penalty...	569	150
Restrictions, etc., upon pledge of securities of bank, etc.....	570	150
No bank, etc., to loan to commissioner, etc.; penalty	571	150
Neither commissioner, clerks, employes, nor examiners, shall be in- terested in bank, etc., or indebted to same; penalty	572	151
Board may change form of statements required of banks.....	573	151
Bonds of cashier and treasurer	574	151
Savings banks.....	386-430	107
Savings banks incorpo- rated, how.....	386	107
Articles of association, requisites	387	107
Further requisites.....	388	108
To be signed, acknowl- edged, recorded, etc...	389	108
Board of directors and other officers.....	390	108
Meetings of board of di- rectors—quorum	391	108
Capital stock prescribed, to be subscribed and paid up.....	392	109
Capital stock limited; re- quirements as to in- crease of.....	393	109
Stock a guarantee fund and invested, etc.....	394	109
Powers of corporation...	395	109
May limit deposits, etc...	396	109
Payment of deposits; reg- ulations, notice; inter- est	397	109
Pass book, requirements as to.....	398	110
Deposit in name of minor or female there- after married.....	399	110
Deposit in trust.....	400	110
No interest paid or de- clared until when, nor unless, etc.....	401	110
Interest rate paid, to be regulated by directors..	402	110
Deposits invested, how...	403	110

Article Page		Article Page	
BANKS AND BANKING—		BANKS AND BANKING—	
continued.		continued.	
Same subject.....	404 111	banks, etc., when; communication to attorney general; his duties; order of court.....	428 115
Applications for loans, how made; record of; presented to board....	405 111	Visitation of savings banks, etc., by commissioner, etc., powers, expenses, certificate; report	429 115
Cash reserve.....	406 111	Commissioner to report to legislature, requisites	430 116
Indemnity fund and guaranty fund.....	407 111	Savings departments ...431-444	116
Guaranty and indemnity funds; rule in determining per cent of....	408 111	Bank, etc., desiring to establish savings departments, etc., shall do what.....	431 116
No dividend over ten per cent, etc., nor except as provided.....	409 112	Shall invest not over 85 per cent of savings deposits, how; power to sell and reinvest.....	432 117
Dividend not over ten per cent may be declared when, etc.....	410 112	May sell securities and reinvest proceeds....	433 117
Dividends, further provisions as to, and as to net profit.....	411 112	To meet current demands securities may be sold, or taken up by bank, etc., out of guaranty fund	434 117
Division of net profits; guaranty and indemnity funds.....	412 112	Not less than 15 per cent of deposits to be kept on hand in cash in savings department...	435 117
Safety deposit box rent, default in payment of; proceedings on.....	413 112	Notice of withdrawal of deposits	436 117
Powers of savings banks as to real estate.....	414 113	Exclusive prior lien of savings depositors on cash of savings department, etc.....	437 118
Corporation, etc., shall not repurchase lands sold	415 113	Statement of assets and liabilities of savings department; no savings deposits to be received unless, etc.....	438 118
Powers of directors....	416 113	Directors may provide for interest on savings deposits, etc.; provided, etc.	439 118
Notices and rules posted, effect of.....	417 113	Accumulated earnings of savings department may be transferred to general fund of bank, etc., when.....	440 118
Compensation of directors, when and how allowed	418 113	Savings department governed by provisions of this title, etc.....	441 118
No director to receive pay for services, except, etc.	419 113	Directors may adopt regulations; to be submitted to commissioner, etc.....	442 118
Restrictions as to fees, brokerage, etc.....	420 113	Certain acts forbidden...	443 118
No director or officer to borrow funds, nor use, except, etc., nor be surety, etc., for loans to bank.....	421 113	Assets not to be reduced below deposits, and 15 per cent to be cash....	444 119
Fees, etc., to member of board to be reported..	422 114		
Penalty for directors borrowing, etc., being surety, failure to attend meetings, etc.....	423 114	BARRATRY—	
Security from officers, agents, etc., for fidelity.	424 114	Forfeiture of licenses by attorneys for.....	331 94
Annual report of savings bank, etc., to commissioner; form; requisites	425 114		
Report continued, and requisites	426 114		
Report continued and requisites; examination of books, as to basis, etc., forfeiture for failure to report	427 114		
Commissioner may give directions to savings			

	Article	Page
BASTARDS—		
Inherit from mother.....	2473	524
RAWDY HOUSES—		
Use of premises for, may be enjoined.....	4689	954
BEEES		
Bees affected with foul brood or other contagious disease to be reported to state entomologist; powers of...	575	152
State entomologist to prescribe rules, etc., duties in case of refusal to comply	576	152
Upon failure of owner, etc., to carry out instructions of state entomologist, duty of latter and of county attorney	577	152
Disposition of moneys recovered	578	152
BENEVOLENT CORPORATIONS—		
Renewal of charter of...	1136	276
BEQUESTS—		
To children, etc., not to lapse	7869	1711
To subscribing witnesses.	7870	1711
BIDS—		
To furnish fuel for state departments	7341	1567
For public printing.....	6351	1360
For furnishing stationery to counties	2263	482
For supplies for eleemosynary institutions.....	7329	1564
For depositories of state funds	2417-2439	509
For county depositories.	2440-2453	515
For city depositories.	2454-2460	518
For construction of drains, etc.....	2502	531
Construction of drains, etc.	2536	537
For drainage in drainage districts, etc.....	2561	542
For drainage in county drainage districts.....	2610	555
For estates of decedents.	3505	729
For improvements in improvement districts ...	5570	1175
For improvements in navigation districts.....	5993	1285
For lease of water of irrigation districts.....	5102	1071
For work in irrigation districts	5094	1069
For property of estates of wards	4166	855
On estrayed live stock...	7200	1538

	Article	Page
BILLIARD TABLES—		
Occupation tax on.....	7355	1571
BILLS OF EXCEPTIONS—		
Instructions to juries refused constitute part of	1974	434
Bills of exceptions and statements of facts	2058-2077	445
Exceptions to rulings taken, when.....	2058	445
Requisites of bill of exceptions	2059	445
May refer to statement of facts	2060	445
Charges regarded as excepted to.....	2061	445
No bill of exceptions where ruling appears of record	2062	445
Bill to be presented to the judge	2063	445
Submitted to opposing counsel, etc.....	2064	445
If found incorrect.....	2065	445
On disagreement, judge to make out bill, etc....	2066	445
Bystander's bill, how obtained	2067	446
Statement of facts, how prepared	2068	446
When the parties disagree	2069	446
Statement of facts prepared from transcript of official shorthand reporter, when and how, etc.; in duplicate; filed; original sent up; reporter to prepare on request, etc., fees, proviso	2070	446
Statements of facts by stenographer for party appealing without bond, etc., when.....	2071	447
Parties may prepare statement of facts, independent of transcript.....	2072	447
Time for preparing and filing statements of facts and bills of exceptions; judge may extend, provided, etc....	2073	447
Statement of facts not filed in time, when considered by court.....	2074	448
Time for judge to file conclusions, etc.....	2075	448
Where term of office expires before adjournment, etc.....	2076	448
Statements of facts and bills of exceptions in civil cases in county courts and county courts at law	2077	448
BILLS OF LADING—		
Carriers must give.....	710	181
Bills of lading certified, etc.	715-724	183

	Article	Page		Article	Page
BILLS OF LADING—continued.			BILLS AND NOTES—		
Certain common carriers, etc., to issue bills of lading and certify, etc., same when demanded by shipper, etc.....	715	183	continued.		
Requisites, etc., of certificate, etc.....	716	183	Consideration, want or failure of, a defense, when	589	154
“Straight” and “order” bills of lading defined, and issuance of “order” bills of lading regulated	717	183	Liability of drawer and indorser of bills and notes may be fixed by protest	590	154
Authority of agent to be posted in station, his signature attached....	718	184	Protest, how made and evidence of.....	591	154
Bills of lading issued by authorized agent, to be held act of carrier, etc., liability thereon; effect of certificate, etc.....	719	184	Damages on protested bills, recoverable, when.	592	155
Carrier's liability in case of delivery of goods without taking up, etc., “order” bill of lading; exception	720	184	Days of grace allowed on bills and notes.....	593	155
Same subject, where part of goods are delivered, etc., exception.....	721	184	BILLS OF REVIEW—		
Procedure in case of loss of “order” bill of lading; carrier not relieved from liability to innocent purchaser, etc., proviso.....	722	184	In suits concerning estates of wards.....	4290-4301	873
Carriers not liable, etc., when	723	184	BILLS OF SALE—		
Duties and powers of railroad commission ..	724	185	Of live stock to be taken.	7170	1533
See “Carriers.”			Of animals for shipment.	7274	1552
BILLS AND NOTES—			BIRDS—		
Bills, notes and other written instruments..	579-593	153	Property of public.....	4022	832
Liability of drawer, etc., how fixed by suit in district or county court.	579	153	BLACKLISTING—	594-604	156
How fixed by suit in justice's court.....	580	153	Discrimination defined...	594	156
Drawer of bill liable on non-acceptance	581	153	Discrimination prohibited, etc.	595	157
Assignee of negotiable instrument may sue in his own name.....	582	153	Foreign corporation to forfeit permit for violating provisions; duty of attorney general...	596	157
Non-negotiable instrument may be assigned.	583	153	Every person or corporation violating provisions liable to forfeiture; suit; venue; duty of attorney general; fees	597	157
Assignee of non-negotiable instrument may sue in his own name..	584	153	Fees of prosecuting attorney	598	157
Waiver of diligence not to be shown by parol evidence	585	154	Prima facie evidence of agency	599	157
Assignor liable to assignee	586	154	On application of attorney general, justice of peace to have witness examined	600	157
Assignor, indorser, etc., may be sued alone, when	587	154	Witness sworn and examined, how; statement in writing, and disposition of.....	601	158
Assignments, execution of, put in issue, how..	588	154	Failure of witness to appear, contempt, etc.,	602	158
			Immunity of witness, if, etc.	603	158
			Written statement of cause of discharge not to be used as cause of action, civil or criminal	604	158
			BLIND ASYLUM—		
			General provisions....	171-187	68
			Appointment of oculist and qualifications.....	188	71
			Removal of oculist.....	189	71

	Article	Page
BLIND ASYLUM—continued.		
Other asylums.....	107-239	58
For colored youths....	209-210	74
BOARD OF EDUCATION—		
To appoint local board of directors of Sam Houston normal.....	2697	570
North Texas normal under control of.....	2699	571
To appoint local board of directors for southwest Texas normal...	2709	573
Southwest Texas normal under control of	2707	572
To appoint local board of directors for West Texas normal.....	2713	573
Duty of, as to Agricultural and Mechanical College	2679	567
May appoint local board of directors for North Texas normal	2704	572
Duties, etc.	2727-2743	577
BOARDING HOUSES—		
Liens in favor of.....	5663	1199
BOARDS—		
Of alderman of towns and villages, powers, etc.	1033-1069	249
Anatomical Board...5756-5763		1221
Of arbitration authorized	71	47
Of contractors for fuel for for state departments	7339	1567
County boards of examiners of teachers....	2786	592
To calculate tax rate....	7349	1569
Of dental examiners....	2405	506
Of directors of Agricultural and Mechanical College	2567	564
Of directors of banks and trust companies..	383	105
Of directors of banking corporations	374	102
Of directors of savings banks	390	108
Of directors of irrigation districts	5024	1053
Of directors of railroad companies	6438	1382
Of directors of North Texas normal.....	2704	572
Of directors of Sam Houston normal.....	2697	570
Of directors of West Texas normal.....	2713	573
Embalming board...4596-4605		937
Board of equalization—		
Tax assessors to secure certificates from....	7559	1639
Commissioners' courts to sit as.....	7564	1641
To value unrendered lands for back taxes...	7666	1662

	Article	Page
BOARDS—continued.		
For cities and towns, how constituted.....	945	229
Form of oath of.....	7573	1644
Of examiners for military service.....	5706	1235
Of examiners of city finances	885	216
State board of examiners of teachers....	2794	593
Of inquiry for construction of seawalls, etc...	5589	1179
Of legal examiners, appointment, etc.....	309	91
To locate agricultural and experimental stations.	4476	907
Of managers of lunatic asylums	108-118	58
Shall appoint superintendents	119	60
Medical board established	5733	1215
For navigation districts..	5857	1276
Of pardon advisers..	6086-6095	1300
Salary of.....	7082	1513
Of pharmacy, appointment, etc.....	6286-6298	1342
Of plumbers for cities and towns	987	238
Of prison commissioners, appointment, etc....	6175	1315
Of public printing provided for.....	6338	1356
Of regents of University of Texas, how appointed	2636	562
Of regents of Girls' industrial institute....	2683	568
Of school trustees for independent school district	2884-2895	616
State banking, duties, etc., under bank guaranty law.....	445-517	120
State mining board....	5923	1268
Of nurse examiners.	5748-5755	1219
State insurance board	4876-4904	1009
State levee and drainage board	5525-5529	1163
State tax board....	7407-7426	1592
Texas state board of health	4521-4553	919
Of trustees for state institution for training of juveniles	5252	1091
Of trustee of Confederate Home, appointment, etc.	205	72
Of trustees of deaf and dumb and blind and other asylums.....	171-187	68
Of trustees for deaf, dumb and blind asylums for colored youths, duties, etc....	210	74
Of managers for epileptic colony, appointment, etc.	212	74

	Article	Page
BOARDS—continued.		
Of trustees for South-west Texas normal...	2709	573
Of trustees of independent school districts...	2852	608
Of visitors of University of Texas.....	2650	563
BOLL WEEVIL—		
Reward for extermination of	4469	905
BOND INVESTMENT COMPANIES—		
Deposit with state treasurer	1309	314
Forfeiture of charter in default of deposit; attorney general to sue for, and receivership; duties of receiver, etc..	1310	314
In case of failure of corporation, receiver appointed how; duties; deposit used; treasurer to pay out how.....	1311	314
Interchange of cash and securities in deposits; approval of attorney general	1312	314
Return of deposit in what case.....	1313	314
Corporations private.....	1117-1321	266
BONDS—		
County, municipal, etc.....	605-702	159
General provisions and regulations as to the issue of bonds.....	605-626	159
Election on bonds required	605	159
Proposition submitted, how	606	159
Time and place of election determined how.....	607	159
Do not apply in what cases	608	160
Sections of special charters in conflict herewith, repealed.....	609	160
Courthouse, jail and bridge bonds, authorized	610	160
To run not exceeding forty years; redeemable when.....	611	160
Interest on such bonds...	612	160
Bonds to be based on and limited by taxable values	613	160
Interest and sinking fund provided	614	160
Bonds to be signed, countersigned, registered and sold at not less than par, etc.....	615	160
Annual tax to meet interest and sinking fund..	616	161

	Article	Page
BONDS—continued.		
Rate of interest; terms of sale.....	617	161
No bond to run longer than forty years.....	618	161
Conditions precedent to the issuance of bonds; examination by attorney general, etc.....	619	161
Bonds to be registered by comptroller.....	620	161
Comptroller's endorsement on bonds and certificate	621	161
Certificate of attorney general recorded.....	622	161
Funding or refunding bonds not registered until old bonds presented for cancellation	623	161
Old bonds canceled and new bonds delivered; provided, etc.....	624	161
Certificate of attorney general and registration prima facie evidence of validity.....	625	162
Law not applicable in certain cases.....	626	162
Funding, refunding and compromise of indebtedness	656-697	169
1. General powers of funding, refunding and compromising debts.		
Debts may be funded, when and how.....	656	169
Old bonds of legal issue may be substituted by new	657	169
Debts may be compromised	658	169
Sinking fund to be provided and tax levied...	659	170
2. Storms, Floods, or Other Great Disasters—Funding, Refunding, and Compromising of Debts in Case of.		
Storms, etc., bonds, power to fund, refund and compromise	660	170
Bonds issued for said purposes, regulations as to	661	170
Order of commissioners' court, prerequisite recitals, etc.....	662	170
Classification of bond issues	663	171
Apportionment of taxes, record	664	171
Levy for interest and sinking fund proportioned how.....	665	171
Constitutional limit not to be exceeded.....	666	171

	Article	Page
BONDS—continued.		
Commissioners to prescribe form and class of bonds, and for issuance	667	171
Term of bonds, etc.....	668	171
Redemption of bonds....	669	171
Interest rate.....	670	171
Bonds to conform to requirements of certain articles not in conflict with the provisions of this subdivision.....	671	171
Signature and attestation of bonds.....	672	171
Registry by comptroller, after examination, etc., by attorney general...	673	171
Registry without presentation and cancellation of old bonds.....	674	171
Bonds delivered to county or city treasurer and registered by him.....	675	171
Bonds not to be sold, etc., for less than par value and accrued interest	676	171
Date of sale, etc., indorsed and certified and attested how, before delivery of bonds.	677	172
3. Railroad, etc., Subsidy Bonds, etc. Compromise, Adjustment and Refunding of.		
Railroad subsidy bonds, how adjusted and paid	678	172
Bonds sold and exchanged, how.....	679	172
Authority for executing bonds and terms and conditions of same....	680	172
Bonds may be exchanged or sold.....	681	173
Levy of tax for interest and sinking fund.....	682	173
Collector liable on bond for failure of duty; new collector appointed, when.....	683	173
Bonds to be registered in comptroller's office, how and effect of....	684	173
Assessment of taxes and compensation of assessor	685	173
Surplus fund, how applied	686	173
May compromise and fund indebtedness.....	687	174
Authority to compromise limited	688	174
Bonds exempt from taxation	689	174
Issued and registered, how	690	174
May be exchanged or sold	691	174

	Article	Page
BONDS—continued.		
Tax laws to be continued in force.....	692	175
Same subject.....	693	175
Collector liable for failing to collect tax and when to be appointed by governor.....	694	175
Compromise by vote of the people; notice of election, how given...	695	175
Counties and city authorities may adjust tax to conform to interest and sinking fund for bonded indebtedness.....	696	176
How amount of levy determined and fees of collector	697	176
Sinking funds — Investments, reports, regulations and penalties..	698-702	176
Sinking fund of county, city, town, school district or school community, to be invested in United States, State, city, or town bonds, provided, etc.....	698	176
Report, annual, of county or city treasurer to comptroller, requisites of	699	177
Draft on sinking fund not to be honored by treasurer except for interest, redemption or investment	700	177
Penalties for failure to report or for diversion or misapplication.	701	177
Comptroller to notify attorney general, district or county attorney; suit to recover fund; payment into treasury.	702	177
Particular provisions and regulations as to the issue of bonds.....	627-655	162
1. For Public Roads —Construction and Maintenance of.		
Power to issue road, etc., bonds and levy tax for interest and sinking fund	627	162
Election for; propositions, restrictions and requirements	628	163
Notice of election.....	629	163
Time, place and manner of holding election	630	163
If election carried by two-thirds vote, bonds to be issued.....	631	163

	Article	Page
BONDS—continued.		
Bonds, term, interest, examination, registry, custody; sale; disposition of proceeds; disbursement, regulation of	632	164
General laws applicable..	633	164
Tax for interest and sinking fund; levy, assessment and collection; treasurer to be custodian, and to deposit with depository	634	164
Treasurer to pay interest and sinking fund.....	635	164
Numbering of districts and bonds to correspond, etc., designation of bonds.....	636	165
Provisions not applicable to bonds of whole county; designation of latter	636	165
District accepting provisions to be body corporate; powers.....	637	165
Road district not liable for torts.....	638	165
County commissioner to be ex officio road superintendent; powers....	639	165
Bids to be taken on contract work; contract to be let to lowest and best bidder; right to reject	640	165
County operating under special road tax law may take advantage of provisions	641	165
2. For Causeways, Viaducts, Bridges, etc., Construction and Maintenance, and Use of.		
Elections in certain counties to authorize bonds for causeways, viaducts, bridges, etc.....	642	165
Preliminary surveys and estimates; order for election to prescribe amount and terms of bonds	643	166
Resolution for election to be recorded, and submitted to vote, how...	644	166
General law to govern election, etc.; proclamation posted; publication	645	166
Qualifications for voting..	646	166
Ballot, form, etc., restrictions	647	166
If election carried by majority, etc., bonds to be prepared and executed,		

	Article	Page
BONDS—continued.		
how, terms, regulations, etc.....	648	166
Levy of tax annually for interest and sinking fund.....	649	167
Commissioners may contract for privilege of using causeways, etc., or constructing, etc., tracks, telegraph lines, etc., no exclusive, etc.; contracts, previous notice, etc.....	650	167
Revenue to be appropriated to maintenance and repair of structures; excess to road and bridge fund of county	651	167
Commissioners may make regulations, etc., for use of structures.....	652	167
Power of condemnation, etc.	653	167
Use, etc., of streets, etc., may be granted for purposes of causeway, etc.	654	168
May condemn land of railroads, etc.....	655	168
Board of education may invest school funds in..	2736	579
Certain, to be deposited with comptroller.....	4337	880
City council may issue, for funding indebtedness	891	217
City council may issue...	879	215
Of cities shall specify what	880	215
Commissioners' courts may issue for bridge purposes, when.....	2254	481
Of counties, held by school fund, apportioned between counties, when.....	1346	322
Drainage corporations may issue.....	1265	305
For drainage districts...	2542-2566	538
For drainage districts...	2567-2625	544
Election for issuance of, for school houses.....	2837	605
Of independent school districts	2857	609
Of improvement districts, to be issued, etc.....	5551	1170
Irrigation districts may issue	5041-5052	1057
Issuance of for navigation district.....	5973	1280
For permanent university funds	2652	563
Of landlord applying for distress warrant.....	5480	1152

	Article	Page
BONDS—continued.		
For the public debt declared valid.....	2401-2402	505
Purchasers of railroads may issue.....	6721	1442
Of railroads, issuance regulated	6717-6732	1441
Issuance of, by railroad companies	6544	1396
Of receivers appointed in district court.....	2132	456
For construction of seawalls and breakwaters	5588	1179
For school houses in cities and towns.....	2874	613
Of union depot corporations	1245	299
Registration of, by comptroller	4352	884
For court costs, etc.		
In appeal cases of forcible entry and detainer..	3957	817
On appeals from justice courts	2393	503
On appeal or writ of error	2097	451
Of appellants in probate matters	3632	751
In cases of certiorari to justices' courts.....	748	190
Certiorari granted on execution of.....	735	188
City exempt from giving, in suits.....	768	193
For costs in district and county courts.....	2053	444
Of defendants replevying attached property.....	258	81
Defendant may give, for delivery of property levied on.....	3748	771
In garnishment.....	272	84
Of petitions for writs of error to supreme court	1540	354
Plaintiff in attachment proceedings must give	244	80
Form of.....	246	80
Of plaintiff suing out writ of error.....	2089	450
Of receiver on appeal....	2144	458
Of receivers of abolished city or town corporations	1080	257
By relatives for care of lunatics	162	66
Replevy bond of defendant	7103	1519
Replevy bond of plaintiff	7110	1520
Of purchaser of property sold under execution..	7117	1520
Rights of dependent child to give.....	2194	469
For writ of sequestration	7097	1518
For writ of injunction... 4654	950	
116—R. O. S.		

	Article	Page
BONDS—continued.		
Individual bonds—		
Of administrators and executors	3305-3324	697
Of assignees.....	96	54
For city depositories....	2455	519
Of retail liquor dealer... 7452	1608	
Of claimant in trial of right of property.....	7770	1687
Form of.....	7774	1688
Of claimants of personal property levied on....	257	81
Colleges, etc., receiving dead bodies to give... 5761	1223	
Contestee to execute in certain cases.....	3057	650
Contestant to execute in certain cases.....	3058	650
Of contract for fuel for state departments....	7344	1567
Of hirer of county convicts	6251	1332
Of county depositories... 2443	516	
Of contractors for construction of drains, etc.	2613	556
Of drainage contractors.. 2537	537	
Of drainage contractor.. 2503	531	
Of executors, administrators and guardians, limitations on.....	5689	1204
Of factors and commission merchants.....	3827	784
Of certain fire insurance companies.....	4870	1005
Of guardians.....4097-4112	845	
When required of heirs of decedents.....	3369	707
Of dealer in intoxicating liquor in local option territory	7475	1614
Lessee of water of irrigation district to execute	5106	1072
Of contractors for levees, etc.	5573	1176
Of contractor for improvements in navigation districts.....	5995	1285
Of owner of ferry.....	7028	1505
Of parties furnishing stationery to counties.. 2263	482	
Of pawnbrokers.....	656	1312
Of person estraying live stock	7186	1536
Of private corporations.. ..1140-1174	277	
Of bidder for public printing	6353	1361
Of state banks, electing bond security, requirements, etc.....	491	128
Of state depositories.... 2424	511	
Of successful bidder for		

	Article	Page
BONDS—continued.		
supplies for state institutions	7332	1565
Of surety companies, regulations as to	4929	1028
Of survivor, in administration of community property	3598	746
Official bonds.....	6078-6085	1298
Officers failing to give, ground for removal...	6040	1293
Of adjutant general.....	5788	1230
Of butchers.....	7179	1535
Of branch pilots.....	6306	1349
Of chief deputy game, fish, etc., commissioner	4034	834
Of city assessors and collectors	941	228
Of city treasurer.....	811	204
Of clerks of Galveston and Harris county criminal district court.....	2209	473
Of clerks of courts of civil appeals	1596	366
Of clerk of court of criminal appeals.....	1663	380
Of clerk of supreme court	1530	353
Of commissioner of agriculture	4436	897
Of commissioner of insurance and banking..	518	134
Of commissioners of improvement districts...	5547	1169
Of commissioners of navigation districts.....	5970	1279
Of commissioner of labor	5236	1095
Of comptroller.....	4322	878
Of county attorneys.....	351	98
Of county auditors...1460-1463		342
Of county clerks.....	1747	395
Of county commissioners	2239	478
Of county judge as county school superintendent..	2764	586
Of county school superintendents	2751	583
Of county surveyors.....	1379	328
Same	5307	1107
Of county treasurers as custodians of school funds	2768	587
Of county treasurer.....	1500	347
Of appointee in case of vacancy	1501	347
Of county treasurer in navigation districts...	5988	1284
Of county treasurer in drainage district.....	2608	555
Of dairy and food commissioner	4575	931
Of deputy game, fish and oyster commissioner...	4007	829
Of district attorneys....	340	96
Of district clerks.....	1689	385
Of drainage commissioners	2587	550

	Article	Page
BONDS—continued.		
Of engineers of improvement districts.....	5536	1166
Of engineer for drainage district	2572	546
Of game, fish and oyster commissioner	3977	821
Of general land commissioner	4394	891
Of chief clerk in general land office.....	4398	891
Governor may require from military officers..	5812	1237
Of health officers at Galveston	4569	930
Of inspector of hides and animals	7260	1550
Of inspector of sheep....	7880	1714
Of judge of Dallas county court at law.....	1791	402
Of judge of Tarrant county court for civil cases	1805	404
Of justices of the peace..	2283	486
Of live stock sanitary commissioners	7312	1559
Of notaries public.....	6003	1287
Of officers of towns and villages	1054	252
Of police officers in cities and towns.....	808	203
Of president of state board of health.....	4526	920
Of prison commissioners..	6176	1316
Of public warehousemen	7320	1699
Of public weigher.....	7829	1703
Of secretary of state....	4303	875
Of secretary of board of pharmacy	6287	1342
Of secretary for board of dental examiners....	2416	507
Of secretary of irrigation districts.....	5024	1053
Of sheriff.....	7121	1522
Of constable.....	7141	1525
Of state bank examiners	520	135
Of state purchasing agent	7326	1562
Of state tax commissioner	7408	1592
Of state mining inspector	5932	1269
Of state treasurer.....	4364	886
Of storekeepers of eleemosynary institutions..	7327	1563
Of superintendents of deaf and dumb, etc., asylums	182	70
Of superintendents of lunatic asylums.....	120	60
Of superintendents of public roads.....	6955	1487
Of superintendent of public buildings, etc..	6381	1368

	Article	Page
BONDS—continued.		
Of surveyors appointed by land commissioner..	5348	1114
Of special deputy surveyors	5321	1110
Of tax assessor.....	7535	1633
Of tax collector for drainage district.....	2605	555
Of tax collector.....	7608	1650
Of tax collector for navigation district.....	5985	1283
Of wreck-master.....	7888	1716
BOND SECURITY SYSTEM—		
Of state banks, requirements, etc.....	491	128
BONDSMEN—		
Of Officials, may be joined in suits, when..	1846	414
BOOKKEEPERS—		
Liens of.....	5644-5649	1194
In office of comptroller...	4354	884
In office of state treasurer	4379	888
Railroad commission to adopt system of.....	6667	1426
BOOKS—		
Of railroad companies kept where.....	6431	1380
Of railroad companies, commission may inspect	6665	1425
Of trusts, etc., examination of.....	7811	1695
BOOTHS—		
For elections.....	2976	637
For primary elections...	3114	662
BOUNDARIES—		
Of counties, how marked	1375-1386	327
Of independent school districts, extensions...	2865	611
Of irrigation districts	5065-5087	1063
Territorial, of cities and towns	777	195
BOWLING ALLEYS—		
City council may license..	872	214
BRANCH PILOTS—		
And pilots for mouth of Brazos river, etc. .	6305-6319	1349
BRANDS—	7151-7160	1528
Of floating timbers.....	7727	1680
Brands, trade marks, etc.	703-706	179
Trade marks of carbonated goods.....	703	179
Disposition of penalty funds	704	179
Infringements enjoined..	705	179
Trade mark to be filed...	706	179

	Article	Page
BREAKWATERS—		
How established....	5585-5594	1178
BRIDGES— See "R o a d s, Bridges and Ferries."		
Bonds for erection of, authorized	610	160
Construction and maintenance of	642-655	165
City councils may construct	857	212
Commissioners' court may construct in corporate limits of cities and towns	2252	481
Timber for.....	6934	1483
Contracts for.....	6966	1489
Parties misplacing shall be liable.....	6972	1490
Overseers shall have bridges built, when...	7013	1502
Commissioners' court, power to have bridges built	7014	1502
May contract for building of toll bridges.....	7015	1502
Shall take security from contractors to keep bridges in repair, etc..	7016	1502
When stream forms line of counties, expense of bridge to be joint....	7017	1503
Tolls assessed to pay bonds	7018	1503
Coast counties may lease, etc., causeways, etc...	7019	1503
Funds available for the purpose	7020	1503
Bridge and ferry corporations	1279-1281	308
Distance between bridges and ferries regulated..	1279	308
Commissioners' court shall regulate tolls...	1280	308
Owner liable for damages	1281	308
Corporations, private	1117-1321	266
BRIEFS—		
Filed in court below on appeal	2115	453
BROKERS—		
Occupation tax on.....	7355	1575
BUCKET SHOPS—		
May be enjoined.....	4691	955
BUILDERS—		
Lien of.....	5621-5639	1188
BULK ASSESSMENTS—		
Validated when.....	7708	1676
BULK SALES—		
Of merchandise, void when	3971	820

	Article	Page
BURGLARY—		
Companies insuring against loss by....	4922-4927	1025
BURGLARY INSURANCE—		
Mutual companies insuring against loss by burglary, etc.....	4922-4927	1025
What companies entitled to license.....	4922	1025
Certain conditions; premium contracts to constitute part of assets..	4923	1025
Must file copy of charter and statement; im-		

CAMPAIN CONTRIBUTIONS—		
By private corporations forbidden	1166	281

CANALS—		
See "Irrigation."		
See "Navigation Districts."		

CANDIDATES—		
Contributions to, by private corporations, forbidden	1166	281
Shall not pay poll tax of another	2946	630
Nominations of by primary elections, etc.	3084-3174	655
None on ballot, except, etc.	2966	635
Statement of expenses of	3145	667

CANNON CRACKERS—		
Occupation tax on dealers in	7356	1575

CAPITAL STOCK—		
Need not be stated in charter of fraternal orders	1224	294
Of banking corporations, prescribed, etc.....	375	103
Of savings banks prescribed	392	109
Of insurance companies	4705-4723	958
Of life, health and accident insurance companies	4724-4774	961
Of private corporations, regulations as to.....	1125	274
Of private corporations, further regulations as to	1140-1174	277
Of railroad companies may be increased.....	6461	1385
Of trust companies prescribed	384	105
Of union depot corporations	1245	299

	Article	Page
BURGLARY INSURANCE—		
continued.		
paired reserve, etc., line of business. must set aside reserve.....	4924	1025
Policy holders.....	4925	1026
Commissioner agent for service of process.....	4926	1026
Statement submitted and license issued annually	4927	1026
BUTCHERS—		
City council may regulate	843	210
To report of commissioners' courts.....	7173	1534

C

CAPITOL BUILDING—		
How controlled.....	6386	1396
CARBONATED GOODS—		
Trademarks of.....	703	179
CAR COMPANIES—		
Gross receipts tax on.....	7373	1580
CARRIERS—	707-732	181
Duties and liabilities of carriers	707-714	181
Common law shall govern, except, etc.....	707	181
Carriers can not limit their responsibilities..	708	181
Bound to carry goods, when	709	181
Must give bill of lading..	710	181
Liability as warehousemen, etc.....	711	182
Diligence as to delivery..	712	182
Shall forward in good order, etc.....	713	182
Shall feed and water live stock, unless, etc.....	714	182
Bills of lading certified, etc.	715-724	183
Certain common carriers, etc., to issue bills of lading and certify, etc., same when demanded by shipper, etc.....	715	183
Requisites, etc., of certificate, etc.....	716	183
"Straight" and "order" bills of lading defined, and issuance of "order" bills of lading regulated	717	183
Authority of agent to be posted in station, his signature attached....	718	184
Bills of lading issued by authorized agent, to be held act of carrier, etc., liability thereon; effect of certificate, etc.	719	184
Carrier's liability in case of delivery of goods		

	Article	Page
CARRIERS—continued.		
without taking up, etc., “order” bill of lading; exception	720	184
Same subject, where part of goods are deliv- ered, etc., exception . . .	721	184
Procedure in case of loss of “order” bill of lad- ing; carrier not rel- ieved from liability to innocent purchaser, etc., proviso	722	184
Carriers not liable, etc., when	723	185
Duties and powers of rail- road commission	724	185
Disposition of unclaimed or perishable property by carriers	725-730	185
Unclaimed freight may be sold, when and how	725	185
Notice of such sale	726	185
Carrier shall keep an ac- count of sales, etc.	727	186
Carrier may sell live stock, when	728	186
Carriers shall sell perish- able property when	729	186
Disposition of unclaimed intoxicating liquor	730	186
Connecting lines of com- mon carriers	731-732	187
Connecting lines of com- mon carriers defined	731	187
Liability of such connect- ing lines	732	187
See “Express Companies.”		
CARS—		
Railroads to furnish when demanded	6678	1431
CASH RESERVE—		
Of banking corporations . . .	377	103
Of savings banks	406	111
CATTLE—		
Charges on for fer- riage	7041	1507
Exportation to Mexico	7279	1553
Marks and brands of	7151-7160	1528
Mode of preventing from running at large	7235-7255	1545
Shipped or slaughtered, register to be kept	7177	1534
See “Stock Laws.”		
CATTLEGUARDS—		
Railroads to provide, etc. . .	6596	1405
CAUSES—		
Trial of in district and county courts	1934-1969	429
CAUSEWAYS—		
Coast counties may buy and lease	7019	1503

	Article	Page
CAUSEWAYS—continued.		
Construction and mainte- nance of	642-655	165
Timber for	6934	1483
CEMETERIES—		
City council may establish and regulate	849	211
City council may im- prove, etc.	864	213
Lots exempt from forced sale	767	193
Property of exempted from taxation	7507	624
Purchases of public lands for	5448	1143
CEMETERY CORPORA- TIONS—	1286-1302	310
Incorporation and pow- ers; charter to state what	1286	310
Owner of lots sharehold- ers, etc.	1287	310
Directors and officers chosen, how; married woman may be, etc.	1288	310
Power to acquire and hold land, including land dedicated to burial purposes	1289	310
Owners of lots in dedi- cated land so purchased may participate in or- ganization	1290	310
Divisions of dedicated land so purchased, to be preserved, etc.	1291	310
Ground to be laid out, plotted, approved, at- tested and recorded	1292	311
Corporation may make by-laws and regula- tions	1293	311
Directors may make rules to keep lots in order, etc., but, etc.	1294	311
Meeting of lot owners to create corporation to take title, etc., notice of; majority deter- mines action; selec- tion of directors	1295	311
Directors to elect officers Corporation not required to make reports	1296	311
City council may control location of cemetery and limit price of lots . . .	1297	311
Commissioners’ court may limit price of lots of cemetery outside of city Powers of	1298	311
May convey lots for pur- poses of sepulture	1299	311
Owners of lots are mem- bers of corporation	1300	311
Corporations, private	1301	311
.	1302	312
.	1117-1321	266

	Article	Page
CERTIFICATES—		
Of attorney general to county and municipal bonds	622	161
Of authority to fidelity, etc., insurance companies	4931	1029
Of a t h o r i t y, insurance companies to publish..	4943	1034
Of authority of state banks, regulations as to	511	132
Of board of dental examiners	2409	507
Of board of pharmacy...	6291	1343
For land, general provisions as to.....	5388-5404	1123
To land, when patents to issue on.....	5361-5382	1118
Of occupancy on public lands, etc.....	5445	1143
Of warehousemen.....	7820	1699
CERTIORARI—		
Certiorari to the county court	733-761	188
Cerlorari to county court issued, when.....	733	188
Application for.....	734	188
Shall be granted on execution of bond.....	735	188
Not to operate as super-sedeas, unless bond given	736	188
Writ to issue, to contain what	737	188
When super-sedeas granted	738	188
Citation as in ordinary cases	739	188
Trial de novo, judgment to be certified below..	740	189
Appeals and writs of error allowed.....	741	189
Certiorari to justices' courts	742-761	189
On order of the county or district court or judge	743	189
Requisites of the writ...	744	189
Affidavit of sufficient cause	745	189
What application for certiorari must show.....	746	189
Within what time granted	747	190
Bond with sureties required	748	190
Bond, affidavit and order to be filed.....	749	190
Writ to issue instanter..	750	190
Justice shall stay proceedings and make return	751	190
Citation as in other cases	752	190
Cause to be docketed, and how	753	190
Motion to dismiss at first term	754	190
No amendment of bond or oath	755	190

	Article	Page
CERTIORARI—continued.		
Judgment of dismissal...	756	190
Pleadings same as in justice's court, except, etc.	757	190
Issues made up under direction of the court...	758	190
New matter may be pleaded, etc.....	759	190
Trial de novo.....	760	190
Appeals and writs of error in certiorari cases	761	191
Costs in case of.....	2046	443
County court may issue writ of, to justice court	1768	393
In suits concerning estates of wards...	4290-4301	872
To remove cause from justice to county court	2398	504
CESTUI QUE TRUST—		
Property held by, how rendered for taxation...	7509	1626
CHAIN CARRIERS—		
Oath, duties, etc.....	5309	1109
CHALLENGES TO JURORS—		
Challenge to the array of jurors	5188	1086
Not allowed, when.....	5189	1086
Challenge to array must be in writing.....	5190	1086
Court shall decide at once	5191	1086
Proceedings when challenge to array is sustained	5192	1086
Challenge to a particular juror	5193	1087
Challenge for cause.....	5194	1087
On trial for challenge for cause, evidence to be heard	5195	1087
Certain questions not permissible	5196	1087
Peremptory challenge...	5197	1087
Number in district court.	5198	1087
In the county court.....	5199	1087
Challenge to a particular juror made orally.....	5200	1087
Court to decide challenges promptly	5201,	1087
For cause to be made, when	5206	1088
To array of jury in justice court	2351	497
See also.....	2354, 2356	497
CHANNEL AND DOCK CORPORATION—		
1249-1253	300	
This chapter embraces, what	1249	300
Added powers.....	1250	300
Dock corporations, added powers	1251	301
Corporations created under this chapter, additional powers granted..	1252	301

	Article	Page		Article	Page
CHANNEL AND DOCK CORPORATION—con-			CHARTERS—continued.		
tinued.			Of macadam and plank		
Rates, tolls and charges			road corporations, may		
subject to legislative			be forfeited, when....	1270	306
control	1253	301	Of mutual assessment ac-		
Corporations, private gen-			cident insurance home		
erally	1117-1321	266	companies	4795	983
CHARGES—			Of mutual burglary insur-		
And instructions to juries	1954	432	ance companies...	4922-4927	1025
And instructions in dis-			Of mutaul fire, storm and		
trict and county courts	1970	433	lightning insurance		
To juries, regarded as ex-			companies, how ob-		
cepted to.....	2061	445	tained	4907	1020
CHARITABLE CORPORA-			Of private corporations		
TIONS—	1212-1224	293	must be filed with sec-		
CHARITABLE INSTI TU-			retary of state.....	1126	274
TIONS—			General provisions relat-		
Exempt from taxation...	7507	1625	ing to, of private cor-		
CHARTERS—			porations	1120-1139	266
Amending or changing			Pleading of corporations		
charter of railroad com-			in district and county		
panies	6417-6422	1377	courts	1822	407
May amend articles, when	6417	1377	Of railroad companies,		
shall be made.....	6418	1377	amending or changing		
How amendment, etc.,			of	6417-6422	1377
Shall take effect, when...	6419	1377	Forfeiture of.....	6425	1379
Shall not amend, when..	6420	1377	Of railroads, forfeiture		
May project, etc., branch			of	6633-6636	1415
line, etc., by amend-			Of railroad companies,		
ment, etc.....	6421	1377	forfeiture for illegal		
Branch line shall complete			issuance of stock....	6726	1443
ten miles first year, etc	6422	1377	Of state banks, suits to		
Forfeiture of charter of			forfeit	507	132
railroad companies	6633-6636	1415	Quo warranto to forfeit..	2131	456
Forfeiture for failure to			Of trusts, etc., forfeited		
build, etc.....	6633	1415	when	7800	1692
Branch lines.....	6634	1415	CHASTISEMENT—		
Relief of, for failure to			May be administered		
comply with law....	6635	1415	moderately to minors..	42	42
Neglect to make annual			CHATTEL MORTGAGES—		
report	6636	1416	.....	5654-5662	1196
Of towns and villages,			Reservation of title in		
how amended.....	1062	253	chattel mortgages....	5654	1196
Attorney general shall en-			All instruments intended		
force forfeitures of,			to operate as liens to		
when	4427	896	be recorded.....	5655	1196
Of bond investment com-			Duty of clerk receiving..	5656	1197
panies, forfeited when	1310	314	Copy to be received in		
Of cemetery corporations			evidence	5657	1197
to state what.....	1286	310	County clerk to keep		
Of corporations, to be			book, etc.....	5658	1197
forfeited on failure to			Satisfaction to be entered	5659	1197
pay franchise tax....	7399	1589	Property not to be re-		
Granted by legislature,			moved	5660	1198
suits to forfeit brought			Not to be recorded at		
where	1830	410	length	5661	1198
Under general incorpora-			Provision for destruction		
tion law, suits for for-			of	5662	1198
feitures, brought where	1830	410	Void, when	3970	820
Of life, health, and acci-			CHATELS—		
dent insurance compa-			Titles to, where recorded	6841	1467
nies, attorney general			CHIEF DEPUTY—		
to approve.....	4726	962	Game, fish and oyster		
			commissioner	4033	834

	Article	Page		Article	Page
CHILDREN—			CITATIONS—continued.		
Adopted, rights of, etc.	1-8	3	On appeal.....	2110	452
Admitted to orphan asylum, when.....	199	72	On issuance of writ of certiorari to county court	739	188
Custody of, in case of divorce of parents.....	4641	946	On issuance of writ of certiorari to justices' court	752	190
Dependent and neglected	2184-2190	466	Requisites of, in probate matters	3228	684
Half fare on street railways for, when.....	6742	1448	Service of, in final settlement of estates of decedents	3567	741
Juvenile courts for trial of delinquent.....	2191-2201	468	To attorneys at law, how issued, etc.....	328	93
Posthumous children, will to admit.....	7865	1711	To joint owners in partition suit.....	6098	1303
Born after making of will, to be provided for	7866	1711	To parties interested in estates of decedents	3247-3266	687
Under five years, fare free on street railways	6744	1449	To tenant in distress proceedings	5486	1153
			Service of citation in suits against cities in district and county courts	1859	416
CHURCHES—			CITIES AND TOWNS—		
No saloon within certain distance of.....	7447	1607	Cities, general provisions relating to.....	762-783	192
Property of exempted from taxation.....	7507	1624	Cities, town and villages may accept provisions of this title.....	762	192
Purchases of public lands for	5448	1143	Provisions of this title do not apply until accepted	763	192
			General powers of the corporation	764	193
CIDER—			Property, officers, etc., not affected by this title	765	193
Manufacture and sale of impure prohibited....	4590	936	Rights, actions, etc., not affected by this title..	766	193
			Cemetery lots exempt from forced sale.....	767	193
CIGARETTE DEALERS—			City exempt from giving bond in suits.....	768	193
Occupation tax on.....	7355	1575	Powers of city, etc., owning waterworks, sewers, gas and electric lights, to own land within or without limits	769	193
			May purchase, construct and operate systems inside or outside limits, and regulate, etc.....	770	194
CIRCUSES—			May sell water, etc., to persons outside, permit connections, etc.....	771	194
City council may license and tax.....	873	214	May prescribe kind of mains and appliances, etc., inspect, etc.; make regulations; prescribe penalties.....	772	194
Occupation tax on.....	7355	1572	Limits of corporation to remain the same until extended, etc.....	773	194
			Cities, town and villages may incorporate under...	774	194
CITATIONS—					
For removal of county officers	6044	1293			
From justices' courts.....	2321-2325	492			
In appointments of temporary guardians.....	4095	844			
In cases to annul probate of wills.....	3360	705			
In cases of injunctions..	4662	951			
In case of partition and distribution of estates of decedents.....	3528	734			
In cases of forcible entry and detainer.....	3944	815			
In escheat proceedings..	3188	677			
In error	2090	450			
In district and county courts, when to issue, etc.	1850-1885	415			
In quo warranto proceedings	6400	1372			
In suits for recovery of funds of estates of decedents from state treasury	3585	744			
In guardianship cases...	4063	839			
In suits of unincorporated joint stock companies..	6150	1311			

	Article	Page
CITIES AND TOWNS—		
continued.		
Validating incorporations	775	194
Territorial boundaries of cities and towns, etc...	777	195
Excessive territory to be relinquished	778	195
Validating certain incorporations	779	196
Discontinuing territory..	780	196
Adjoining inhabitants may become part of city, how.....	781	196
Segregating territory from city.....	782	196
Liable for debts, etc....	783	196
City council, general powers and duties of	813-902	206
City council, who shall preside over it, etc....	813	206
Shall hold stated meetings, may call special meetings, petitions, etc., to, etc.....	814	207
Attendance, etc., of officers	815	207
Salary of officers shall be fixed by city council, etc.	816	207
Power to pass, etc., ordinances, etc., and other powers.....	817	207
Style of ordinances.....	818	208
Ordinances, when and how published.....	819	208
Ordinances, etc., remain in force until, etc....	820	208
Published ordinances admissible in evidence...	821	208
Fines, etc., to be paid into city treasury.....	822	208
Council may remit fines and penalties.....	823	208
May prescribe duties of officers, etc.....	824	208
May create and regulate police	825	208
May prevent, trespasses, etc., and punish offenders	826	208
May regulate the carrying of weapons.....	827	208
May suppress riots, etc...	828	209
May punish vagrants, etc.	829	209
May restrain, etc., the sale, etc., of intoxicating liquors.....	830	209
May prevent sale of liquors in certain places	831	209
May close drinking houses, etc., on Sunday	832	209
May prevent and punish the keeping of disorderly houses, etc.....	833	209
May prohibit and punish the abuse of animals..	834	209
May establish, etc., work houses, etc.....	835	209

	Article	Page
CITIES AND TOWNS—		
continued.		
May compel convicts to labor on streets, etc...	836	209
Regulate hiring of convicts	837	209
May do, etc., to promote health and suppress disease	838	209
May make health and quarantine regulations	839	210
May establish hospitals, etc.	840	210
May regulate inspection, etc., of provisions, etc.	841	210
May regulate weight and quality of bread.....	842	210
May regulate butchers..	843	210
May define nuisances and punish persons guilty thereof, etc.....	844	210
May abate nuisances....	845	210
May compel the cleansing of premises.....	846	210
May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.....	847	210
May direct the location of certain establishments, etc.....	848	210
May regulate the burial of the dead, etc.....	849	211
May prevent, etc., dead animals, etc., being deposited within city limits	850	211
May tax, etc., dogs.....	851	211
Sanitary regulations by cities and counties....	852	211
Incorporated cities may establish libraries.....	853	211
Control over streets, alleys, etc.....	854	211
May prevent the incumbering of streets, etc., and cause unsafe buildings to be removed, etc.	855	211
City council may cause dangerous buildings, etc., to be removed...	856	212
May construct bridges, etc., sewers, sidewalks, etc.	857	212
May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc...	858	212
May prevent, etc., the driving of animals into or through the city...	859	212
May establish pounds, etc.	860	212
May prevent, etc., horse-racing	861	213
May regulate street railways	862	213

	Article	Page
CITIES AND TOWNS—		
continued.		
May control, etc., the laying of railroad track, etc.	863	213
May improve public grounds, cemeteries, etc.	864	213
To provide city with water, etc., water system not to be leased without vote, etc.....	865	213
May establish market, etc.	866	214
May provide light and gas for the city.....	867	214
May assess and collect taxes on street railways	868	214
May license, tax, etc., certain occupations.....	869	214
May license hackmen and prescribe their compensation, etc.....	870	214
May license, etc., peddlers, theaters, etc....	871	214
May license, etc., billiard tables, etc.....	872	214
May license, etc., circuses, etc.	873	214
May authorize proper officer to grant license, etc	874	214
Shall control the finances and property.....	875	214
Rate of interest on city indebtedness	876	214
Power to appropriate money, etc.....	877	215
Power to provide special fund for special purposes, etc.....	878	215
To appropriate revenues, and for what purposes; to issue bonds, etc....	879	215
City bonds shall specify what	880	215
Bonds shall be signed, etc., and payable where and when.....	881	215
May issue bonds for public improvements; regulations as to.....	882	215
Gulf cities may issue bonds for harbors, etc.	883	216
Interest and sinking fund tax to be levied, interest paid and bonds sold, etc.....	884	216
Board of examiners of finances	885	216
Duties of board.....	886	216
Compensation	887	216
Council to pass on such report	888	216
Statement of receipts and expenditures, etc., shall be published annually.	889	216
May pass ordinances to fund debt, etc.....	890	217

	Article	Page
CITIES AND TOWNS—		
continued.		
May compromise debts and issue bonds.....	891	217
Barred debts can not be compromised	892	217
Bonds when executed must be registered with comptroller	893	217
Bonds when issued, how disposed of, etc.....	894	217
Tax laws to remain in force	895	217
The method of liquidating compromise bonds	896	217
Laws to enforce collection continued in force, and all defenses to bonds cut off.....	897	218
Tax collector; liability; governor to appoint, when	898	219
Receiver of corporation may be appointed, when	899	219
Compromise bonds exempt from taxation and may be used to pay taxes	900	219
Other instances when debts may be compromised and bonds issued, etc.....	901	220
Official paper, and contract for publishing, etc.	902	220
Commission form of government	1070-1076	255
Election to determine... ..	1070	255
Qualification of voters, form of ballot.....	1071	255
Judges and clerks; election, etc.; order; effect	1072	255
Officers to be elected, etc.	1073	255
Clerk, etc., appointment, etc.	1074	255
Commissioners, powers and duties.....	1075	256
Meetings and compensation	1076	256
Corporation courts.....	903-922	220
Corporation court created	903	220
Jurisdiction	904	220
Judge or recorder elected or appointed how; term; mayor ex-officio recorder when.....	905	221
Recorder elected or appointed, when and how; discretion of council; term of office, etc.; vacancy; council may make mayor ex-officio recorder when..	906	221
Clerk of corporation court elected by council when, provided; term; duties	907	221

	Article	Page
CITIES AND TOWNS—		
continued.		
Right of trial before jury	908	222
Rules of pleading, practice and procedure...	909	222
Seal of corporation court	910	222
Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state, but no fees; process	911	222
Council to prescribe rules for collecting fees and costs, practice, etc.; rules in mean time...	912	222
Fines and costs paid into city treasury, etc....	913	223
Costs to be collected as provided by ordinances, but not greater than in justices' courts	914	223
Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure....	915	223
Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court.....	916	223
Process how served; defendant entitled to notice of complaint, if demanded	917	223
Writs of mayor, etc., may be executed anywhere in the county.....	918	223
Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited	919	223
Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committal; city liable to officers of appellate court, when; court to be always open.....	920	224
Appeals to what court; trial de novo; appeals, how governed.....	921	224
Until organization of corporation courts, municipal court as now established has jurisdiction, but thereafter abolished	922	224
Fire department.....	965-978	233
City council may regulate and control the erection of wooden buildings	965	233

	Article	Page
CITIES AND TOWNS—		
continued.		
May prohibit, etc., dangerous condition of chimneys, etc.....	966	234
May prevent the deposit of ashes in improper places	967	234
May require inhabitants to keep fire buckets, etc.	968	234
May regulate carrying on of business dangerous in promoting fires....	969	234
May regulate, etc., use of fireworks and firearms	970	234
May control, etc., the storing of gunpowder, etc.	971	234
May regulate, etc., the building of parapets and party walls.....	972	234
May compel owners of buildings to have scuttles, etc.....	973	234
May provide regulations for extinguishment of fires	974	234
Same subject.....	975	234
May procure fire engines, etc.	976	234
Buildings may be blown up, etc., when, and the damage in such case..	977	235
Damages satisfied, how..	978	235
Officers and their election	784-802	197
Municipal government to consist of certain officers to be elected, etc.	784	197
Manner of electing officers, etc.....	785	197
Election and term of office of mayor and aldermen	786	198
Time of holding election, and returns thereon...	787	198
Who are qualified voters for city officers.....	788	199
Managers of election shall be sworn; their powers and duties.....	789	199
Proceedings when vote challenged in cities and towns of 10,000 inhabitants and over.....	790	199
Proceedings in case of a tie vote.....	791	199
Who are eligible to the offices of mayor and aldermen	792	199
Member of city council ineligible to other office, and shall not be contractor surety, etc.	793	200
None but resident voters eligible to office.....	794	200
Resignation of officers...	795	200

	Article	Page
CITIES AND TOWNS—		
continued.		
Power of city council to remove officers.....	796	200
Vacancy, how filled.....	797	200
Election to fill vacancy ordered by commissioners' court, when.....	798	200
Election, etc., in such case, how conducted..	799	201
Outgoing officer shall deliver books, etc., to his successor	800	201
City council composed of mayor and aldermen, etc.	801	201
Wards of city to remain unchanged until, etc...	802	201
Officers, duties and powers of.....	803-812	202
Officers shall take official oath	803	202
Duties of mayor.....	804	202
Mayor may summon citizens to act as a special police force, etc.....	805	202
Powers of the mayor....	806	202
Ordinances and resolutions adopted shall not take effect until, etc...	807	203
May appoint police officers; salary, fees, tenure, etc.; bond; powers	808	203
Duties and powers of the marshal	809	203
Certain cities may dispense with office of marshal, etc.....	809	203
Duties of the secretary..	810	204
Treasurer shall give bond; his duties, etc...	811	204
Powers of city council over officers.....	812	205
Public utility corporations, rates and charges — regulation by council, etc....	1018-1024	245
City council may regulate rates	1018	245
Mayor not to accept franks, privileges, etc.	1019	245
Council may pass ordinances to protect company, etc.....	1020	245
Company to make reports	1021	245
Penalties	1022	246
City council of city owning plants may regulate rates. Also may establish and operate plants, etc.....	1023	246
This chapter does not repeal, what.....	1024	246
Public utility corporations, rates and charges — regulation by court.....	1025-1032	247

	Article	Page
CITIES AND TOWNS—		
continued.		
Extortionate rates unlawful, district court to regulate, etc.; provided, etc.....	1025	247
City council to pass resolution, etc.; copy delivered to president, etc.	1026	247
After twenty days, suit in district court, if, etc...	1027	247
What to be considered in fixing rates, etc.....	1028	247
Books to be produced, rate to yield ten per cent, and to stand three years and less, etc.....	1028	248
Appeal may be taken, etc.	1029	248
Upon judgment fixing rate, decree enforcing same, etc., duty of attorney general, etc....	1030	248
What public utilities herein included.....	1031	248
Any city incorporated under special charter may avail itself of provisions, etc.....	1032	249
Sanitary department... 979-998		236
City council map appoint health physician etc.....	979	236
Power to make regulations in regard to pestilence and disease.....	980	236
Owner, etc., of public conveyance, conveying into city person sick with contagious disease, liable to punishment, when.....	981	236
Any person liable to punishment, when....	982	237
Inn-keeper, physician, etc., shall report persons sick with smallpox, etc.....	983	237
Power of council to have city cleansed, etc.....	984	237
Health physician may be authorized to do what.	985	237
Cities to regulate sewer, etc., connections, draining, plumbing.....	986	237
Examining and supervising board of plumbers	987	238
Composition of board....	988	238
Term regulated and vacancies filled by mayor and aldermen, etc.....	989	238
Inspector of plumbing elected, when and how	990	238
Board to examine plumbers and plumbing inspector, licenses and register of.....	991	238

	Article	Page
CITIES AND TOWNS— continued.		
License not to issue for more than one year, renewable, etc.....	992	238
License fees; disposition of	993	238
Members of board to receive no compensation	994	238
License not transferable	995	238
Examination and fee not required of same person but once.....	996	238
No license until examination passed.....	997	239
Every plumbing firm to have one member a practical plumber.....	998	239
Streets and alleys....	999-1005	239
Power of city council to have streets, etc., graded, etc.....	999	239
Estimate of cost of improvements shall be made, etc.....	1000	239
Property levied on and sold for improvements, when and how, etc...	1001	240
Suit against owner of property for improvement tax, when, etc...	1002	240
Condemnation of property	1003	240
Condemnation of property by private corporations	1004	240
Rules for condemning property for railways followed	1005	241
Street improvements	1006-1017	241
Powers acquired by accepting benefits of this chapter, and by whom	1006	241
Terms defined.....	1007	241
Governing body to order improvement of highways, etc.....	1008	242
Cost of improvements, how paid, etc.; assessments	1009	242
What cost assessed against railroad, etc., special tax lien enforceable, how.....	1010	242
Cost how assessed; certificates; costs; attorneys' fees; liens.....	1011	242
No lien on exempt property; owner personally liable; lien not invalidated, how, enforcement	1012	243
Notice and hearing before assessment, etc., no assessment in excess of benefit	1013	243
Governing body may correct mistake, etc.; in		

	Article	Page
CITIES AND TOWNS— continued.		
assessment proceedings, etc.; may reassess, etc.....	1014	243
Suit to set aside or correct assessment.....	1015	243
Referendum on adoption of provisions of this chapter; ordinances to carry out same.....	1016	244
Provisions of this chapter cumulative; subordinate to special charter	1017	244
Taxation	923-937	225
Ad valorem tax.....	923	225
May levy and collect tax for improvements, buildings, etc.....	924	225
May levy tax for interest and sinking fund on certain bonds for current expenses, permanent improvements, roads, etc.....	925	225
Cities of ten thousand inhabitants and over to levy and collect tax; validating act.....	926	225
Poll tax.....	927	226
Occupation tax.....	928	226
Occupations that are subject to taxation.....	929	226
Same subject.....	930	226
Power of city council to provide for assessing, etc., taxes.....	931	226
Collection of license tax, etc.	932	226
Occupation license to be suspended or revoked, etc., when.....	933	227
Real estate includes what	934	227
Personal estate includes what	935	227
City council may provide for the exemption of property from taxation, etc.	936	227
Taxes for payment of indebtedness	937	227
Taxes, assessment and collection of.....	938-964	228
Power of city council to provide for collection of taxes.....	938	228
Power of city council to regulate tax lists, assessment of taxes, etc..	939	228
Duty of taxpayers to render inventory of property, etc.....	940	228
Assessor and collector, powers, duties, bond, etc.	941	228
Duty of assessor and collector to make list of personal property, etc.	942	229

	Article	Page
CITIES AND TOWNS—		
continued.		
Unrendered property shall be ascertained, etc., by assessor	943	229
Assessment for back taxes	944	229
Board of equalization, how constituted.....	945	229
Annual meetings of board	946	230
Value of property, how fixed	947	230
Shall equalize value of lots	948	230
Lists of unrendered property to be examined... ..	949	230
Notice to taxpayer, how given	950	230
Valuation lowered, when	951	230
Rolls to be approved, when	952	230
Action of board final... ..	953	231
Compensation of board and secretary.....	954	231
Oath of members.....	955	231
Duty of assessor and collector in regard to collection of taxes.....	956	231
Property of taxpayer shall be levied on and sold for taxes, when.....	957	231
Assessor and collector shall make deed to purchaser of property sold for taxes; effect of deed, right of redemption, etc.....	958	231
Sale may take place at any other time than that first advertised, and may be continued from day to day.....	959	232
Property shall be struck off to city, when.....	960	232
Certain provisions of general tax law applicable, when.....	961	232
Property of infant, etc., may be redeemed, when	962	233
Redemption of lands sold for taxes.....	963	233
Taxes, etc., collectible in current money only... ..	964	233
Towns and villages..1033-	1069	249
May be incorporated, when	1033	249
Towns and villages incorporated, when.....	1034	249
Adjoining territory, how added	1035	250
County judge to order election to determine, etc.	1036	250
Officers appointed to hold election	1037	250
Qualifications of electors	1038	250
Tickets, written or printed	1039	250
Returns of election.....	1040	250

	Article	Page
CITIES AND TOWNS—		
continued.		
Duty of county judge to make an entry.....	1041	250
Powers of corporation... ..	1042	250
Election of mayor, etc... ..	1043	251
Who are eligible for offices	1044	251
Commission of mayor, etc.	1045	251
Officers—term of office... ..	1046	251
Annual election of officers	1047	251
Quorum may pass by-laws	1048	251
May prevent and remove nuisances, regulate markets, etc.....	1049	251
Board of aldermen may levy tax.....	1050	251
Aldermen may prescribe fine, etc.....	1051	252
Vacancies, how filled....	1052	252
Additional officers may be appointed	1053	252
Board must prescribe amount of bonds, etc... ..	1054	252
If bond is not given in five days after, etc... ..	1055	252
Powers, duties and fees of constable.....	1056	252
Taxes, by whom collected, etc.; sale of property for, etc.....	1057	252
Real estate sold may be redeemed, etc.....	1058	252
Where purchaser is a non-resident	1059	252
Ordinances not to be enforced, until.....	1060	252
Where property is liable for taxes and owner is unknown	1061	253
Charters amended, how... ..	1062	253
Takes effect, when.....	1063	253
Property of re-incorporating city or town, vested how; assumption of indebtedness.. ..	1064	253
Certain incorporations invalidated	1065	253
Condemnation of railroad right of way and roadbed for streets.....	1066	253
Proceedings for.....	1067	253
Duty of railroad to keep in condition for travel portion of roadbed and right of way crossed by street; penalty.....	1068	254
Condemnation for same purpose by county commissioners	1069	254
Abolition of Corporate existence	1077-1096	256
Abolition of corporation provided	1077	256
Petition and election to abolish, provided, etc. ..	1078	256

	Article	Page
CITIES AND TOWNS—		
continued.		
Qualified voters at such election; duty of county judge.....	1079	257
Receiver of abolished corporation; appointment; bond, etc.....	1080	257
Duties of receiver.....	1081	257
Claims against city, proceedings to collect....	1082	257
Limitation not to run, when	1083	258
No receiver for corporation dissolved, when etc.	1084	258
No suit to be brought on protested claims, after what time.....	1085	258
Payment of claims, and priority; sale of property in hands of receiver	1086	258
Court to levy tax, when, etc.	1086	258
County assessor and collector to assess and collect tax; compensation	1087	259
Suits by receiver against delinquent taxpayers..	1088	259
Compensation of receivers	1089	259
Receivers compensation and costs prior claims	1090	259
Claims paid pro rata according to priority....	1091	259
Balance turned over to trustees, etc., of public schools	1092	259
Public free school management, etc.....	1093	259
Collection of municipal or school taxes.....	1094	259
Public buildings of abolished corporation.....	1095	260
Corporation may be abolished, how.....	1096	260
Commissioners' court may co-operate with in sanitary regulations...	2251	481
Construction of seawalls by	5585-5594	1170
Exclusive control by, of independent school districts	2867-2883	612
May regulate placing of telegraph poles.....	1235	296
Ordering elections in, etc.	2934	627
Party nominations for officers of.....	3170-3171	671
Property of exempt from forced sales.....	3790	777
Right of to collect delinquent taxes.....	7693	1670
CITY ATTORNEYS—		
To conduct prosecutions in corporation courts..	911	222

	Article	Page
CITY COUNCILS—		
Duties of, as to transfer of messages of telegraph and telephone companies	1240	298
Duties in construction of seawalls and breakwaters	5585-5594	1178
How composed.....	801	201
Issuance of school house bonds by.....	2874	613
May compromise and fund indebtedness....	687	174
May exempt property from taxation.....	936	227
May control location of cemeteries	1298	311
May make appropriations for militia.....	5888	1258
May make mayor ex-officio recorder, when....	906	221
May regulate and control erection of buildings, etc. Other duties as to safeguarding against fires	966-978	233
May regulate rates of public utility corporations, etc.....	1018-1032	245
Members of, ineligible to other offices, etc.....	793	200
Powers of for assessing taxes	931	226
Power in collection of city taxes.....	938	228
Powers of, over city officials	812	205
General powers and duties of	813-902	206
Power to remove officers.	796	200
Powers and duties as to sanitation of cities..	979-998	236
Powers and duties as to streets and alleys..	999-1017	239
To appoint police officers.	808	203
To prescribe rules for collecting fees, etc., in corporation courts....	912	222
To take bids for city depositories	2454-2460	518
CITY DEPOSITORIES—		
	2454-2460	518
CITY ELECTIONS—		
Qualifications for voting in	2940	629
Regulations as to.....	2989	639
CITY HEALTH OFFICER—		
Office created, and duties	4540	924
CITY LIMITS—		
Extension of, for school purposes	2883	615
CITY OFFICERS—		
Removal of mayors and aldermen	6065-6073	1296

	Article	Page		Article	Page
CITY OFFICERS — cont'd.				CLAIMS—continued.	
Causes of removal.....	6065	1296		Against estates of wards	
Complaint against an alderman and proceedings thereon.....	6066	1296		.....4113-4121	847
Who shall try an alderman	6067	1296		Against estates of wards	
Proceedings against a mayor	6068	1296		.....4206-4237	862
Who shall try a mayor... ..	6069	1296		Presentment of, against estates of decedents....	
Rules which govern proceedings and trial....	6070	1296		.....3430-3457	717
Judgment	6071	1296		Against state, comptroller shall audit.....	4329 879
Officer removed ineligible for two years.....	6072	1296		For improvements in trespass to try title..7760-7768	1685
This chapter does not apply, when.....	6073	1296		County treasurer to report registration of... 1441	339
To collect municipal subsidy taxes.....	7717	1678			
Removal of.....	6065-6073	1296		CLEARING HOUSE—	
				Selected when two or more county depositories	2446 517
CITY SECRETARY—				CLERKS—	
Duties of.....	810	204		Of commissioners' courts	2279 484
				Of corporation courts, election, etc.....	907 221
CITY TREASURER—				Of county courts... 1743-1762	394
Custodian of seawall funds	5593	1180		Of county courts, fees of	3860-3863 796
Shall give bond, etc.....	811	204		General provisions... 3880-3926	804
Shall register bonds issued in cases of disaster	675	171		Of county court of Tarrant county for civil cases	1807 404
Fines prescribed by city paid to.....	822	208		Of the courts of civil appeals	1596-1605 366
				Of the court of criminal appeals	1662-1666 380
CIVIL BUSINESS—				Of Dallas county court at law	1794 402
Terms of county courts for	1776-1778	399		Of district courts, certificate, etc., in appeals..	2114 453
				Of district court to furnish stationery to jury commissioners	5130 1077
CIVIL CASES—				Of district courts, fees of	3855-3859 794
County Court of Tarrant county for.....	1799-1811	403		General provisions... 3880-3926	804
Juries in.....	5114-5220	1074		Of district and county courts may require security for costs.....	2049 443
Jurisdiction of justices of the peace in.....	2291	487		Of district and county courts, duties of, when petition filed.....	1813 406
Oaths of jurors in... 5212-5213	1089			Of district and county courts, duties on change of venue.....	1916 425
Formation of jury for trial of.....	5202-5211	1088		Of elections.....	2920 624
				Of Galveston and Harris county criminal district court	2208-2215 473
CLAIMANT—				Secretary of state may appoint	4318 878
For property must make affidavit, in trial of right of.....	7769	1687		Of supreme court... 1530-1538	352
Of mines, rights, etc....	5909	1264		Of supreme court and courts of civil appeals	3846-3848 791
Of personal property levied on, must give bond	257	81		General provisions... 3880-3926	804
				CLOCK PEDDLERS—	
CLAIMS—				Occupation tax on.....	7355 1572
Against counties, duty of auditors as to.....	1482	345			
Against counties, registration of, etc....	1432-1438	338			
Against defunct cities and towns	1077-1096	256			
Against estates of decedents	3330-3349	701			
Against estates of decedents, classification and payment of... 3458-3471	721				

	Article	Page
CLOTHING—		
For state prisoners.....	6219	1327
COAL MINING—		
State mining board and coal mining regulations	5923-5946	1268
State mining board, duties of.....	5923	1268
Appointment, qualifications, and terms of office of members of board	5924	1268
Duty of board to select mining inspector; place of meeting.....	5925	1269
Qualifications of mining inspector; term of office	5926	1269
State mining inspector under supervision of mining board; how removed from office....	5927	1269
Semi-annual meeting of board to receive reports of inspector.....	5928	1269
Compensation of members of board.....	5929	1269
Inspector to enforce law; salary and expenses...	5930	1269
Discrimination prohibited	5931	1269
Bond of inspector; liability for discrimination.	5932	1269
Mine shafts, how constructed and equipped..	5933	1270
Mine must be supplied with suitable props...	5934	1270
Abandoned working to be cut off.....	5935	1270
Ventilation	5936	1271
Same	5937	1271
Dangerous gases and fires; inspector must be notified	5938	1271
Cages, how operated....	5939	1271
Powder	5940	1272
Inspector may require use of safety lamp....	5941	1272
Rules to be observed by miners.....	5942	1272
Rules to be posted.....	5943	1272
Coal scales.....	5944	1272
Employes may employ check weighman.....	5945	1272
Kind of oil to be used...	5946	1272
COAL SCALES—		
To be provided, etc., for mines	5944	1272
COAST COUNTIES—		
May buy and lease causeways and bridges.....	7019	1503
COAST LANDS—		
Deep water corporations may purchase from state	1254	302

	Article	Page
C. O. D. SHIPMENTS—		
Occupation tax on handling liquors C. O. D.	7483-7486	1618
Amount of tax.....	7483	1618
Penalty for failure to pay tax.....	7484	1618
No one required to keep office for handling liquors C. O. D.....	7485	1618
Invalidity of part not to affect whole chapter..	7486	1619
In local option territory, occupation tax on.	7483-7486	1618
COLD STORAGE—		
Tax on persons soliciting orders or operating cold storage for intoxicating or non-intoxicating beverages in local option districts 7479-7482	7479-7482	1617
Amount of tax for soliciting orders.....	7479	1617
Amount of tax for keeping cold storage.....	7480	1617
Application for license..	7481	1617
County clerk to report licenses issued.....	7482	1618
Tax on persons operating, in local option territory	7479-7482	1617
COLLECTING AGENCIES—		
Gross receipts tax on....	7372	1580
COLLECTION OF TAXES—		
Election and qualification of the collector	7605-7662	1650
Collector; election and term of office.....	7605	1650
Vacancies, how filled....	7606	1650
Sheriff collector, when..	7607	1650
Bond and oath.....	7608	1650
New bond, etc.....	7609	1651
Bond for county taxes...	7610	1651
All bonds to be first approved	7611	1651
May appoint deputies....	7612	1651
Rolls to be warrant, etc.	7613	1651
Collector for all taxes...	7614	1651
Collections, when to begin	7615	1651
Shall keep office at county seat.....	7616	1652
Tax receipts and requisites	7617	1652
Quarterly reports, requisites of.....	7618	1652
Duties of clerk and collector	7619	1653
Report not to be approved, unless.....	7620	1654
List of delinquents and insolvents to be made out	7621	1654
Collector to endeavor to collect	7622	1654
Non-residents	7623	1654

	Article	Page
COLLECTION OF TAXES—		
continued.		
Forced collections to begin, when.....	7624	1655
Personal property may be pointed out.....	7625	1655
When property about to be removed from county	7626	1655
Tax lien superior to assignment, attachment, inheritance or devise, except	7627	1655
Executions upon property in other counties than that where taxes are due	7628	1655
Tax collector not allowed credit for delinquents, when	7629	1656
All property liable for taxes	7630	1656
Sales of property, how made	7631	1656
If property is insufficient	7632	1656
Sales of real property, when made.....	7633	1656
Advertisement of real property for sale.....	7634	1656
List to be posted.....	7635	1657
May be continued from day to day.....	7636	1657
Homesteads liable only for	7637	1657
Sales of land, how made	7638	1657
Tax deed, and its requisites	7639	1657
Sales to be reported to commissioners' court..	7640	1657
Redemption of land sold for taxes.....	7641	1658
Redemption of land within two years.....	7642	1658
Redemption from private purchasers.....	7643	1658
Receipt of collector's notice, when.....	7644	1658
Relief, when.....	7645	1658
Same	7646	1658
Certificate of redemption from collector, notice, when	7647	1659
Lands to bid in for state, when.....	7648	1659
May redeem, how.....	7649	1659
If not redeemed.....	7650	1659
May redeem by paying costs	7651	1659
Commissioners' court to sit as board of inquiry, when	7652	1660
Collector to file complaint, when.....	7653	1660
Compensation	7654	1660
On occupation taxes.....	7655	1660
Compensation for one levy only, when.....	7656	1660
Taxation upon lands in unorganized counties..	7657	1660

	Article	Page
COLLECTION OF TAXES—		
continued.		
Payments of moneys....	7658	1661
Same	7659	1661
Notification to pay.....	7660	1661
District and county attorneys to sue for taxes on personal property..	7661	1661
Limitation not available to delinquent taxpayer	7662	1661
COLLECTORS—		
Of taxes, fees of.....	3872	801
General provisions..	3880-3926	804
See "Tax Collectors."		
COLOR OF TITLE—		
Defined	5673	1201
COMMERCIAL AGENCIES—		
Gross receipts tax on....	7372	1580
COMMERCIAL FERTILIZERS—		
Duty of professor of chemistry in agricultural and mechanical college in regard to...	2670	566
COMMISSIONERS—		
Commissioner of agriculture	4435-4484	897
Election and qualification	4435	897
Term of office.....	4436	897
Oath and bond.....	4437	897
Location of office.....	4438	897
Chief clerk.....	4439	898
Chief clerk shall act, when	4440	898
Same	4441	898
Seal	4442	898
Duties	4443	898
Shall be member of board of directors of A. & M. college	4444	900
Shall make report.....	4445	900
Report printed and distributed	4446	900
Shall co-operate with A. & M. college.....	4447	900
Duties as to irrigation...	4448	900
To employ engineers....	4449	900
Shall maintain bureau of cotton statistics.....	4450	900
Public ginners, who are; to obtain certificates..	4451	900
Affidavit	4452	901
Certificate furnished commissioner	4453	901
Commissioner to furnish blanks	4454	901
Ginners to report to commissioner	4455	901
Reports opened and made public, when.....	4456	901
Revealing contents of reports punishable.....	4457	902
Shall supervise protection of fruit trees.....	4458	902

	Article	Page
COMMISSIONERS—cont'd.		
Proceedings where diseased trees, etc., are found	4459	902
Nurseries to be examined and certificates issued	4460	903
Shipments of nursery stock to be accompanied by certificate....	4461	903
Nursery stock shipped into state; certificate of inspection	4462	903
Transportation companies not liable, when.....	4463	904
Commissioner to revoke certificate, when.....	4464	904
Provisions, how enforced	4465	904
Provisions, how enforced by prosecution.....	4466	904
Terms defined.....	4467	905
Rules and regulations by commissioner	4468	905
Reward	4469	905
Expenses and claim for reward	4470	905
Farmers to make affidavit	4471	906
Discoverer to report to governor	4472	906
Farmers appointed to experiment	4473	906
Oath and preliminaries before payment of reward	4474	906
Same	4475	907
Board to locate agricultural and experimental stations established....	4476	907
Additional stations located	4477	907
Stations may be abandoned or located elsewhere	4478	908
In locating, donations may be considered....	4479	908
Bulletins may be printed and circulated.....	4480	908
Stations may be discontinued at pleasure of board	4481	908
Board may employ assistants, purchase implements, etc.....	4482	908
Appropriation for.....	4483	908
Board of directors of A. & M. college to assist U. S. government in maintaining station in Seventeenth representative district.....	4484	908
Salary of.....	7051	1509
May sell standard weights	7840	1705
Commissioner of deeds.....	1097-1102	261
Appointment of commissioner and term of office	1097	261
Oath of commissioner....	1098	261

	Article	Page
COMMISSIONERS—cont'd.		
Commissioner may administer oath or affirmation—their effect...	1099	261
Force of acknowledgments thus taken.....	1100	261
Commissioners to take depositions	1101	261
Commissioners' seal.....	1102	261
Commissioners to assess damages in condemnation of land by United States government.....	5255	1100
Commissioners to assess damages in condemnation proceedings.....	6508	1391
Dairy and food commissioner	4575-4595	931
Commissioners of drainage districts.....	2585	549
Game, fish and oyster commissioner	3974-3979	821
Commissioners to designate homestead.....	3807	779
Commissioner of General Land Office—		
Duties of as to university lands	2635	562
To direct surveys of county lines, when...	1382	328
Not to place county line on map, until.....	1386	329
Fees of.....	3842	788
General provisions.....	3880-3926	804
Duties, etc.....	5280-5292	1104
To have surveys made, when	5347	1114
Duties as to land patents	5361-5382	1118
Duties as to surveys of mineral lands.....	5350	1115
To co-operate with United States geological survey	5351	1115
Other duties as to surveys	5353-5359	1116
To correct abstracts, etc.	5389	1123
Duties as to sale and lease of public school and asylum lands....	5405-5459	1126
Duties as to lease of certain public lands.....	5450-5459	1144
Duties as to recovery of public lands.....	5460-5474	1148
Salary of.....	7049	1509
To furnish abstracts to assessors	7552	1636
His election, term of office	4392	891
Vacancies, how filled....	4393	891
His bond and oath.....	4394	891
Seal of office.....	4395	891
General duties.....	4396	891
To give information to the governor, etc.....	4397	891
Chief clerk, his bond, etc.	4398	891
May act as commissioner, when	4399	892

	Article	Page
COMMISSIONERS—cont'd.		
Spanish translator.....	4400	892
His duties	4401	892
Receiving clerk	4402	892
Shall receive and receipt for money.....	4403	892
Shall register receipts and payments.....	4404	892
Shall report to the gov- ernor	4405	892
If defaulting, to be re- moved	4406	893
Chief and other drafts- men	4407	893
Appointment of clerks..	4408	893
Salary of chief draftsman, etc.	4409	893
All employes may be re- moved by the commis- sioner	4410	893
C o m m i s s i o n e r o f i m- p r o v e m e n t d i s t r i c t s . . .	5545	1168
Commissioner of insur- ance and banking 4485-4508	4485-4508	909
Appointment of.....	4485	909
Term of office.....	4486	909
Vacancies in office, how filled	4487	909
Oath and bond.....	4488	909
Clerks, may appoint....	4489	909
Chief clerk, duties of....	4490	910
Shall be styled Commis- sioner of Insurance and Banking, and have a seal	4491	910
Ineligibility of certain persons	4492	910
Duties of commissioner— Shall execute the laws	4493	910
File articles of incorpora- tion and other papers..	4493	910
Shall calculate net value of policies.....	4493	910
Shall see that company has net value of poli- cies on hand.....	4493	910
May accept the valuation of commissioners of other states.....	4493	910
Shall see that companies furnish certificate....	4493	911
Shall calculate the reserve on fire insurance....	4493	911
Shall charge premiums in marine and inland in- surance	4493	911
Duties when company's capital is impaired....	4493	911
Shall publish result of ex- amination	4493	911
Shall suspend or revoke certificate of authority	4493	911
Shall report to attorney general	4493	911
Shall furnish blanks....	4493	911
Shall keep records.....	4493	912
Shall give certified copies	4493	912

	Article	Page
COMMISSIONERS—cont'd.		
Shall report annually to governor	4493	912
Shall send copy of reports to	4493	912
Shall report laws to com- missioners of other states, when.....	4493	912
Shall see that no company does life business, when	4493	912
Shall admit mutual com- panies, when.....	4493	912
May change form of an- nual statement.....	4494	912
Duties when parties re- fuse to appear and tes- tify	4495	912
Sheriff and other peace officers shall execute service	4496	912
Shall issue certificate of authority, when; shall revoke certificate when suit removed to federal court	4497	912
Shall compute reserve lia- bility of companies...	4498	913
Shall calculate reinsur- ance reserve.....	4499	913
Shall examine companies, have free access to books, may revoke or modify certificate, ex- penses for examina- tions	4500	914
Powers and duties of commissioner in cases of examination.....	4501	914
Transfer of securities, must be countersigned	4502	914
State treasurer, duty in regard to transfers...	4503	914
Free access to records, books, etc., given to commissioner and state treasurer	4504	915
Instruments executed and copies of papers made evidence	4505	915
Commissioner authorized to make inquiries of companies	4506	915
Commissioner's report...	4507	915
Valid final judgment, in- surance company's cer- tificate of authority re- voked, when.....	4508	915
To give directions to sav- ings banks, etc.....	428	115
Duties under bank guar- anty law.....	445-517	120
Further duties concerning state banks.....	518-574	134
No bank to make loan to.	571	150
Fees of.....	3844	790
General provisions..	3880-3926	804

	Article	Page		Article	Page
COMMISSIONERS—cont'd.			COMMISSIONERS—cont'd.		
Duties of, in incorporation of insurance companies	4705-4723	958	Commissioners to partition real estate	6101	1304
Salary of	7052	1509	Commissioners of pilots	6299-6304	1347
Duties as to life, health and accident insurance companies	4724-4774	961	Commissioner of pensions—Duties, etc.	6283-6285	1340
Duty as to investment by insurance companies in Texas securities.	4775-4790	976	Salary of	7076	1513
Duty as to assessment or natural premium companies	4791-4793	982	Commissioner of labor statistics.		
Duty as to mutual assessment accident insurance home companies	4794-4808	983	Expenditures of money		
Duty as to co-operative life insurance companies	4809-4826	987	Salary of	7077	1513
Duty as to fraternal beneficiary associations	4827-4861	993	Library and historical commission	5599-5609	1182
Duty as to fire and marine insurance companies	4862-4875	1004	Railroad commissioners.	6653-6716	1420
Duty as member of state insurance board.	4876-4904	1009	Road commissioners	6946-6952	1484
Duty as to mutual fire, storm and lightning insurance companies	4905-4918	1020	Commissioners' court may employ four road commissioners, etc.	6946	1484
Duty as to printers mutual fire and storm insurance companies	4919-4921	1024	Powers and duties, etc.	6947	1484
Duty as to mutual burglary insurance companies	4922-4927	1025	by, etc.	6948	1485
Duty as to fidelity, guaranty and surety companies	4928-4940	1027	Court to see to expenditures	6949	1485
Duty as to employers liability insurance companies	4941-4942	1032	May make rules, etc., for working roads, etc.	6950	1485
General duties of.	4943-4972	1034	May accept donations, etc.	6951	1485
Jury commissioners for county courts.	5132-5134	1077	Law cumulative, etc.	6952	1486
Proceedings in selection of jurors	5135-5150	1078	Commissioners for San Jacinto Park.		
Jury commissioners for district courts.	5122-5131	1076	Appointment, etc.	6396	1371
Proceedings in selection of jurors.	5135-5150	1078	Commissioners of state prisons.		
Commissioner of labor—			Appointment, etc.	6175	1315
Duty of, as to the baling of cotton.	1324	318	State levee and drainage commissioner	5525-5529	1163
To have control of bureau of labor statistics	5235-5246	1095	State tax commissioner.		
Live stock sanitary commissioners	7312-7324	1559	Appointment of.	7407	1592
Commissioners for navigation districts—			Commissioners' courts	2236-2282	478
Appointment, etc.	5968	1279	COMMISSION FORM OF GOVERNMENT—		
Duties, etc.	5991-6001	1285	For cities and towns 1070-1076	255	
Commissioners for partition and distribution of estates of decedents.	3527-3562	734	Election to determine.	1070	255
Costs of.	3526	750	Qualification of voters, form of ballot.	1071	255
			Judges and clerks; election, etc.; order; effect	1072	255
			Officers to be elected, etc.	1073	255
			Clerk, etc., appointment, etc.	1074	255
			Commissioners, powers and duties.	1075	256
			Meetings and compensation	1076	256
			COMMISSION MERCHANTS AND FACTORS—	3826-3832	784
			Commission merchant defined	3826	784
			Bond of.	3827	784
			Bond made where; suit in same county.	3828	784

	Article	Page		Article	Page
COMMISSION MERCHANTS AND FACTORS—con- tinued.				COMMUNITY PROPERTY— continued.	
Factors, etc., prohibited from being interested in their own sales....	3829	784		Application for commu- nity administration...	3595 745
Factor to render account of sales and give partic- ulars under penalty.	3830	784		Court shall appoint ap- praisers	3596 745
No charge allowed for mending, etc., unless the same has been actu- ally done.....	3831	785		Inventory, appraisalment, and list of indebted- ness, sworn to and re- turned, etc.....	3597 746
Drawbacks, rebates, etc., prohibited	3832	785		Bond of survivor.....	3598 746
Occupation tax on.....	7355	1571		Action of court upon in- ventory, etc.....	3599 746
Occupation tax on.....	7355	1573		After order of court, sur- vivor has control, etc..	3600 746
Shall employ only public weighers	7833	1704		Survivor shall keep ac- count, etc.....	3601 746
COMMISSIONS—				New appraisalment and bond may be required.	3602 746
To county judge.....	3850	793		Duty of survivor to pay debts	3603 747
General provisions....	3880-3926	804		Creditor may have sur- vivor to make exhibits, when	3604 747
To take depositions....	3655	756		Action of the court upon exhibit	3605 747
For garnishee, when re- siding in another county	283	86		Sureties on survivor's bond shall be cited, when	3606 747
Of mayor, etc., of towns and villages.....	1045	251		Creditor may sue upon bond, when.....	3607 747
For military service....	5803	1234		Action of court when sur- vivor fails to make ex- hibit	3608 747
Of notaries public.....	6015	1288		Surviving wife shall have same rights, etc.....	3609 747
To take testimony in suits against trusts, etc....	7815	1697		"Survivor" applies alike to sane and insane per- sons	3610 748
COMMITTEES—				Rights of wife cease when she marries again....	3611 748
Legislative investigating committees	5517-5524	1159		Persons entitled to estate may have partition, when	3612 748
COMMON CARRIER—				Recovery of insane spouse stops action hereunder.	3613 748
Defined	6579	1402		Duty of guardians in such cases.....	3614 748
See "Carriers."				Estates of decedents..	3206-3639 680
COMMON LAW—				Survivor may have parti- tion of.....	3556 739
Duties and liabilities of common carriers to be governed by.....	707	181		Shall be held by executor, etc., until.....	3559 739
Rules of evidence, when followed	3687	760		Of estates of decedents, administration of.	3592-3614 745
Shall govern in suits against pawnbrokers..	6171	1314		COMMUTATION—	
COMMON SCHOOL DIS- TRICTS—				Of life or long term sen- tence	6218 1326
Regulations as to...	2815-2849	600		COMPLAINTS—	
COMMUNITY ESTATES—				Against attorneys at law, how made, etc.....	327 93
Rule as to in descent and distribution	2469	523		In corporation courts, how commenced, etc..	911 222
COMMUNITY PROPERTY—				Against road hands....	6933 1482
Administration of...	3592-3614	745			
Community property lia- ble for community debts, etc.....	3592	745			
Where there is no child administration is not required	3593	745			
Where there is a child survivor holds subject, etc.	3594	745			

		Article Page			Article Page
COMPRESSES—			COMP'TROLLER—cont'd.		
Requirements of, in re-			Comptroller and treasurer		
balancing cotton.....	1322-1324	318	to examine and cancel		
			warrants	4361	885
COMP'TROLLER—	4320-4361	878	To have abstracts printed,		
Election and term of office	4320	878	etc.	5391	1123
Vacancy, how filled.....	4321	878	Duty of, as to agricul-		
Bond	4322	878	tural and mechanical		
Seal	4323	879	college	2681	567
Accounting officer for			Railroad subsidy bonds		
state	4324	879	to be registered in		
Shall keep account be-			office of.....	684	173
tween state and U. S....	4325	879	City bonds to be regis-		
Examine accounts of per-			tered with.....	893	217
sons indebted to state.	4326	879	To register county and		
Accounts to be verified by			municipal bonds.....	620	161
affidavit	4327	879	To register bonds of im-		
Shall require statements..	4328	879	provement districts....	5554	1171
Audit claims against state	4329	879	To register bonds issued		
Certain claims to be pre-			in cases of disaster....	673	171
sented before legisla-			To keep accounts of es-		
ture convenes.....	4330	879	cheated estates.....	3199	678
Claims to have priority...	4331	879	Hunting licenses reported		
Warrants on treasurer...	4332	880	to	4028	833
No warrants to be drawn,			May revoke liquor deal-		
unless	4333	880..	ers' licenses, when....	7436	1603
Shall prescribe forms....	4334	880	Application for pension		
Allowance to tax collector	4335	880	from Mexican war vet-		
Comptroller's account to			eran to be filed with...	6260	1335
be approved by secre-			Property listed by, when.	7710	1676
tary of state.....	4336	880	To notify attorney general		
Bond, etc., to be de-			of conversion, etc., of		
posited in office.....	4337	880	sinking fund of coun-	702	177
Audited claims to be re-			State treasurer and attor-		
ported to legislature..	4338	880	ney general to make		
Accounts to be closed,			rules as to state de-		
when	4339	880	positories	2432	513
Shall render account to			Duties of as to school		
governor, when.....	4340	880	funds	2744-2749	581
Shall preserve books, rec-			Salary of.....	7049	1509
ords, etc.....	4341	880	Fees of.....	3843	790
To be notified of deficien-			General provisions..	3880-3926	804
cies, when.....	4342	881	Non-residents to pay tax		
Chief clerk.....	4343	881	to	1342	321
Deposit warrants.....	4344	881	Member of board to cal-		
Deposit receipts.....	4345	882	culate tax rate.....	7349	1569
Claims and accounts.....	4346	882	To certify tax rate to tax		
Claims to be classified...	4347	882	assessors	7352	1570
List of claims to be kept..	4348	883	Duty as to occupation		
Pay warrants.....	4349	883	taxes	7355-7368	1571
Pay warrants registered..	4350	883	Duties under gross re-		
Law not to apply to pen-			ceipts tax law.....	7391	1586
sion warrants.....	4351	884	Member of state tax com-		
Registration of bonds....	4352	884	mission	7407	1592
Accounts of bonds belong-			Duty on receipt of tax		
ing to each fund to be			rolls	7584	1647
kept separate.....	4353	884	Duty in collection of tax		
State general ledger.....	4354	884	from non-residents....	7623	1654
Revenue ledger.....	4355	885	To collect tax in unorgan-		
Ledger for account of tax			ized counties.....	1345	322
collectors	4356	885	Duty of, in assessment of		
Ledger for account of			taxes in unorganized		
state treasurer.....	4357	885	counties	7561	1639
Shall keep journals.....	4358	885	Duties of, in assessment		
Issue duplicate warrants,			of taxes in unorganized		
when	4359	885	counties	7589	1647
Duty when duplicates are			To keep taxes of unorgan-		
improperly issued.....	4360	885	ized counties, until....	7602	1649

	Article	Page		Article	Page
COMPTRROLLER —cont'd.			CONFEDERATE SOLDIERS		
To prepare list of unren-			continued.		
dered lands.....	7664	1662	District judges shall		
COMPTRROLLER'S OFFICE —			charge the grand jury.	6275	1339
Records and copies there-			Fees limited.....	6276	1339
of, evidence.....	3698,	761	County judge to be al-		
Archives of.....	89	52	lowed fee for hearing		
CONCENTRATED FEED			application	6277	1339
STUFFS —			Inmates of Confederate		
Regulations as to.....	5894	1259	Home, asylums, etc.,		
CONCERTS —			not entitled to pension..	6278	1339
Occupation tax on.....	7355	1573	Appropriation shall be		
CONDEMNATION —			prorated	6279	1339
Of lands, for public use..			Veteran may cause cer-		
.....	5247-5277	1098	tain persons to make		
Of land for improvement			statement under oath...	6280	1340
districts	5567	1174	Statement to be filed with		
Of land for navigation			secretary of state.....	6281	1340
districts	5989	1284	Widow of veteran may es-		
Of property by railroad			tablish identity in same		
companies	6506	1391	way	6282	1340
Of material for public			Commissioner of Pensions.		
roads	6984	1493	Salary and general duties		
CONDUCTOR —			of	6283	1340
Of passenger trains shall			Shall strike certain per-		
wear badge.....	6560	1399	sons from roll.....	6284	1340
Duty under separate			Copies of certain instru-		
coach law.....	6753	1450	ments accepted as evi-		
CONFEDERATE HOME —			dence before grand		
.....	205-208	72	jury	6285	1341
General provisions...	171-187	68	CONFESSION —		
Board of trustees, term			Of judgments.	2007	438
of office, duties, etc....	205	72	C O N G R E S S I O N A L D I S -		
Superintendent's term of			TRICTS —		
office, duties, etc.....	206	73	Counties apportioned to.	28	17
Secretary to superintend-			CONNECTING LINES —		
ent; appointment, du-			Of common carriers...	731-732	187
ties, compensation, etc	207	73	Of railroads, regulations		
Applications for admis-			as to.....	6608	1407
sion, etc.....	208	73	Of railroads, commission		
Other asylums.....	107-239	58	to fix rates.....	6654	1422
CONFEDERATE SOL-			CONSIDERATION —		
DIERS —			Failure of, etc., in nego-		
How pensioned....	6267-6285	1337	tiable instruments.....	589	154
Confederate soldiers and			CONSOLIDATION —		
...sailors	6267-6285	1337	Of railroads prevented...	6604	1406
To whom granted.....	6267	1337	CONSPIRACIES —		
Application, how made..	6268	1337	Against trade.....	7796-7809	1691
Widow not be granted			CONSTABLES —		
pension, unless, etc...	6269	1338	Election, qualification,		
Widow may make proof			etc.	7137-7143	1525
of certain facts by af-			Election and term of office	7137	1525
fidavit, etc.....	6270	1338	Only one deputy.....	7138	1525
Soldier applying for pen-			Appointed, how, in unor-		
son shall have served			ganized counties.....	7139	1525
honorably; evidence,			Vacancies, how filled....	7140	1525
how taken.....	6271	1338	Bond and oath.....	7141	1525
What constitutes indig-			May act without commis-		
ency	6272	1338	sion	7142	1526
Payments, to be made			Neglect to qualify.....	7143	1526
when	6273	1338	Failure to give new bond	7144	1526
Pensions denied to whom	6274	1339			

	Article	Page
CONSTABLES—cont'd.		
Powers, duties and liabilities	7145-7150	1526
Duties in general.....	7145	1526
May summon posse comitatus	7146	1526
Failure to execute or return process.....	7147	1526
Failure to pay over collections	7148	1527
May execute process, where	7149	1527
Unfinished business....	7150	1527
Powers, duties, etc., of in towns and villages..	1056	252
Subject to orders of live stock sanitary commission	7320	1561
Fees of.....	3868-3869	800
General provisions. ..	3880-3926	804
CONSTITUTIONAL AMENDMENTS—		
How submitted.....	2971	636
CONSTRUCTION—		
Of laws.	5502-5504	1156
CONSUMPTIVES—		
Duties of health officers as to certain.....	4545	925
CONTAGIOUS DISEASES—		
Bees affected with.	575-578	152
Regulations as to, in cities and towns.....	980	236
Proclamation as to.....	4555	927
CONTESTING ELECTIONS—	3046-3078	649
CONTESTS—		
Of primary elections, how decided	3147	667
Of elections of presidential electors.....	3181	675
In election of county surveyor, where tried..	5314	1109
Of local option elections..	5728	1212
Of issuance of patents to mining claims.....	5913	1266
In formation of navigation districts.....	5961	1276
CONTESTS OF WILLS—		
Barred, when.....	5699	1205
CONTINUANCES—	1917-1919	425
Continuance not to be granted, except, etc....	1917	425
Application for continuance, requisites of....	1918	425
Business not disposed of continued by operation of law.....	1919	425
Permissible in cases of arbitration	61	45

	Article	Page
CONTINUANCES—cont'd.		
Of suits in district and county courts.	1917-1919	425
Of suits in justice court..	2329	494
CONTRACTORS—		
Lien of.	5621-5639	1188
CONTRACTS—		
Limiting liability to fellow servants void.....	6643	1417
Changing liability void..	6651	1419
With counties, valid, etc., when	1371	326
In writing, may be sued on, where.....	1830	409
Suits against obligors in	1842	413
Also	1843	414
Of record, evidence when certified to.....	3706	764
Marriage contracts. ..	4617-4620	942
Rate of interest on, regulated	4973-4983	1041
Shortening period of limitation, invalid.....	5713	1207
For improvements in navigation districts.....	5994	1285
For public printing.....	6340	1356
For working public roads	6965	1489
By commissioners' courts for building toll bridges	7015	1502
For fuel for state departments	7342	1567
CONTRIBUTORY NEGLIGENCE—		
In fellow servants act, a defense, etc.....	6644	1417
Rule as to.....	6649	1418
CONVENTIONAL INTEREST—	4975	1041
CONVERSION—		
Of prison property, penalty	6197	1321
CONVEYANCES—	1103-1116	263
Conveyances must be in writing, signed and delivered	1103	263
Purchaser or creditor, without notice not to be affected.....	1104	263
Conveyance of the greater estate passes the less..	1105	263
An estate deemed a fee simple, when.....	1106	263
Form of conveyance....	1107	263
Other forms and clauses valid	1108	264
Must be witnessed or acknowledged	1109	264
Conveyance by sheriff or other officer will pass title, when.....	1110	264
Estates in futuro.....	1111	264
Implied covenants.....	1112	264

	Article	Page
CONVEYANCES—cont'd.		
“In c u m b r a n c e s” embraces, what.....	1113	264
Conveyance of the separate lands of the wife, how made.....	1114	264
Conveyance of homestead, how made.....	1115	265
Falling as a conveyance, shall be valid as a contract	1116	265
To counties, valid, etc....	1369	326
Under forced sales.....	3765	773
Clerks prohibited from writing	3909	809
Fraudulent	3965-3973	819
Of estates of wards.....	4179	857
Heretofore made, governed how.....	6850	1469
CONVICTIONS—		
In military trials	5879-5881	1256
Work a removal from office, when.....	6028	1291
Sufficient ground for removal from office, when	6039	1293
CONVICTS—		
When insane, how admitted to lunatic asylums	144	63
City council may compel to work on streets....	836	209
Paroled, when	6089-6095	1301
Employment of, etc....	6183	1317
After conviction, must be sent to Huntsville.....	6201	1322
See “Penitentiary.”		
COPARTNERSHIPS—		
Property of, how rendered for taxation....	7509	1626
COPYRIGHTS—		
Of county maps.....	5287	1104
CORPORATION COURTS—		
	903-922	220
Corporation court created	903	220
Jurisdiction	904	220
Judge or recorder elected or appointed how; term; mayor ex officio recorder when.....	905	221
Recorder elected or appointed, when and how; discretion of council; term of office, etc.; vacancy; council may make mayor ex officio recorder when.....	906	221
Clerk of corporation court elected by council when, provided; term; duties	907	221
Right of trial before jury	908	222
Rules of pleading, practice and procedure....	909	222

	Article	Page
CORPORATION COURTS—		
continued.		
Seal of corporation court	910	222
Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state, but no fees; process	911	222
Council to prescribe rules for collecting fees and costs, practice, etc., rules in meantime....	912	222
Fines and costs paid into city treasury, etc....	913	223
Costs to be collected as provided by ordinances, but not greater than in justices' courts.....	914	223
Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure...	915	223
Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court.....	916	223
Process how served; defendant entitled to notice of complaint, if demanded	917	223
Writs of mayor, etc., may be executed anywhere in the county.....	918	223
Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited	919	223
Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committal; city liable to officers of appellate court, when; court to be always open.....	920	224
Appeals to what court; trial de novo; appeals, how governed.....	921	224
Until organization of corporation courts, municipal court as now established has jurisdiction, but thereafter abolished	922	224
CORPORATIONS—		
May arbitrate.....	69	46
Writ of garnishment served on, requisites, etc.	275	85

	Article	Page
CORPORATIONS—continued.		
Judgments against, for shares, etc., in garnishment proceedings.....	296	89
Banking, etc.	370-574	102
Certain, may be surety for state banks.....	498	130
Banking, certain regulations	518-574	134
Discriminating against employes, penalty for	594-604	156
Service of citations on..	1860	416
Receivers of, where applied for.....	2150	459
Receivership limited....	2153	460
Records of, evidence.....	3713	765
Levy on stock of, under execution	3742	771
When party to suit, no ex parte deposition....	3691	759
Insurance corporations	4705-4723	958
To transact one or more kinds of insurance business	4956	1037
For irrigation purposes	4991-5011	1045
Railroad	6405-6753	1374
Charters forfeited on failure to pay franchise tax	7399	1589
Certain, not required to pay franchise tax....	7403	1590
Tax on intangible assets of	7407-7426	1592
Property of, how rendered for taxation....	7509	1626
Rendition of property by, for taxation.....	7526	1631
Corporations, foreign; may be sued where....	1830	411
Corporations, municipal	762-1096	192
CORPORATIONS, PRIVATE—		
	1117-1321	266
Bond investment companies	1309-1313	314
Deposit with state treasurer	1309	314
Forfeiture of charter in default of deposit; attorney general to sue for, and receivership; duties of receiver, etc..	1310	314
In case of failure of corporation, receiver appointed how; duties; deposit used; treasurer to pay out how.....	1311	314
Interchange of cash and securities in deposit; approval of attorney general	1312	314
Return of deposit in what case	1313	314
Books, records, etc.; examination of	1187-1192	286

	Article	Page
CORPORATIONS, PRIVATE—continued.		
Attorney general, etc., may examine books, etc.	1187	286
Same subject; not to be made public, etc., except, etc.....	1188	286
Foreign corporation to forfeit permit for refusal, etc.....	1189	286
Domestic corporation to forfeit charter rights for refusal, etc.....	1190	287
Venue of suits in Travis county	1191	287
Provisions cumulative... ..	1192	287
Bridge and ferry corporations	1279-1281	308
Distance between bridges and ferries regulated..	1279	308
Commissioners' court shall regulate tolls...	1280	308
Owner liable for damages	1281	308
Cemetery corporations	1286-1302	310
Incorporation and powers; charter to state what	1286	310
Owners of lots shareholders, etc.....	1287	310
Directors and officers chosen, how; married women may be, etc....	1288	310
Power to acquire and hold land, including land dedicated to burial purposes	1289	310
Owners of lots in dedicated land so purchased may participate in organization..	1290	310
Divisions of dedicated land so purchased, to be preserved, etc.....	1291	310
Ground to be laid out, plotted, approved, attested and recorded...	1292	311
Corporation may make by-laws and regulations	1293	311
Directors may make rules to keep lots in order, etc., but, etc.....	1294	311
Meeting of lot owners to create corporation to take title, etc., notice of; majority determines action; selection of directors.....	1295	311
Directors to elect officers	1296	311
Corporation not required to make reports.....	1297	311
City council may control location of cemetery and limit price of lots	1298	311
Commissioners' court may limit price of lots of cemetery outside of city	1299	311
Powers of.....	1300	311

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
May convey lots for purposes of sepulture.	1301	311
Owners of lots are members of corporation.	1302	312
Channel and Dock corporations	1249-1253	300
This chapter embraces, what	1249	300
Added powers.	1250	300
Dock corporations, added powers	1251	301
Corporations created under this chapter, additional powers granted.	1252	301
Rates, tolls and charges subject to legislative control	1253	301
Creation of corporations	1120-1139	266
Private corporations may be created.	1120	266
For what purposes corporations may be created	1121	267
Charter and what it must set forth.	1122	273
Charter must be subscribed and acknowledged	1123	273
Business firm shall give notice of intention to incorporate	1124	274
Private corporations for profit must subscribe full amount of stock and pay fifty per cent of same before being chartered	1125	274
Secretary of state to receive, file and record charter, on satisfactory evidence, and payment of fees and franchise tax	1126	274
Satisfactory evidence defined	1127	274
Secretary of state may require other evidence.	1128	274
Certain corporations exempt from provisions.	1129	274
Subscriptions and payment of stock required of excepted corporations	1130	275
Must be filed with secretary of state, etc.	1131	275
Corporation shall exist from time of filing charter, etc.	1132	275
Charter may be amended, how	1133	275
When amendments shall take effect.	1134	275
Amendments, what void and what valid	1135	275
Renewal of charter of certain benevolent, etc., corporations, how	1136	275

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
Renewal and consolidation of two or more such corporations, etc., how	1137	276
Existence of corporation shall not be disputed collaterally	1138	276
Legislature may alter, reform or amend.	1139	276
Deep water corporations	1254-1260	302
Corporations acting under authority of congress may purchase certain coast land from the state	1254	302
May purchase certain other lands.	1255	302
Application for purchase, how made.	1256	302
Regulating surveys, payment of purchase money, forfeitures, etc., under foregoing articles	1257	303
Right to construct docks, etc., charge tolls, subject to railroad commission and general laws regulating rights of said corporations.	1258	303
Rights, powers and privileges granted shall not interfere with, what.	1259	304
Shall file release with secretary of state of right of control by congress	1260	304
Dissolution of private corporations	1205-1211	291
Corporation is dissolved, how	1205	291
Unless receiver appointed, president, etc., to be trustees, and close business	1206	291
Trustees responsible to creditors, etc., to what extent	1207	292
Liability of stockholders to creditors and to each other	1208	292
Stockholder may compel contribution	1209	292
Only liable for unpaid stock	1210	292
Members or officers of defunct corporation not to do business under old corporate name, etc.	1211	292
Drainage corporations	1261-1267	305
Authority for incorporation	1261	305
Corporation may contract for drainage and charges subject to control of legislature; lien	1262	305

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
Drains, etc., to be reported to and approved by commissioners' court	1263	305
May acquire lands for business, how	1264	305
May borrow money for construction, etc., issue bonds; mortgage property, etc.	1265	305
Lands to be alienated, except	1266	305
Excepted lands	1267	305
Educational corporations		
.....	1225-1230	295
Faculty of, and their powers	1225	295
Directors, etc., may make by-laws, etc.	1226	295
May procure shops, etc., for manual labor purposes	1227	295
May convert property into stock or scholarships	1228	295
Limitation as to debts, and liability of directors	1229	295
May change location, etc.	1230	295
Foreign corporations	1314-1321	315
Permit to do business, etc., in state must be obtained and how	1314	315
Permit may be limited to one or more of several purposes of incorporation	1314	315
Permit to do business, affidavit as condition of issuance; requisites of	1315	315
Secretary of state to require proof in what case	1316	316
Rights under permit	1317	316
Right to purchase, hold, sell, mortgage, etc., real and personal estate; provisos as to alienation	1317	316
No such corporation can maintain any suit, etc.	1318	316
Corporations exempted from provisions hereof	1319	316
Permit to extend for period of ten years	1320	316
Evidence	1321	316
Gas and water corporations	1282-1283	308
Privileges of such corporations	1282	308
May contract with cities, etc.	1283	308
Insolvent corporations		
.....	1201-1204	290
Unlawful for insolvent corporations to do business in state	1201	290

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
Attorney general, etc., to bring quo warranto, etc., to forfeit charter or cancel permit; receiver, etc.	1202	290
Suit may be dismissed or not brought on what conditions	1202	290
Stockholders or creditors may sue to dissolve when; by leave of court, with notice, etc.	1203	290
Rights and remedies cumulative	1204	291
Land—acquisition, etc., of, restricted	1175-1181	283
Purchase of land, unless necessary to business or to secure debts, prohibited	1175	283
Excess of land over necessary amount to be alienated, when	1176	283
Certain corporations forbidden to acquire lands	1177	283
Lands previously acquired to be alienated, when	1178	283
Purchase, subdivision and sale of city, etc., lands not prohibited	1179	283
Forfeiture prescribed; duty of attorney general	1180	284
Proceeds of such forfeitures to be covered into the treasury	1181	284
Liability of stockholders and directors	1198-1200	289
When and how stockholders may be made liable on execution	1198	289
Secretary shall furnish names, etc., of stockholders to plaintiff	1199	289
Directors liable for debts of corporation, when and to what extent	1200	289
Lien of state for fines and penalties, etc.	1193-1197	287
State to have lien on property within state for fines, etc., from date of suit to forfeit charter, etc.	1193	287
Action not to abate by dissolution, etc.; receivership when; writs; lien	1194	288
Attorney general may bring suit to foreclose lien; service	1195	288
Rights and remedies cumulative	1196	288

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
No compromise without trial, without consent of attorney general...	1197	288
Macadam and plank road corporations	1268-1278	306
May enter upon land, make survey, etc.....	1268	306
May condemn land, etc..	1269	306
If road is out of repair, charter may be forfeited	1270	306
Shall not collect tolls when road is out of repair	1271	306
Width of road and how to be constructed.....	1272	306
No toll gates permitted in towns, etc.....	1273	306
Tolls to be regulated by commissioners' court..	1274	306
Persons exempt from tolls	1275	307
Mile posts and rates of toll	1276	307
Any person may complain of non-repairs; proceedings in such case..	1277	307
Travelers practicing fraud, may be sued, etc.	1278	307
Oil, gas, salt, etc., companies	1303-1308	312
How corporation may be formed	1303	312
Same subject.....	1304	312
Powers of corporation...	1305	312
Right of condemnation..	1306	312
Right to borrow money, issue stock, mortgage franchises, etc.....	1307	313
Discrimination unlawful.	1308	313
Powers and duties of private corporations, and duties of stockholders in reference thereto, etc.	1140-1174	277
General powers of corporations	1140	277
Unpaid stock payable when; proof of payment	1141	277
On default of payment secretary of state to forfeit charter, how...	1142	278
Notification of forfeiture; record of same; relief from forfeiture within six months, conditions of, etc., revival.....	1143	278
On failure to revive, affairs of corporation wound up; provided right to avoid forfeiture within two years, but no prejudice to creditor	1144	278
May increase its capital stock, how.....	1145	278

	Article	Page
CORPORATIONS, PRIVATE—		
continued.		
Watering stock prohibited, forfeiture for violation	1146	279
Watered stock and bonds not for money, etc., quo warranto suit to cancel	1147	279
Suit may be dismissed or not brought on what conditions	1148	279
Remedies cumulative....	1149	279
Increase in certain cases validated	1150	279
Unpaid increase of stock payable when; forfeiture for default....	1151	279
May decrease stock, how.	1152	280
Quorum of directors, and annual elections.....	1153	280
President and secretary to be chosen.....	1154	280
By-laws may be adopted, altered, etc.....	1155	280
May increase number of directors or trustees..	1156	280
Failure to elect directors shall not dissolve, etc..	1157	280
Trustees to be elected to control religious corporation	1158	280
Directors shall have general management, etc..	1159	280
Directors shall cause record to be kept, etc....	1160	280
Shall report to stockholders and make dividends	1161	280
May borrow money.....	1162	281
Existing corporations may accept provisions of this title, etc.....	1163	281
Corporation restricted to objects of its creation..	1164	281
Restrictions upon creation of debts.....	1165	281
Contributions to political parties or candidates, etc., by corporation officers, etc., forbidden...	1166	281
Penalty of forfeiture for violation of provisions of either of last three preceding articles....	1167	281
Stock of corporation is personal estate.....	1168	282
Directors may require payment of stock.....	1169	282
Stock forfeited, when and how.....	1170	282
Corporation may sue its own members.....	1171	282
Misnomer shall not vitiate	1172	282
Corporation may convey lands, how.....	1173	282
Principal office must be kept in state.....	1174	282

Article	Page
CORPORATIONS, PRIVATE—	
continued.	
Preliminary provisions...	
.....1117-1119	266
Corporations classified...	1117 266
Public corporations.....	1118 266
Private corporations.....	1119 266
Religious, charitable and	
other corporations	1212-1224 293
Powers and privileges of	1212 293
Directors, etc., not to	
usurp spiritual func-	
tions	1213 293
Certain orders may incor-	
porate, how.....	1214 293
Incorporation of grand	
body to include what;	
rights of subordinate	
bodies	1215 293
Grand and subordinate	
bodies may elect their	
own trustees, etc.;	
other powers.....	1216 293
May acquire and hold	
land and personalty	
necessary for sites, etc.,	
sell, mortgage, etc.	1217 293
Subordinate bodies sub-	
ject to grand, etc.	1218 294
On demise of subordinate	
body, property vests in	
grand body, subject,	
etc.	1219 294
Grand body may loan	
certain funds, take	
liens on real estate,	
etc.	1220 294
Grand body may provide	
in charter, what, etc.	1221 294
Rights of grand body	
now chartered.....	1222 294
Franchise tax not re-	
quired	1223 294
Not required to state cap-	
ital stock in charter...	1224 294
Reports by certain corpo-	
rations	1182-1186 284
Certain corporations to	
make reports to secre-	
tary of state.....	1182 284
Same subject.....	1183 285
Reports to be under oath,	
etc.	1184 285
Copies of reports to be	
filed with mayor and	
with county clerk, re-	
corded, etc.....	1185 285
Penalty	1186 285
Sewerage companies	1284-1285 309
Corporation may condemn	
private property for	
sewers, etc., when, etc.	1284 309
Method same as for rail-	
ways	1285 309
Telegraph corporations...	
.....1231-1236	296
May set poles, etc.,	
across public roads,	
etc.	1231 296

Article	Page
CORPORATIONS, PRIVATE—	
continued.	
May enter upon lands,	
etc.	1232 296
One company can not con-	
tract to exclude another	1233 296
Company may own line in	
or out of state, and	
may join with other	
company	1234 296
Cities, etc., may direct as	
to posts, etc.....	1235 296
Manner of consolidating	
with another company.	1236 297
Telephone and telegraph	
companies	1237-1241 297
Corporations owning or	
operating lines, etc.,	
shall arrange for trans-	
fer, etc., as follows....	1237 297
Telephone companies,	
etc., shall connect lines	
at common points, how,	
etc.	1238 297
Telegraph companies,	
etc., shall transmit	
transferred messages,	
etc., when.....	1239 297
City council, etc., to hear	
and determine whether	
transfers necessary and	
just, etc.....	1240 298
Companies to comply	
with order of council,	
etc., or forfeit what;	
provided, etc.; appeal,	
etc.	1241 298
Union depots—to construct	
.....	1242-1248 299
Corporations to construct	
union passenger depots,	
how formed.....	1242 299
Powers	1243 299
Authority of railroad	
commission	1244 299
Stock and bonds, issuance	
how governed.....	1245 299
Railway companies may	
subscribe to and own	
stock and bonds.....	1246 299
Right to condemn, etc.,	
land for depot pur-	
poses, etc.; may ac-	
quire fee simple.....	1247 299
Condemnation governed,	
how	1248 299
Condemnation of property	
by, in cities for public	
utilities	1004 240
Suits against, brought	
where	1830 410
CORPORATIONS, PUBLIC—	
May be sued where.....	1830 411
COST BONDS—	
Affidavit of inability to	
give	2052 443

	Article	Page
COSTS—		
In district and county courts and security therefor 2030-2057	441	
Who responsible for costs	2030	441
Each party liable for costs incurred by him	2031	441
Officers may demand payment of, to adjournment of each term	2032	441
May put bill of costs with officer for collection, when; same has force of execution; appeal not to prevent execution for costs	2033	442
Levy for costs; costs demanded of attorney; fees for collecting, when allowed	2034	442
Successful party to recover	2035	442
Taxes on law proceedings	2036	442
Fees of only two witnesses to any fact	2037	442
Costs of motions	2038	442
Costs where exception sustained	2039	442
Where exception overruled	2040	442
Costs of several suits, etc.	2041	442
Where demand reduced by payment, etc.	2042	443
In actions of assault and battery	2043	443
Costs of new trials	2044	443
Where judgment is arrested, etc.	2045	443
On appeals and certiorari	2046	443
The same	2047	443
Court may otherwise adjudge costs	2048	443
Clerk may require security for costs	2049	443
Who may require security	2050	443
Judgment on cost bond	2051	443
Affidavit of inability to give cost bond	2052	443
Deposit in lieu of cost bond	2053	444
No security to be required of whom	2054	444
No security required of the state	2055	444
Security may be required of whom, etc.	2056	444
Costs may be secured by other bonds	2057	444
In apprenticing minors, paid by whom	54	43
In suits for recovery of funds of estates of decedents from state treasury	3587	744
Of administration of estates of decedents. 3621-3630	750	
In cases of arbitration	67	46

	Article	Page
COSTS—continued.		
In corporation courts, how collected	914	223
In corporation courts paid into city treasury	913	223
In suits involving counter claim, determined how	1328	319
In suits against counties	1374	327
Regulations as to payment of, in courts of civil appeals	1634	373
In court of criminal appeals, to be taxed how	1670	381
In contested election cases	3067	652
Of suits for rejected claims against estates of decedents	3451	719
In condemnation proceedings by railroads	6526	1393
In district and county courts, security therefor 2030-2057	441	
Of divorce suits	4642	946
In escheat trials, how paid	3194	677
Executions for	3918	810
In garnishment proceedings	307	90
Of guardianships 4280-4289	872	
In condemnation of lands by United States government	5268	1101
United States liable for, when	5272	1102
In condemnation of lands for public use	5250	1099
Security for in justice courts	2319	492
In justice courts	2367	498
Taxation of in justice courts	2383	501
In military trials, defendant liable for	5877	1256
Of proceedings to establish navigation districts, how provided	5981	1282
In establishment of public roads	6897	1477
In partition suits, adjudged how	6125	1307
In setting apart homestead	3812	780
COTTON—		
And cotton seed products, banks may accept as security for loans	568	150
Department for grading, etc., in agricultural and mechanical college	2666	566
For instruction in manufacture of	2669	566
Cotton—baling of 1322-1324	318	
Baling of cotton regulated; penalty	1322	318
Person, firm, etc., receiving for storage, trans-		

	Article	Page
COTTON —continued.		
portation, etc., cotton not baled as required, liable for injuries to employe, duty of inspection	1323	318
Duty of commissioner of labor	1324	318
Cotton salvage	7896-7901	1717
Wrecked cotton to be advertised	7896	1717
And delivered to owner, when	7897	1717
If no owner appear, to be sold	7898	1717
And proceeds paid into state treasury.....	7899	1718
If no wreck-master, county clerk to act....	7900	1718
Warrant to issue for suspected cotton.....	7901	1718
Cotton statistics, bureau of	4450	900
COTTON BROKERS —		
Occupation tax on.....	7355	1573
COUNSEL —		
Bill of exception submitted to.....	2064	445
For defendant in military trials	5863	1253
Commissioners of navigation districts may employ	5999	1286
COUNTER-BRANDING —		
When stock removed from county.....	7154	1530
Of cattle.....	7294	1555
COUNTER CLAIM —	1325-1330	319
Counter claim may be pleaded, when.....	1325	319
Requisites of the plea...	1326	319
Judgment in defendant's favor, when.....	1327	319
Judgment for costs determined, how.....	1328	319
Certain and uncertain damages not to be set off against each other..	1329	319
Matters incident to plaintiff's demand may be set off.....	1330	319
Plea of payment, etc., by defendant	1907	423
COUNTIES —	1331-1336	320
Creation of counties	1331-1355	320
Legislature may create counties	1331	320
Must have nine hundred square miles, unless, etc.	1332	320
Exterior territory may be divided into counties at any time.....	1333	320

	Article	Page
COUNTIES —continued.		
Counties created out of other counties must have seven hundred square miles.....	1334	320
Line of new county shall not approach nearer than twelve miles to an established county seat	1335	320
Counties with less than nine hundred square miles may be created, how	1336	320
Existing counties may be reduced to seven hundred square miles, how	1337	321
New county shall pay its part of the liabilities of the old county....	1338	321
New counties to pay pro rata of indebtedness..	1339	321
Such indebtedness, how apportioned	1340	321
Suits to have precedence; special tax to pay judgments	1341	321
Non-residents to pay to comptroller	1342	321
When territory is added, duty of commissioners in organized counties..	1343	322
Tax for pro rata indebtedness	1344	322
Tax collected in unorganized counties by comptroller	1345	322
County bonds held by school funds apportioned between counties, when.....	1346	322
Commissioners' court to levy tax for, prorated	1347	322
Part of existing county shall not be detached, etc., except, etc.....	1348	322
Election shall be ordered, when, etc.....	1349	323
Application shall show, what	1350	323
Notices of such election shall contain, what....	1351	323
Question to be voted upon	1352	323
Law governing other elections shall govern this	1353	323
Returns of election, how and to whom made...	1354	323
Another election for the same purpose shall not be held for five years..	1355	323
Organization of counties	1356-1364	324
Old county shall organize new one.....	1356	324
Election to be ordered, when and by whom...	1357	324

	Article	Page
COUNTIES—continued.		
County commissioners may act, when.....	1358	324
New county subject to old until organized....	1359	324
Disorganized county is to be attached to other county, until, etc.....	1360	324
County attached to another may be organized, how.....	1361	324
Certificates of election in such cases.....	1362	325
Books, etc., shall be delivered to such officer...	1363	325
Elections in unorganized counties	1364	325
Corporate rights and powers	1365	326
County a body corporate	1365	326
Suits against.....	1366	326
Inhabitants of, may be jurors, etc, in such suits	1367	326
Execution shall not issue against county.....	1368	326
Deeds, grants, etc., to counties valid, etc....	1369	326
Commissioner to sell real estate of.....	1370	326
Contracts with county valid	1371	327
Suits on notes, etc., by county	1372	327
Agents to contract for county may be appointed	1373	327
Costs in suit against county	1374	327
Tabular statement showing how apportioned...		9
Apportioned to Senatorial districts.....	24	10
Apportioned to Representative districts....	26	12
Apportioned to Congressional districts.....	28	17
Apportioned to Supreme Judicial districts.....	29	18
Apportioned to Judicial districts	30	19
To be called in alphabetical order, in organization of house.....	5509	1158
List of, showing county brands	7152	1528
Drainage by districts 2477-2510		526
Drainage by, separately	2511-2541	533
Drainage by district in	2542-2566	538
Drainage by districts in one or more	2567-2625	544
Laws relating to not repealed		1720
What are separate land districts	5293-5299	1106

	Article	Page
COUNTIES—continued.		
List of in which eight sections of public land may be purchased....	5418	1132
To pay expenses of indigent epileptics.....	230	77
To pay expenses of conveying patients to asylums	145	63
To be reimbursed, when..	146	63
Exempted from law regulating slaughter of animals	7184	1535
Exempted from hide and animal inspection law..	7305	1557
Exempt from road law...	6976	1491
Exempted from law providing for destruction of wolves.....	7169	1533
List of, exempted from sheep inspection law..	7886	1715
Property of, exempt from forced sales.....	3790	777
List of, exempted from certain provisions of general road law.....	6989	1495
Road law for certain 6977-6989		1491
In which horses, etc., may be prevented from running at large.....	7235	1545
Stock law elections for certain	7209	1540
Service of citation in suits against in district and county courts.....	1858	416
Suits against, brought where	1830	410
Suits by and against....	1835	413
Sued in justice courts, where	2308	490
To pay for standard weights and measures.	7841	1705
COUNTY ATTORNEYS—		
Election and term of office	346	97
May appoint assistants...	347	97
Vacancy in office of, how filled.....	348	98
Shall be no county attorney, when there is a resident criminal district attorney.....	349	98
Joint duties of county and district attorneys.	350	98
Bond and oath of.....	351	98
General provisions applicable to both district and county attorneys 352-369		99
Shall be licensed attorneys	352	99
Duties and powers of....	353	99
Residence of.....	354	99
Shall notify attorney general and comptroller of residence, etc.....	355	99
Shall give opinion, etc., to officers	356	99

	Article	Page
COUNTY ATTORNEYS—		
continued.		
With consent of attorney general, to buy property for state.....	357	99
With consent of attorney general may sell property of state so purchased	358	99
With consent of commissioners' court, may sell property of county so purchased	359	99
Shall give receipt for money collected.....	360	100
Shall report collections for state, etc.....	361	100
Shall report collections for county.....	362	100
Shall pay over money collected in thirty days, less commissions.....	363	100
Shall keep register of official acts.....	364	100
Shall not receive fee, etc., to prosecute case.....	365	101
Shall institute proceedings against officers, when, etc.....	366	101
To sue for penalty against railroads	367	101
To institute quo warranto proceedings	368	101
Admissions made by shall not prejudice the state	369	101
To represent state in lunacy cases.....	160	65
Duties of, in regard to epileptics	220	75
Shall make a report of county finances, etc....	1425	337
Certain duties of, in reference to suppression of diseases among bees	575-578	152
Duties of in juvenile courts	2188	467
May represent State in prosecutions in corporation courts.....	911	222
Duties of in juvenile court	2193	469
To represent state in suits to recover estates of decedents from state treasury	3591	744
Duties as to employment of children, etc.....	5242	1096
Duty in suits against officers guilty of nepotism	6077	1297
To represent state in collecting delinquent taxes	7691	1669
To sue for taxes on personal property.....	7661	1661
COUNTY AUDITOR—	1460-1498	342
County auditor appointed in what counties; title; term; salary.....	1460	342

	Article	Page
COUNTY AUDITOR—con-		
tinued.		
Appointment by whom; reported to commissioners; recorded.....	1461	342
Qualifications	1462	342
Bond; oath; requisites of	1463	343
May appoint assistant, with consent of county judge	1464	343
May appoint clerical help with consent of county judge	1465	343
Books and stationery...	1466	343
General duties of auditor	1467	343
Access to and right to examine accounts, orders of commissioners, etc..	1468	343
Reports, monthly under art. 1421, examination of	1469	343
Reports and books of officers, quarterly examination and checking of	1470	343
Report, quarterly, of treasurer, examination of	1471	343
Count, etc., cash in hands of treasurer or depository; how, when, etc.	1472	344
Law, see to enforcement of	1473	344
Balances, see that all to credit of funds are on hand	1474	344
Investment of funds, see that none unauthorized	1475	344
Forms for collection, mode of keeping, etc., accounts; time for reports, shall prescribe..	1476	344
Regulations for collecting, accounting, etc., may adopt and enforce	1477	344
Deposits in treasury to be made, how.....	1478	344
Bids for stationery, etc.; purchase from lowest bidder	1479	344
Bids for supplies, etc....	1480	344
Claims, etc., to be filed in what time; not to be paid until, etc.....	1481	345
Shall examine and approve claims, to be verified	1482	345
May administer oaths, when	1483	345
Restrictions and requirements in audit and approval of claims, requisition, etc., bids for supplies, etc.....	1484	345
Warrants, to countersign, except jury.....	1485	345
Register, shall keep, of warrants issued by		

		Article Page			Article Page
COUNTY AUDITORS—con-			COUNTY CLERKS—		
tinued.			May take acknowledg-		
clerks and judges; who			ments to deeds, etc., for		
shall report, etc.....	1486	345	record	6797	1459
Accounts, shall keep with			Hide and animal inspector		
officers named, reliev-			to report to.....	7268	1551
ing clerk of finance			Duty of as to county fi-		
ledger	1487	345	nances	1401-1459	333
Statements to be required			Shall be clerk of probate		
from persons receiving			court	3222	683
money or property of			Duties of, in payments of		
county	1488	345	estates of decedents		
Books, general set of,			into state treasury....	3579	743
showing transactions of			Duties in transfer of ad-		
county, shall keep....	1489	345	ministration of estates		
Report tabulated, shall			of decedents.....	3618	749
make, for each regular			To issue citation in guard-		
meeting of commis-			ianship cases.....	4063	839
sioners	1490	346	Duties of as to jury list		
Reports, quarterly and			.....	5135-5150	1078
annual, to be made to			Duties of, in selecting		
commissioners, show-			jurors in cities of cer-		
ing what, etc.....	1491	346	tain population...	5151-5158	1081
Estimate, shall prepare			To make jury list and de-		
for commissioners;			liver to sheriff.....	5159	1083
who shall prepare			To keep jury dockets....	5184	1086
budget	1492	346	Duties of, in formation		
Expenses, shall see that			of juries.....	5202	1088
do not exceed appro-			Land records of county		
priations	1493	346	given in charge to,		
Account with each appro-			when	5333	1112
priation, shall open, etc.	1494	346	Shall keep judgment rec-		
Provisions of this chap-			ord	5610	1186
ter cumulative, but			To record chattel mort-		
controlling	1495	346	gages	5655	1196
County clerk's duties,			To record proceedings of		
how affected.....	1496	346	navigation board.....	5959	1276
Removal of auditor,			Shall be recorders.....	6786	1457
grounds, mode.....	1497	346	Butchers to register with	7174	1534
Bell county exempt from			Duty when jury of view		
provisions	1498	346	for public roads is ap-		
			pointed	6886	1476
			To furnish list of road		
			overseers	6909	1479
			Issuance of sequestration		
			by	7094	1517
			Shall examine reports of		
			tax collector.....	7619	1653
			To record delinquent tax		
			lists	7686	1666
			Duty in trespass to try		
			title	7768	1686
			Duty as to estrays.....	7192	1537
			To give notice of estray..	7207	1539
			To issue hunting licenses	4026	833
			Shall issue retail liquor		
			dealers' license.....	7450	1607
			Duty of, when license of		
			liquor dealer is for-		
			feited	7455	1610
			Duty as to issuance of		
			license to sell intoxi-		
			cating liquor in local		
			option territory.....	7473	1614
			Duties of as to county		
			finances	1401-1459	333
			Duties of, how affected		
			by county auditor.....	1496	346

	Article	Page
COUNTY CLERKS—con-		
tinued.		
To issue letters testa-		
mentary, etc.	3325-3329	700
To publish list of nomi-		
nees in primary elec-	3130	664
Duty of, when appeal is		
taken in probate mat-	3635	752
Duty in case of vacancy		
in office of notary public	6007	1287
Wills to be deposited		
with	7873	1712
To act as wreck masters,		
when	7900	1718
Fees of	3860-3863	796
General provisions. ...	3880-3926	804
COUNTY COMMIS-		
SIONERS—		
To be ex-officio road su-		
perintendents	639	165
May contract for privi-		
lege of using cause-	650	167
ways, etc.		
May make regulations		
for use of causeways,	652	167
etc.		
To prescribe form of		
bond in cases of	667	171
disaster		
Shall open election re-		
turns, when	3030	646
Election, duties, etc.	2236-2282	478
Fees of	3870	800
General provisions. ...	3880-3926	804
Duty as to estrays	7191	1537
See "Commissioners'		
Courts."		
COUNTY CONVENTIONS—	3134	664
COUNTY CONVICTS—		
Workhouses and county		
convicts	6232-6248	1330
Commissioners' courts to		
establish workhouses..	6232	1330
"County convict" defined	6233	1330
Certain convicts only to		
do manual labor	6234	1330
Commissioners' court to		
control workhouse....	6235	1330
All officers to obey their		
orders	6236	1330
Overseers and guards....	6237	1330
To labor upon public		
works, etc.	6238	1330
Where confined when off		
duty	6239	1330
Refractory convicts to be		
punished	6240	1331
Female convicts	6241	1331
Aged or disabled convicts		
not to work	6242	1331
Their inability, how de-		
termined	6243	1331
Convicts to receive credit		
for labor	6244	1331

	Article	Page
COUNTY CONVICTS—con-		
tinued.		
Mechanic, etc., to have		
extra credit	6245	1331
Convicts to be guarded..	6246	1331
Costs to be paid officers..	6247	1331
Convict may commute		
his labor	6248	1331
Hiring county convicts		
.....	6249-6256	1332
Convicts may be hired		
out	6249	1332
Either publicly, privately		
or generally, etc.	6250	1332
Hirer shall give bond,		
and its requisites....	6251	1332
Liability when convict es-		
capes	6252	1333
Suit on bond	6253	1333
Convict to receive full		
credit for labor	6254	1333
Record in relation to		
county convicts.....	6255	1333
Officers' costs, how paid..	6256	1333
Regulations as to.....	6232-6248	1330
May be hired out.....	6249-6256	1332
May be required to work		
on public roads.....	6967	1489
May be worked on public		
roads, in certain coun-	6979	1492
ties		
COUNTY COURTS—		
Certiorari to.....	733-738	188
Certiorari to county court		
issued, when	738	188
Application for	734	188
Shall be granted on execu-		
tion of bond.....	735	188
Not to operate as super-		
sedeas, unless bond		
given	736	188
Writ to issue, to contain		
what	737	188
When supersedeas		
granted	738	188
Citation as in ordinary		
cases	739	188
Trial de novo, judgment		
to be certified below...	740	189
Appeals and writs of		
error allowed.....	741	189
Certiorari to justice		
courts	742-761	189
The powers and jurisdic-		
tion of the county		
court and of the judges		
thereof	1763-1775	397
Exclusive original juris-		
diction	1763	397
Concurrent original juris-		
diction	1764	397
Forfeited bonds in crim-		
inal cases	1765	397
Jurisdiction denied in cer-		
tain cases	1766	397
Appellate jurisdiction...	1767	398
Certiorari to justices'		
courts	1768	398

	Article	Page
COUNTY COURTS—cont'd.		
Motions against certain officers	1769	398
To punish contempts....	1770	398
Both law and equity powers	1771	398
To grant remedial writs..	1772	398
To appoint attorney for pauper	1773	398
Additional authority, where expressly granted	1774	398
Changed jurisdiction recognized, eminent domain retained.....	1775	398
Courts, county.....	1731-1785	392
Practice in.....	1812-2201	406
Given jurisdiction over dependent and neglected children.....	2185	465
Given jurisdiction of juvenile courts.....	2192	469
Probate jurisdiction of, in estates of decedents	3206	680
Action of, on report of sales of estates of wards	4177	857
Duties as to claims against estates of wards	4206-4237	862
Jurisdiction in final settlements of estates of wards	4267-4279	870
Jurisdiction of, over property of wards....	4134-4152	850
Jurisdiction of, over guardians	4043	836
Commencement of guardianship proceedings in	4061-4067	839
Appointment of guardians by	4080-4090	841
Appointment of temporary guardians by	4091-4096	844
May determine and declare heirship.....	3521	732
Executions on judgments of	3714-3784	767
J u r y Commissioners for	5132-5134	1077
Proceedings in selection of jurors.....	5135-5150	1078
District court commissioners to prepare jury list for.....	5142	1079
Verdicts of juries in.....	5214-5217	1090
In cases of appeal on forcible entry and detainer	3662	818
Sheriffs to attend.....	7129	1524
Stenographer for in civil causes, when, etc.....	1932	428
Has jurisdiction of suits concerning bills, notes, etc.	579	153
Duty under inheritance tax law.....	7491	1620

	Article	Page
COUNTY COURTS—cont'd.		
May grant writs of injunction, when....	4643-4693	947
Trials in for condemnation of lands for U. S. government	5269	1101
Proceedings in, in case of lost records.....	6781	1455
See "Courts, County."		
COUNTY DEPOSITORIES—		
Road bonds to be deposited with.....	634	164
General provisions ..	2440-2453	515
COUNTY FINANCES—		
.....	1401-1498	333
General provisions... ..	1401-1459	333
Duties of commissioners' court to procure ledger, etc.....	1401	333
Duty of county clerk to keep accounts.....	1402	333
Same	1403	334
Same	1404	334
Compensation of clerk..	1405	334
Accounts shall be opened, how, and shall be indexed	1406	334
Account with the tax collector	1407	334
Receipt of collector for tax rolls.....	1408	334
How collector may discharge his indebtedness	1409	334
Collector shall make separate lists of indigent and delinquent taxpayers	1410	335
No credit shall be entered for delinquents until allowed by the court... ..	1411	335
Taxes for each year shall be kept separate.....	1412	335
Tax collector going out of office shall deliver tax rolls to successor, etc..	1413	335
Collector shall collect occupation tax and receipt for same.....	1414	335
County clerk shall issue occupation license, when	1415	335
County clerk shall make two reports of licenses issued at end of each month	1416	335
What the reports shall state, etc.....	1417	335
Clerk shall keep occupation tax account with collector	1418	336
Clerk shall keep account with sheriff.....	1419	336
How sheriff may free himself from liability under preceding article..	1420	336

	Article	Page
COUNTY FINANCES—cont'd.		
Clerks and justices of the peace shall report fines, judgments and jury fees monthly....	1421	336
What reports shall show..	1422	336
Fines imposed and judgments rendered by justices shall*be charged against them, etc.....	1423	336
District attorney shall make report, etc.....	1424	337
County attorney shall make report, etc.....	1425	337
Judgments not collectible may be sold.....	1426	337
Any officer collecting money for county shall report the same.....	1427	337
Money collected by officer shall be charged to him, etc.....	1428	337
Estray account.....	1429	337
Same subject.....	1430	337
Clerk shall keep account with county treasurer	1431	337
County treasurer shall register claims against the county.....	1432	338
Claims shall be classified.	1433	338
Manner of registering claims	1434	338
What shall be written on registered claim.....	1435	338
Claims shall be numbered in what order...	1436	338
Order in which claims shall be paid.....	1437	338
Classification of county funds	1438	338
Commissioners' court may create other classes of funds	1439	338
Said court may transfer one class of funds to another, except, etc...	1440	338
County treasurer shall report registered claims each month.....	1441	339
Clerk shall enter report upon ledger, etc.....	1442	339
Party receiving payment of claim shall receipt thereon	1443	339
Officer receiving claims in payment of debt to county shall report list of same.....	1444	339
Claims received by other officer than county treasurer shall be reported to county treasurer	1445	339
County treasurer shall keep accurate accounts and accompany same with vouchers.....	1446	339

	Article	Page
COUNTY FINANCES—cont'd.		
Claim shall be canceled, when and how.....	1447	339
Report of treasurer, order approving; to recite what; credit.....	1448	339
Commissioners to inspect and count cash, etc., in hands of treasurer, etc.	1449	340
Affidavit of compliance, etc.; filing, record, and publication of, etc....	1450	340
Commissioners' court shall examine and correct all accounts and reports, etc.....	1451	340
Reports and vouchers shall be filed and preserved in county clerk's office	1452	340
District judge shall appoint committee to examine into finances of county	1453	340
Duty of such committee..	1454	340
Report of committee....	1455	340
Pay of committee.....	1456	341
All reports shall be sworn to	1457	341
Monthly reports shall be filed, when.....	1458	341
Warrants issued against county by judge or court shall be attested by clerk, etc.....	1459	341
Duties of county auditors as to.....	1460-1498	342
Duties of county treasurer as to.....	1499-1511	347
COUNTY HEALTH OFFICER—		
Office created, and duties.	4538	924
COUNTY JUDGES—		
County judges, election, qualifications and term of office.....	1731	392
Oath of office.....	1732	392
Shall keep office at county seat	1733	392
May practice law in certain counties.....	1734	392
Vacancy, how filled....	1735	392
Disqualification, causes of	1736	393
Special county judge appointed by parties....	1737	393
Governor to appoint special county judge....	1738	393
Governor to appoint by telegram	1739	393
Minutes of court to show proceedings	1740	393
Special judges, when and how elected; powers..	1741	394
Record of election of special judge.....	1742	394

	Article	Page
COUNTY JUDGES—cont'd.		
May take acknowledgments to deeds, etc., for record.....	6797	1459
Duties in condemnation proceedings by railroad companies	6506	1391
Shall be county school superintendent, when..	2763	586
To appoint committee to act in place of commissioners of pilots.....	6304	1348
May cause person to whom minor is apprenticed to be cited, etc..	48	43
Shall inquire into treatment of minor, etc...	50	43
May appoint probation officers, etc.....	2196	470
Duties in probate matters	3218-3246	683
Granting letters of administration, etc.....	3277-3296	692
May appoint temporary administrators ...	3297-3304	696
Duty of, as to bond of administrators, etc..	3305-3324	697
To appoint appraisers of estates of decedents	3330-3349	701
Duties of, in appointment of guardians.....	4043-4301	836
Powers of, in appointment of guardians of habitual drunkards, etc.	4238-4255	866
Bond of as custodian of drainage bonds.....	2601	553
Must certify to applications for admission to lunatic asylums.....	136	62
Duties of, in regard to epileptics	224	76
To give bond before selling bonds of improvement districts.....	5557	1172
May order writ of certiorari to justices' courts.	743	189
To order election for incorporation of towns and villages.....	1036	250
Duties of, in elections to abolish corporate existence of cities and towns	1079	257
Application to, for election for school districts	2850	608
Order for election, by...	2930	626
Duty of, as to election returns	3042	648
To order election to prevent horses, etc., from running at large.....	7240	1546
Shall approve bonds of assignees	96	54
Shall certify death of certain officers to the secretary of state....	3080	654

	Article	Page
COUNTY JUDGES—cont'd.		
Duties of, as to jury lists	5135-5150	1078
Duties as to petition for liquor dealers' license.	7448	1607
List of pensioners of Mexican war sent to..	6266	1336
To order inspection of live stock, when.....	7161	1531
Fees of, in applications pensions	6277	1339
To appoint road overseer, when	6915	1480
Fees of.....	3849-3854	793
General provisions...3880-3926		804
COUNTY LINES—	1375-1386	327
Survey made.....	1375	327
Boundary, how marked.	1376	327
Natural objects to be named	1377	328
Notice to other counties..	1378	328
Oath and bond of surveyors	1379	328
Field-notes to be returned and recorded...	1380	328
In absence of one surveyor the other shall act	1381	328
Commissioner of the land office to direct surveys in case of disagreement	1382	328
Expense to be divided between the counties....	1383	328
Land district to be surveyed	1384	329
Suit to establish boundary; venue; jurisdiction and powers of court; rule for determination of matter....	1385	329
Land commissioner not to place line on map until filing of certified copy of judgment and field-notes	1386	329
COUNTY OFFICERS—		
Removal of county and certain district officers	6028-6057	1291
Certain convictions work a removal from office.	6028	1291
Appeal supersedes order of removal.....	6029	1292
Officers removable by the district judge, etc....	6030	1292
Causes to be set forth in writing	6031	1292
"Incompetency," what is.	6032	1292
"Official misconduct," what is.....	6033	1292
Two preceding articles apply to mayors and aldermen	6034	1292
"Habitual drunkenness," what is.....	6035	1292
Further defined.....	6036	1292

	Article	Page
COUNTY OFFICERS—cont'd.		
“Drunkenness not habitual,” defined.....	6037	1292
Must be three times convicted	6038	1293
Three convictions sufficient ground for removal, etc.....	6039	1293
Failure to give bond ground for removal...	6040	1293
Proceedings, how commenced and by whom...	6041	1293
Requisites of petition...	6042	1293
General issues alone submitted—verdict	6043	1293
Citation, how and when to issue.....	6044	1293
Application made in vacation	6045	1293
Citation shall issue.....	6046	1294
Time to answer.....	6047	1294
How trial shall be conducted	6048	1294
May be suspended from office, how.....	6049	1294
Appeal or writ of error...	6050	1294
Bond for costs, when ...	6051	1294
Relator to give security for costs.....	6052	1294
Against district attorney, where commenced....	6053	1294
Criminal district attorney included in district attorney	6054	1294
Not to be removed for acts done prior to his election	6055	1294
Appeal and writ of error..	6056	1294
Mandate, when to issue..	6057	1294
Candidate placed on primary ballot, how....	3101	660
Contest of elections for.	3049	649
Removal of.....	6028-6057	1291
COUNTY SEATS—		
	1387-1399	330
Election for county seats.	1387	330
Two-thirds vote necessary, when, to create..	1388	330
Election for removal of, when	1389	330
Proceedings for removal of county seat.....	1390	330
Geographical center, how designated	1391	331
Who may vote, and form of ballot.....	1392	331
Election, how conducted and ordered.....	1393	331
County seats removed, when	1394	331
No change by election until after five years....	1395	331
Courts held at county seats	1396	332
Court house and jail provided	1397	332
When commissioners' court may fix place of holding court.....	1398	332

	Article	Page
COUNTY SEATS—continued.		
County offices at county seat	1399	332
Limitations as to boundary lines of new counties	1335	320
Railroads shall pass through, when.....	6549	1397
First class roads between.	6863	1473
Laws creating, not repealed		1720
C O U N T Y S U P E R I N T E N D E N T—		
Office established.....	2750	582
Shall give bond.....	2751	583
Shall have immediate supervision of schools.	2752	583
Shall conduct county teachers' institute....	2753	583
Shall keep record of attendance and certify to same	2754	584
Shall apportion funds among school districts.	2755	584
Shall approve contracts and vouchers.....	2756	585
Authorized to administer oaths	2757	585
Salary	2758	585
Authority of county superintendent as to transfers	2759	585
Application of parent or guardian	2760	586
To district in adjoining county	2761	586
By agreement of trustees.	2762	586
County judge shall be, when	2763	586
Shall give bond.....	2764	586
Compensation	2765	586
Shall take constitutional oath	2766	586
Treasurers to keep funds in depositories.....	2767	586
Bond	2768	587
Depository shall keep accounts	2769	587
Balances	2770	587
Treasurer of independent districts	2771	587
Purposes for which the funds may be expended	2772	587
Treasurers shall make reports	2773	588
Duties of, as to taking scholastic census....	2776	589
Duties of, as to teachers' certificates	2792	593
COUNTY SURVEYORS—		
Fees of.....	3876	802
See also.....	5300-5334	1107
General provisions.	3880-3926	804
Certain other duties of	5335-5360	1112
See “Surveyors.”		

	Article	Page
COUNTY TAXES—		
Certain to be paid, when..	7601	1649
Bond of collector for....	7610	1651
See "Taxation."		
COUNTY TREASURER—		
Election and term of office	1499	347
Oath and bond of.....	1500	347
Shall give new bond, when	1501	347
Office to be declared vacant, when.....	1502	347
Vacancy, how filled....	1503	347
Appointee's oath, bond..	1504	347
Shall receive moneys belonging to counties, etc.	1505	348
Shall keep true accounts and superintend collection of moneys, etc...	1506	348
Shall report to commissioners' court.....	1507	348
Shall deliver money, etc., to successor.....	1508	348
Shall not pay out money, except, etc.....	1509	348
Shall examine dockets, accounts, etc.....	1510	348
Shall perform such other duties as may be required by law.....	1511	348
Duties of as to county finances	1431	337
Duties as to county depositories	2440-2453	515
To keep funds of drainage districts	2560	542
To collect funds for drainage for public roads...	7007	1501
Shall register bonds issued in cases of disaster	675	171
To keep accounts with drainage districts.....	2607	555
Custodian of funds of improvement districts...	5564	1174
Duties as to funds of navigation districts...	5987	1284
Surplus from sales by pawnbrokers to be paid to	6167	1313
Custodian of road bonds	634	164
Custodian of sea wall funds	5593	1180
To keep school funds in depositories	2767	586
To make report of investment of sinking fund to comptroller...	699	177
Fees of.	3873-3875	801
General provisions...	3880-3926	804
COUNTY WARRANTS—		
Regulations as to.....	1459	341
County auditor to countersign	1485	345

	Article	Page
COURT OF CRIMINAL APPEALS—		
Clerks of the court of criminal appeals..	1662-1666	380
Terms of office.....	1662	380
Shall qualify and give bond	1663	380
Duties and liabilities....	1664	380
Deputies, how appointed and to whom responsible	1665	380
Seal of court.....	1666	380
Judges of the court of criminal appeals..	1652-1657	378
Judges, qualifications, compensation, a n d quorum	1652	378
Election and term of office	1653	378
Presiding judge chosen and writs, etc., how tested	1654	378
Proceedings on disqualification of.....	1655	378
Vacancies, how filled....	1656	378
Terms of office—long and short terms at first election	1657	378
Jurisdiction of the court of criminal appeals	1659-1661	379
Jurisdiction of the court.	1659	379
Writs of habeas corpus, etc., power to issue...	1660	379
Jurisdictional facts may be ascertained.....	1661	379
Reporter to the court of criminal appeals..	1667-1668	380
Reporter, removal o f, compensation a n d duties; reports, etc., how published.....	1667	380
Clerk to furnish reporter with opinions, records, etc.....	1668	380
Special provisions relating to the court of criminal appeals..	1669-1670	381
Proceedings when jurisdiction of lower court has been changed pending appeal.....	1669	381
Cost to be taxed, how, on disposition of case, in the court of criminal appeals	1670	381
Terms of the court of criminal appeals.....	1658	379
Terms of court, when and where held.....	1658	379
COURT HOUSE DOOR—		
Defined	3758	773
COURT HOUSES—		
Bonds for erection of, authorized	610	160

	Article	Page
COURT HOUSES—continued.		
To be established at county seats.....	1397	332
Sheriffs to have charge of.	6393	1370
COURT REPORTS—		
Of supreme court...	1572-1579	361
Of courts of civil appeals, how published, etc...	1651	377
Of court of criminal appeals	1667	380
COURTS—		
Authority over adopted child	1-8	3
Order of, when attachment quashed.....	270	83
Orders of apprenticing minors	32-55	41
Shall enforce sanitary code	4531	922
What held at county seats	1396	332
Jurisdiction, etc., of suits to establish county lines	1385	329
COURTS OF CIVIL APPEALS—		
Certification of questions to supreme court, etc	1619-1625	371
Questions of law certified to supreme court.....	1619	371
Dissenting opinion; point of dissent certified to supreme court.....	1620	371
Proceedings on certificate of dissent.....	1621	371
Decision of supreme court certified back, judgment on.....	1622	371
Conflict with decision of another court of civil appeals; question and record transmitted and certified to supreme court, etc.....	1623	371
Proceedings on same in supreme court.....	1624	371
Action of supreme court on; effect and finality of	1625	372
Clerks of the courts of civil appeals.....	1596-1605	366
Clerk, appointment, qualification, and bond....	1596	366
Temporary appointment to fill vacancy.....	1597	366
Term of office and how removed	1598	367
Seal of court.....	1599	367
Duties as to records, transcripts, dockets, etc	1600	367
To record judgments, etc.; certify decisions to lower court.....	1601	367
Deputy clerks.....	1602	367

	Article	Page
COURTS OF CIVIL APPEALS—continued.		
Shall be librarian, except, etc	1603	367
Library regulations.....	1604	367
Semi-annual report of costs collected.....	1605	367
Conclusions of fact and law	1636-1640	374
Conclusions of law and fact to be filed, when.	1636	374
Reason for judgment to be stated, when.....	1637	374
Supplemental findings, motion for refusal assignable as error.....	1638	374
Court shall decide all issues of fact or law, and announce conclusions..	1639	374
Supreme court shall return record for supplemental conclusions, when	1640	374
Hearing causes.....	1616-1618	370
Hearing of cases, order of	1616	370
Order of decisions, etc..	1617	370
Death does not abate, when	1618	370
Judges of the courts of civil appeals.....	1580-1584	363
Chief and associate justices	1580	363
Election and term of office	1581	363
Qualifications of judges..	1582	363
Vacancies, how filled...	1583	363
Disqualification of judges.	1584	364
Judgment of the court..	.....1626-1635	372
If judgment reversed, when reformed and remanded	1626	372
Judgment on affirmance or rendition, etc.....	1627	372
Damages adjudged, when	1627	372
Finality	1627	372
No reversal for want of form	1628	373
Affirmance with damages in case of delay.....	1629	373
Remittitur	1630	373
Suggestion of remittitur.	1631	373
Refusal to remit not subject to comment on subsequent trial.....	1632	373
Mandate issued, when...	1633	373
No mandate to issue until costs paid.....	1634	373
Affidavit of inability to secure or pay costs...	1635	373
Judgment, execution of	1645-1650	376
Writ, how tested, directed, executed and returned, and alias issued, when.....	1645	376
Judgment enforced, how.	1646	376
Execution to issue, when; mandate	1647	376

	Article	Page
COURTS OF CIVIL APPEALS—continued.		
Appellant on reversal to recover costs of appeal.	1648	376
Return of execution, when	1649	376
Officer failing to make return, remedy by motion	1650	376
Jurisdiction of the courts of civil appeals	1589-1595	365
Jurisdiction defined.....	1589	365
Judgment conclusive, when	1590	365
Same subject.....	1591	365
Issue writs of mandamus, etc	1592	365
Inquire into facts of jurisdiction	1593	366
May punish for contempt	1594	366
May mandamus district courts	1595	366
Proceedings in cases in the courts of civil appeals	1607-1615	368
Cases, how brought before the courts for trial	1607	368
Transcript filed, when...	1608	368
New appeal bond allowed, when.....	1609	369
Certificate of affirmance, proceedings	1610	369
Transcript filed and cause heard after affirmance on certificate, when	1611	369
Assignment of error, requisite of.....	1612	369
Docket of causes and disposition of same.....	1613	369
Appearance by brief, etc..	1614	369
Notices to attorney, how given	1615	370
Rehearing	1641-1644	375
Motion for rehearing, requisites and notice of	1641	375
Notice, how given.....	1642	375
Service of notice and return	1643	375
When motion determined.	1644	375
Reporter to the courts of civil appeals.....	1651	377
The reporter of the supreme court shall be..	1651	377
Stenographer	1606	368
Court stenographer and salary	1606	368
Terms of the courts of civil appeals.....	1585-1588	364
Terms of court.....	1585	364
Places where courts of civil appeals shall be held	1586	364
Transfer of causes.....	1587	364

	Article	Page
COURTS OF CIVIL APPEALS—continued.		
Quorum, what, and court adjourned, when.....	1588	365
Appeals to, etc.....	2078-2117	449
COURTS, COMMISSIONERS—	2236-2282	478
Organization	2236-2240	478
Election and term of office of county commissioners	2236	478
Court composed of whom and the presiding officer thereof.....	2237	478
Three members constitute a quorum, except, etc.	2238	478
Oath and bond of county commissioner	2239	478
Vacancy in office of county commissioner, how filled.....	2240	478
Powers and duties.	2241-2273	479
Certain powers of the court specified.....	2241	479
Power to levy taxes.....	2242	479
Certain tax shall not exceed, etc.....	2243	479
Tax shall not be levied, except, etc.....	2244	480
Power to fill certain vacancies	2245	480
How vacancy shall be filled, etc.....	2246	480
Shall send indigent sick to hospital, when.....	2247	480
Commissioners' court may designate health districts of unincorporated towns	2248	480
Proceedings after health districts designated...	2249	480
Failure to comply with notice provided for in preceding article unlawful	2250	480
May co-operate with cities and towns in sanitary regulations....	2251	481
May construct bridges in corporate limits.....	2252	481
May co-operate with cities in such construction	2253	481
May issue bonds for such bridge purpose.....	2254	481
Bridges in cities and towns, shall keep in repair	2255	481
Stationery, etc., may contract for.....	2256	481
Bids to be advertised for, how	2257	481
Contract to be declared null and new bids advertised for, when....	2258	482
May reject any and all bids	2259	482

	Article	Page
COURTS, COMMISSIONERS—		
continued.		
Preference to citizen, etc., of county, when.....	2260	482
May receive separate bids	2261	482
Stationery to be cassified.	2262	482
Bond with bid, requisites of bond.....	2263	482
No commissioner or other officer to be interested in contract.....	2264	482
Contracts to be made in open court, with lowest bidder, bids to be spread on minutes:...	2265	482
Contracts in writing, etc.; amount of bond, sureties, conditions, etc...	2266	482
Suit on bond, venue of..	2267	483
Affidavit that bidder is not member of a trust, etc	2268	483
Commissioners may repeal order, when.....	2269	483
May provide building, etc., for county court.	2270	483
Duty as to school lands.	2271	483
Shall provide seals for the district and county courts	2272	483
Other powers, etc., of the court	2273	483
Terms and minutes of the court.....	2274-2277	484
Regular terms of the court	2274	484
Special terms of the court	2275	484
Minutes of the court:...	2276	484
Minutes of proceedings in vacation	2277	484
Miscellaneous provisions.		
.....	2278-2282	484
Seal of the court.....	2278	484
The clerk of the court and his duties.....	2279	484
Clerk shall issue process.	2280	484
Process shall be executed, when, etc.....	2281	485
Notices posted, how, instead of publication, when	2282	485
To levy county ad valorem tax.....	7357	1575
To furnish assessors certain books.....	7553	1636
To sit as boards of equalization	7564	1641
To sit as boards of inquiry, when.....	7652	1660
May require new official bond	6083	1299
Order of, for issuance of bonds in cases of disasters	662	170
Power of, to have bridges built	7013-7020	1502
Butchers to report to...	7173	1534
May limit price of lots in certain cemeteries.....	1299	311

	Article	Page
COURTS, COMMISSIONERS—		
continued.		
General powers of..	1300-1302	311
Duty of, when territory is added.....	1343	322
When members may act as county judge.....	1358	324
To establish county seats, etc.....	1387-1399	330
Duties of, as to county finances	1401-1459	333
May create classes of county funds.....	1439	338
Other duties.....	1440	338
To count cash in hands of treasurer	1449	540
County clerk ex-officio clerk of.....	1753	396
May fix terms of county courts for civil and probate business.....	1777	399
To call for bids for county depositories..	2440-2453	515
To appoint county surveyor, when.....	5302	1107
Shall appoint constables for unorganized counties	7139	1525
To calculate the county tax rate	7353	1570
Drains, etc., to be reported to and approved by.....	1263	305
Authorized to construct drains in any county	2511-2541	533
May establish drainage districts	2542-2566	538
Certain duties in reference to drainage..	2477-2510	526
Duties in creation of drainage districts..	2567-2625	544
Duties of, in drainage of public roads.....	6990	1495
Certain duties of as to elections	3079	654
Fees of.....	3870	800
General provisions..	3880-3925	804
May compromise and fund indebtedness....	687	174
Of parent county to levy tax for pro rata share of indebtedness.....	1347	322
To regulate mode of irrigation	4984-4990	1043
Duties of, in organization of irrigation districts	5012-5023	1050
To establish improvement districts.....	5530	1164
May levy tax on sale of intoxicating liquor in local option territory.	7468	1612
To appoint inspector of sheep	7879	1714
To provide jails.....	5108	1073

	Article	Page
COURTS, COMMISSIONERS—		
continued.		
To order local option elections	5715	1209
Duties, in formation of navigation districts.....	5955-6001	1275
To canvass returns of election for navigation district.....	5967	1278
To issue bonds for navigation districts.....	5973	1280
May make appropriations for militia.....	5888	1258
With consent of, district and county attorneys may sell property of county	359	100
Duties as to poll tax receipt books.....	2956	632
Duty of, as to property omitted from tax rolls.	7702	1674
When may declare quarantine	4568	930
Condemnation of railroad property for street purposes, by.....	1069	252
To regulate toll charges by road corporations..	1274	306
To sell real estate of county	1370	326
To have records transcribed, when.....	6772	1454
To open public roads....	6860	1472
Shall appoint road overseers	6905	1479
May employ road commissioners	6946	1484
To be ex-officio road commissioners	6977	1491
Duty of, in elections for special road tax....	7045	1508
May change common school district lines...	2816	600
Change of boundaries of independent school districts, by.....	2866	611
Duties in construction of sea walls and breakwaters	5585-5594	1178
To order stock law elections	7209	1540
May appropriate money for stocking waters, etc	4018	831
Shall order election to prevent horses, etc., from running at large.	7339	1546
To order election of hide and animal inspector..	7306	1558
County treasurer shall report to.....	1507	348
Duty of, as to reports of tax collector.....	7619	1653
To order elections to fill vacancies in city offices.	798	200
To establish workhouses.	6232	1330
Duty in destruction of wolves	7167	1532

	Article	Page
COURTS, COMMISSIONERS—		
continued.		
May license vendors of standard weights, etc.	7842	1706
COURTS, CORPORATION—	903-922	220
COURTS, COUNTY—	1731-1785	392
Clerk of the county court	1743-1762	394
Election and term of office	1743	394
Vacancy, how filled.....	1744	394
Clerk pro tem, appointed, when	1745	394
County clerk pro tem. to qualify and give bond.	1746	395
Bond and oath.....	1747	395
May appoint deputies....	1748	395
Oath and powers of deputies	1749	395
Clerk shall keep office at county seat.....	1750	395
Take acknowledgments and proofs of deeds for record	1751	395
Issue marriage licenses and take oaths, depositions, etc.....	1752	396
Ex-officio clerk of commissioners' court....	1753	396
Custody of records of deeds, etc.....	1754	396
Custody of records, etc., of said court.....	1755	396
Record of proceedings, judgments	1756	396
Indexes to all judgments.	1757	396
Other dockets, indexes, etc	1758	396
Report fines and jury fees	1759	396
Shall pay over jury fees and fines.....	1760	397
Shall transfer records to his successor.....	1761	397
To use seal of county court	1762	397
County judge	1731-1742	392
County judge, election, qualifications and term of office.....	1731	392
Oath of office.....	1732	392
Shall keep office at county seat	1733	392
May practice law in certain counties.....	1734	392
Vacancy, how filled....	1735	392
Disqualification, causes of	1736	393
Special county judge appointed by parties....	1737	393
Governor to appoint special county judge....	1738	393
Governor to appoint by telegram	1739	393
Minutes of court to show proceedings	1740	393

	Article	Page
COURTS, COUNTY—cont'd.		
Special judges, when and how elected; powers..	1741	394
Record of election of special judge.....	1742	394
Jurisdiction and powers of the county court and of the judge thereof	1763-1775	397
Exclusive original jurisdiction	1763	397
Concurrent original jurisdiction	1764	397
Forfeited bonds in criminal cases.....	1765	397
Jurisdiction denied in certain cases.....	1766	397
Appellate jurisdiction...	1767	398
Certiorari to justices' courts	1768	398
Motions against certain officers	1769	398
To punish contempts...	1770	398
Both law and equity powers	1771	398
To grant remedial writs.	1772	398
To appoint attorney for pauper	1773	398
Additional authority, where expressly granted	1774	398
Changed jurisdiction recognized, eminent domain retained.....	1775	398
Miscellaneous provisions relating to the county court	1779-1785	400
Minutes of the court to be read and signed.....	1779	400
Minutes of proceedings before special judge....	1780	400
Seal of the court.....	1781	400
When clerk has no seal may use scroll.....	1782	400
Probate day to be designated	1783	400
Proceedings when case is transferred to district court	1784	400
Jurisdiction taken away, judgments to be transferred	1785	400
Terms of the county court for civil and probate business	1776-1778	399
Terms of the county court	1776	399
Commissioners' court may fix	1777	399
Adjournment of term, when the county judge fails to appear.....	1778	399
Courts, district and county, practice in.	1812-2201	406
See "County Courts."		
COURTS, COUNTY AT LAW—	1786-1811	401

	Article	Page
COURTS, COUNTY, AT LAW—continued.		
County court of Dallas county, at law...	1786-1798	401
Creation of County court of Dallas county, at law	1786	401
Jurisdiction of said court	1787	401
Jurisdiction retained by county court of Dallas county	1788	401
Terms of county court of Dallas county, at law; practices, etc.....	1789	402
Judges to be elected when, etc.; qualifications; term	1790	402
Bond and oath of judge..	1791	402
Special judge elected or appointed how.....	1792	402
May issue writs.....	1793	402
Clerk of; seal; sheriff to attend when, etc.....	1794	402
Appointment of jury commissioners; selection, etc., of juries.....	1795	402
Vacancies in office of how filled.....	1796	402
Fees and salary of judge	1797	402
Salary of county judge of Dallas county....	1798	402
County Court of Tarrant County for Civil Cases.	1799-1811	403
Creation of county court of Tarrant county for civil cases	1799	403
Jurisdiction of said court	1800	403
Jurisdiction retained by court of Tarrant county	1801	403
Both courts may issue writs	1802	404
Terms, practice, etc., of county court of Tarrant county for civil cases..	1803	404
Judges to be elected when, etc., qualifications; term; vacancies how filled.....	1804	404
Bond and oath of judge..	1805	404
Special judge elected or appointed, how.....	1806	404
Clerk of; seal; sheriff to attend when, etc.....	1807	404
Selection, etc., of juries by two courts jointly....	1808	404
Fees, salary of judge of county court of Tarrant county for civil cases..	1809	405
Removal of judge	1810	405
Salary of county judge of Tarrant county.....	1811	405
COURTS, CRIMINAL DISTRICT—	2202-2235	472
Galveston and Harris counties criminal district court.	2202-2228	472
The judge	2202-2207	472
Judge shall be appointed	2202	472

	Article	Page		Article	Page
COURTS, CRIMINAL DISTRICT—continued.			COURTS, DISTRICT—cont'd.		
His term of office.....	2203	472	District clerk pro tem, to to qualify and give bond	1688	384
Shall possess certain qual- ifications	2204	472	District clerk bond and oath.....	1689	385
Shall reside in his district	2205	472	May appoint deputies....	1690	385
May be removed from of- fice, how	2206	472	Oath and powers of dep- uties	1691	385
Exchange, etc., with dis- trict judge	2207	472	Shall keep office at county seat	1692	385
Clerk	2208-2215	473	May administer oaths, take depositions, etc....	1693	385
Governor shall appoint clerks	2208	473	Shall keep a record of proceedings of court, judgments, etc.	1694	385
Clerk shall give bond....	2209	473	Other dockets, books, etc.	1695	385
Shall take oath of office	2210	473	Shall report fines and jury fees.....	1696	385
Bond and oath shall be recorded	2211	473	Shall pay over jury fees and fines	1697	386
Duties and powers of clerks	2212	473	Records of suits, etc., in former district courts..	1698	386
Fees of clerks	2213	473	Records of suits in former county courts	1699	386
Salary of clerks	2214	473	Books, papers, etc., cus- tody and arrangements of	1700	386
Vacancy in office of clerk, how filled	2215	473	Indexes to all judgments	1701	386
Jurisdiction of the crim- inal district court 2216-2220	474		Shall transfer records to his successor.....	1702	386
Original jurisdiction ...	2216	474	Single clerk for district and county courts in certain counties	1703	386
Appellate jurisdiction ..	2217	474	When acting as district clerk to use seal of said court	1704	386
May grant habeas corpus, etc.	2218	474	Judge of the district court	1671-1684	382
Jurisdiction over cases transferred to it	2219	474	Ele ction, qualifications and residence.....	1671	382
Jurisdiction over bail bonds, etc.	2220	474	Term of office.....	1672	382
Miscellaneous provisions	2221-2228	475	Oath of office.....	1673	382
Seal of the court and its use	2221	475	Vacancy in office, how filled	1674	382
Terms of the court	2222	475	Disqualification, causes of	1675	382
Practice, pleading and evi- dence	2223	475	Disqualification, exchange of district judges; or special judge agreed upon, when	1676	382
Selection, etc., of juries..	2224	475	Record of election or ap- pointment of	1677	383
Procedure	2225	475	Special judge elected... ..	1678	383
Sheriffs shall attend	2226	475	Electoral body, how con- stituted	1679	383
Same power as district court	2227	475	Mode of conducting elec- tion	1680	383
Appeals from	2228	475	Failure of clerk or sher- iff to act	1681	383
Dallas criminal district court	2229-2235	476	Record of election.....	1682	383
Court created; jurisdiction	2229	476	Effect of such record....	1683	383
Dallas county district courts to have no crim- inal jurisdiction	2230	476	Other similar elections..	1684	384
Judge; qualification, elec- tion, etc.	2231	476	Jurisdiction and powers of the district court and of the judge thereof	1705-1717	387
Seal of court and its uses	2232	476	Original jurisdiction....	1705	387
Sheriff, clerk and county attorney to serve	2233	476	Jurisdiction in probate matters	1706	387
Terms of court and grand juries	2234	476			
Practice in	2235	477			
COURTS, DISTRICT— 1671-1730	382				
Clerk of the district court	1685-1704	384			
Election and term of of- fice	1685	384			
Vacancy, how filled....	1686	384			
District clerk pro tem, appointed, when....	1687	384			

	Article	Page
COURTS, DISTRICT—cont'd.		
Motions against officers... 1707	387	
To punish contempts... 1708	387	
May transfer probate proceedings to county court	1709	387
Clerk to transmit papers, records, etc.....	1710	388
Judgments transferred and enforced.....	1711	388
To hear and determine all cases of legal and equitable cognizance	1712	388
To grant all remedial writs	1713	388
Judges may exercise all powers, etc., in vacation by consent of parties, except, etc.	1714	388
Judges may alternate, etc.	1715	388
May appoint attorney for pauper	1716	388
Other powers and authority	1717	389
Miscellaneous Provisions relating to the district court	1727-1730	391
Minutes to be read and signed	1727	391
Of proceedings before special judge.....	1728	391
Seal of the court	1729	391
When clerk has no seal..	1730	391
Courts, district and county, practice in 1812-2201	406	
Terms of the district court	1718-1726	389
Terms of court	1718	389
Terms of court in unorganized counties.....	1719	389
Special terms may be held, when; time; jury commissioners; grand and petit juries, etc....	1720	389
Grand jury, selection, etc., duties.....	1721	389
Indictment at special term, arraignment on..	1722	389
No new civil cases to be brought to special term	1723	389
Juries, how summoned, business transacted, etc.	1724	389
Adjournment of term, when and how made..	1725	390
Extension of term of court, when, etc., effect as to term in another county	1726	390
(See "District Courts.")		

COURTS, DISTRICT AND COUNTY—		
Practice in.....	1812-2183	406
Suit, abatement and discontinuance of suit 1886-1901	420	

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Suit not to abate where plaintiff dies, if, etc.	1886	420
Scire facias to executor, etc.....	1887	420
Death of defendant	1888	420
When executor, etc., dies	1889	420
Surviving parties	1890	420
Death between verdict and judgment.....	1891	420
Marriage of plaintiff feme sole	1893	421
Marriage of defendant feme sole.....	1893	421
Suit to the use of another	1894	421
Death of party to suit for injuries resulting in death	1895	421
When some defendants not served.....	1896	421
Discontinuance as to principal obligator	1897	421
Discontinuance in vacation	1898	421
As to defendant served ..	1899	421
When defendant has filed counter claim.....	1900	422
Requisites of scire facias and returns	1901	422
Appeal and writ of error	2078-2117	449
Appeals, etc., to the courts of civil appeals, allowed in what cases.....	2078	449
Appeals from interlocutory order appointing receiver or trustee, etc.	2079	449
Appeal from interlocutory order granting or dissolving temporary injunctions	2080	449
"Appellant" and "appellee" defined.....	2081	449
"Plaintiff in error" and "defendant in error" defined	2082	449
"Appellate court" and "court below" defined..	2083	449
Appeal perfected, how...	2084	449
By parties of whom no appeal bond is required	2085	450
Writ of error sued out, when	2086	450
By petition	2087	450
Requisites of petition....	2088	450
Error bond	2089	450
Citation in error.....	2090	450
Form and requisites of citation	2091	450
Service and return of....	2092	450
Return, and what shall show	2093	451
Alias citation	2094	451
Service on the attorney of records	2095	451
Service in other modes... 1096	451	
Cost bond on appeal or writ of error.....	2097	451

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Appeal, etc., by pauper..	2098	451
Appeal, etc., perfected when	2099	451
Appeal, etc., on cost bond or affidavit does not suspend execution....	2100	451
Supersedeas bond	2101	451
Supersedeas bond where judgment is for land or other property.....	2102	452
Judgment stayed and execution superseded....	2103	452
A m e n d e n t of appeal bond	2104	452
State, county, etc., not to give bond	2105	452
Of executors, etc.....	2106	452
Executor, etc., may take appeal or writ of error	2107	452
Transcript to be made out and delivered	2108	452
To contain all proceedings, etc.....	2109	452
Citation and return omitted when	2110	452
Omission of unimportant proceedings, when	2111	452
A g r e e d statement of pleadings and proof..	2112	453
Transcript must contain, what	2113	453
Clerk's certificate and indorsement	2114	453
Brief filed in court below, and notice given....	2115	453
Case appealed, etc., to remain on docket till, etc.	2116	453
Proceedings on return of mandate	2117	453
Attorney's fees, recovery of	2178-2179	464
Attorney's fees recoverable in certain cases; procedure; costs	2178	464
Remedy cumulative....	2179	464
Bills of exceptions and statements of facts	2058-2077	445
Exceptions to ruling taken, when.....	2058	445
Requisites of bill of exceptions	2059	445
May refer to statements of facts	2060	445
Charges regarded as excepted to	2061	445
No bill of exceptions where ruling appears of record	2062	445
Bill to be presented to the judge	2063	445
Submitted to opposing counsel, etc.....	2064	445
If found incorrect.....	2065	445
On disagreement, judge to make out bill, etc...	2066	445

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Bystander's bill, how obtained	2067	446
Statement of facts, how prepared	2068	446
When the parties disagree	2069	446
Statements of facts prepared from transcript of official shorthand reporter, when and how, etc.; in duplicate; filed; original sent up; reporter to prepare on request, etc., fees, proviso	2070	446
Statements of facts by stenographer for party appealing without bond, etc., when	2071	447
Parties may prepare statement of facts independent of transcript.....	2072	447
Time for preparing and filing statements of facts and bills of exceptions; judge may extend, provided, etc....	2073	447
Statements of fact not filed in time, when considered by court...	2074	448
Time for judge to file conclusions, etc.....	2075	448
Where term of office expires before adjournment, etc.	2076	448
Statement of facts and bills of exceptions in civil cases in county courts and county courts at law.....	2077	448
Change of Venue.....	1911-1916	424
By consent of parties....	1911	424
Granted on application, when	1912	424
Shall be granted, unless.	1913	424
To what county.....	1914	424
In case of new counties..	1915	424
Duty of clerk on change of venue.....	1916	425
Charges and instructions to the jury.....	1970-1975	433
Court shall charge the jury, unless waived, etc.	1970	433
Requisites of the charge.	1971	433
Charge need not be excepted to.....	1972	433
Parties may ask instructions	1973	434
Instructions refused constitute part of bill of exceptions	1974	434
Jury may carry charge, etc., with them.....	1975	434
Continuance	1917-1919	425
Continuance not to be granted, except, etc...	1917	425

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Application for continuance, requisites of...	1918	425
Business not disposed of continued by operation of law.....	1919	425
Costs and security therefor	2030-2057	441
Who responsible for costs	2030	441
Each party liable for costs incurred by him.....	2031	441
Officers may demand payment of, to adjournment of each term....	2032	441
May put bill of costs with officer for collection, when; same has force of execution; appeal not to prevent execution for costs.....	2033	442
Levy for costs; costs demanded of attorney; fees for collecting, when allowed.....	2034	442
Successful party to recover	2035	442
Taxes on law proceedings	2036	442
Fees of only two witnesses to any fact....	2037	442
Costs of motions.....	2038	442
Costs where exception sustained	2039	442
Where exception overruled	2040	442
Costs of several suits, etc.	2041	442
Where demand reduced by payment, etc.....	2042	443
In actions of assault and battery	2043	443
Costs of new trials....	2044	443
Where judgment is arrested, etc.....	2045	443
On appeals and certiorari	2046	443
The same.....	2047	443
Court may otherwise adjudge costs.....	2048	443
Clerk may require security for costs.....	2049	443
Who may require security	2050	443
Judgment on cost bond..	2051	443
Affidavit of inability to give cost bond.....	2052	443
Deposit in lieu of cost bond	2053	444
No security to be required of whom.....	2054	444
No security required of the state.....	2055	444
Security may be required of whom, etc.....	2056	444
Costs may be secured of other bonds.....	2057	444
Institution of suits ..	1812-1816	406
Suit commenced with petition filed by the clerk	1812	406
Duty of the clerk.....	1813	406

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
No paper to be considered filed, unless, etc.....	1814	406
Clerk's file docket	1815	406
Civil suits not to be instituted on Sunday, etc., except	1816	406
Interlocutory Proceedings, etc.	2118-2166	454
Motion docket	2118	454
Service of motion, how made	2119	454
Notice of motion in pending suits	2120	454
Motions disposed of, when	2121	454
Notice of motion not in pending suit	2122	455
Disposed of, when	2123	455
Auditor appointed when	2124	455
Report to be verified by affidavit	2125	455
Shall be admitted in evidence, but, etc.	2126	455
Compensation	2127	455
When receivers may be appointed	2128	455
Who disqualified to act as receiver	2129	455
When appointment void.	2130	456
Quo warranto to forfeit charter	2131	456
Oath and bond of receiver	2132	456
Receiver's power	2133	456
Funds, how invested ...	2134	456
Application of funds in hands of receiver and claims preferred ...	2135	456
Proceedings in suits where receiver is discharged	2136	457
When property in the hands of receiver subject to execution ...	2137	457
Judgments a first lien on property, and property charged with lien after receivership	2138	457
Persons to whom property delivered liable for debts.	2139	457
Effect of discharge of receiver	2140	457
Property redelivered by receiver without sale still liable for debts; suits do not abate, but new party may be made	2141	458
Judgments and unsued claims have preference lien over mortgage ..	2142	458
Receiver and person to whom property is delivered both liable and may be sued for unpaid claim	2143	458

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Receiver to give bond on appeal	2144	458
Railroad funds, where deposited	2145	459
Receiver may sue, or be sued without leave; effect of judgment against	2146	459
Suits against receiver, where brought	2147	459
Inventory to be made and returned by receiver..	2148	459
Jurisdiction to appoint receiver confined to courts of this state in certain cases.....	2149	459
Receiver of corporation where applied for ...	2150	459
Where there are betterments, general creditors have rights to be protected	2151	459
Judgments and other claims have preference over mortgage	2152	460
Receivership of corporations limited to three years	2153	460
Application for receiver, by whom made.....	2154	460
Rules of equity shall govern in receivership proceedings	2155	460
Master in Chancery, qualifications, duties and appointment	2150	460
Lost records and papers supplied, on motion ..	2157	460
Motion, requisites of	2158	460
If substitutes agreed to	2159	461
If not agreed to, court may hear proof, etc...	2160	461
Adverse party may supply	2161	461
Parties may agree on brief, statement, etc...	2162	461
Substituted copies constitute record	2163	461
Custody of money and other articles deposited	2164	461
Officer shall deliver funds, etc., to his successor	2165	461
Not to exempt officer and sureties from liabilities, etc.	2166	461
Judgments	1994-2011	436
Judgments, how framed	1994	436
For or against one or more plaintiffs, etc. .	1995	436
Several counts, some good and others bad	1996	436
But one final judgment	1997	437
Judgment may pass title, etc.	1998	437
Court shall enforce its own decrees in certain cases, how	1999	437

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Judgments of foreclosure of liens	2000	437
Writ of possession awarded	2001	437
On appeals from county court	2002	437
On appeals from justice's court	2003	437
Judgments against executors, etc.	2004	437
Against executors acting independently of probate court	2005	437
Against partners when all not served	2006	438
Confession of judgment ..	2007	438
Acceptance of service, waiver of process	2008	438
Confession of by attorney	2009	438
Release errors, but impeachable, etc.	2010	438
Other judgments when authorized by law ..	2011	438
Miscellaneous provisions	2180-2183	465
Process, requisites of....	2180	465
Vouchers, wager of battle, etc., repealed	2181	465
Suit consolidated, when..	2182	465
Officer failing, etc., punished for contempt and liable for damages ..	2183	465
New trials may be granted	2019	440
Motion for, requisites of	2020	440
Misconduct of jury, etc., as ground of motion; evidence	2021	440
New trials granted where damages too small, etc.	2022	440
Time of making motion..	2023	440
Not more than two new trials, except, etc....	2024	440
Determined when	2025	440
Bill of review in suits by publication	2026	440
Petition necessary in such cases	2027	440
Execution, etc., not suspended, unless	2028	440
Sale under such execution not avoided, but, etc ..	2029	441
Parties to suits	1835-1849	413
Suits by and against counties, etc.	1835	413
Suits by executors, etc...	1836	413
Suits for lands against estates	1837	413
Suits for injuries resulting in death	1838	413
Suits for wife's separate property	1839	413
Against husband and wife for necessaries, etc. .	1840	413
For wife's debts, etc. ...	1841	413

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Several obligors in any contract may be joined, etc.	1842	413
Parties conditionally liable may be sued alone, when	1843	414
Sheriffs, etc., sued may make indemnitors parties	1844	414
Sureties on official bonds when joined	1845	414
When different officials and their bondsmen may be joined.....	1846	414
Suit in the name of the state for use of others	1847	414
Additional parties may be brought in, when.....	1848	414
Parties may appear by attorney	1849	415
Pleadings of the defendant	1902-1910	422
Answer may include several matters	1902	422
Plea of privilege, what sufficient	1903	422
To be filed, when.....	1904	422
In cases of citation by publication	1905	422
Certain pleas to be by affidavit	1906	423
Plea of payment, counter claim, etc.	1907	423
General denial need not be repeated	1908	423
Pleas to be filed in due order	1909	423
Certain pleas to be determined during the term at which filed..	1910	423
Pleadings of the plaintiff	1827-1829	408
Requisites of the petition	1827	408
Defensive matters by plaintiff	1828	408
Denial of special defenses presumed	1829	408
Pleading in general ..	1817-1826	407
System of pleading	1817	407
To be in writing, signed and filed	1818	407
"Pleadings" defined	1819	407
Pleadings of an intervenor	1820	407
Pleadings in particular cases	1821	407
Pleading charters and acts of incorporation	1822	407
Pleading special acts of the legislature	1823	407
Pleading may be amended	1824	407
Time of filing amendment	1825	408
Amendment after arrest of judgment, etc.	1826	408
Process and returns	1850-1885	415

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Requisites of citation; when to issue.....	1850	415
One citation to each county where there is a defendant	1851	415
Citation shall contain, what	1852	415
Defendant out of county to have copy of petition	1853	415
Citation when sheriff is a party	1854	415
Duty of officer receiving citation	1855	416
Service of citation within the county	1856	416
Service without the county	1857	416
Citation in suits against counties	1858	416
Against cities, towns, etc.	1859	416
Against incorporated companies, etc.	1860	416
Foreign corporations, how served	1861	416
In suits against foreign corporations cumulative mode	1862	416
Against partners	1863	417
Return of citation	1864	417
Return of citation not served	1865	417
Alias process	1866	417
Time of service of citation	1867	417
Same	1868	417
Citation to defendants without the state	1869	417
By whom served	1870	417
Service in such cases....	1871	417
Return of service	1872	418
Effect of such service..	1873	418
Citation by publication..	1874	418
For unknown heirs	1875	418
Citation by publication; requisites	1876	418
Publication of citation in suits involving title to land	1877	418
Return of citation by publication	1878	419
Mistake in return may be corrected	1879	419
Acceptance of service of process	1880	419
Entering appearance in open court	1881	419
Answer constitutes appearance	1882	419
Motion constitutes appearance, when.....	1883	419
Reversal of judgment on appearance	1884	419
No judgment without service	1885	419
Remitter and amendment of judgment	2012-2018	439

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Remitter of excess in verdict	2012	439
Remitter of excess in judgment in open court	2013	439
Remitter in vacation ...	2014	439
Mistake in judgment corrected in open court ..	2015	439
Misrecitals, etc., corrected in vacation or term time in certain cases	2016	439
Correction made in vacation to be certified to clerk.	2017	439
Correction or remitter operates to cure errors ..	2018	439
Reporters	1920-1933	426
District judges may appoint official reporters, when	1920	426
Examination and certificate of reporters....	1921	426
Oaths of reporters	1922	426
Duties of reporters.....	1923	427
Same subject.....	1924	427
Compensation of reporter; further duties, compensation, how paid etc., extra compensation, etc. how paid, etc.	1925	427
Reporters to make transcript for any person; compensation	1926	428
Stenographer's fee to be taxed as costs, when, payable into general fund of county, except, etc.	1927	428
Deputy reporter; appointment; oath; examination	1928	428
Annual statement of reporter	1929	428
Special stenographer appointed, when	1930	428
Compensation of special stenographer	1931	428
Stenographer for county court, etc., in civil causes, appointed when; oath, compensation	1932	428
In felony cases reporter to keep stenographic record to be made when and how; transcript for appointed attorney, when, and compensation for same	1933	428
Suit by next friend. 2167-2171		462
When minor may sue by next friend.....	2167	462
Next friend may compromise	2168	462
May collect certain personal judgments, etc....	2169	462

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Disposition of such collections, compensation, etc.	2170	463
Claims against such judgments, how adjusted ..	2171	463
Suits against non-residents	2172-2177	463
Actions against non-residents	2172	463
Actual possession not necessary	2173	463
Requisites of pleadings..	2174	463
Judgment by default can not be rendered.....	2175	463
Procedure if suit be to extinguish lien	2176	464
Judgment receivable in evidence	2177	464
Trial of causes	1934-1969	429
Appearance day	1934	429
Call of appearance docket	1935	429
Judgment by default....	1936	429
Where some defendants answer and others do not	1937	430
Damages on liquidated demands, how assessed ..	1938	430
On unliquidated demands	1939	430
Jury to assess damages, when	1940	430
Procedure in case of service by publication where no answer	1941	430
Guardian ad litem for minors, lunatics, etc....	1942	430
Suits called in their order, etc.	1943	430
To be tried when called unless, etc.....	1944	430
Day set for jury docket..	1945	430
Call of non-jury docket..	1946	431
Issues of law and dilatory pleas, tried when.....	1947	431
Trial by court	1948	431
Agreed case	1949	431
Cases brought up from inferior courts tried de novo	1950	431
Order of proceedings on trial by jury	1951	431
Additional testimony allowed, when	1952	431
Order of argument	1953	431
Charge and instructions	1954	432
Nonsuit may be taken, when	1955	432
Foreman of the jury....	1956	432
Jury may take certain papers	1957	432
Jury to be kept together	1958	432
Duty of officer in charge of jury	1959	432
Caution to the jury	1960	432
May communicate with the court	1961	432
May ask further instructions	1962	432

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
May have witness recalled	1963	432
May have depositions, etc., re-read	1964	433
Disagreement of jury	1965	433
May be discharged by the court	1966	433
Adjournment of court discharges	1967	433
Case to be tried again	1968	433
Court may proceed with other business	1969	433
Venue of suits	1830-1834	409
In what counties suits shall or may be brought	1830	409
Issuing process and taking depositions, no waiver of plea; use of depositions; cause transferred when; costs	1831	412
If plea sustained, no dismissal, but transfer	1832	412
When plea sustained, order changing venue, record transmitted	1833	412
When water course or highway is county boundary	1834	412
Verdict	1976-1993	434
Rendition of verdict	1976	434
Must be in writing and signed	1977	434
Verdict received and noted	1978	434
Jury may be polled	1979	435
Defective or mistaken verdict	1980	435
Not responsive to the issues	1981	435
Verdicts either general or special	1982	435
General verdict	1983	435
Special verdict defined	1984	435
Special verdict, requisites of; failure to submit issue not reversible error unless request, etc.	1985	435
Special verdict conclusive	1986	435
Jury to render general or rected	1987	435
Verdict to comprehend whole issue or all issues submitted	1988	435
Judge on request to state conclusions of fact and law separately, statement to be filed	1989	435
Court to render judgment on special verdict or conclusions, unless set aside, etc.	1990	435
Exceptions to conclusions or judgment noted in judgment; appeal, etc.; transcript	1991	436
No submission of special issues unless requested	1992	436

	Article	Page
COURTS, DISTRICT AND COUNTY—cont'd.		
Verdict not void for want of form	1993	436
See "District Courts."		
COURTS, JUSTICES'	2283-2400	486
Appeal	2391-2397	503
Appeals may be taken	2391	503
Taken to district court, when	2392	503
Notice, bond and other proceedings on appeal	2393	503
Affidavit of inability to give bond	2394	503
When appeal perfected on affidavit	2395	504
Duty of justice in case of appeal	2396	504
Transcript, etc., to be transmitted to county court	2397	504
Appearance and trial	2330-2338	494
Appearance day	2330	494
Proceeding where defendant fails to appear	2331	494
Appearance noted	2332	495
Jury trial may be demanded	2333	495
Court shall try case, when	2334	495
Call of the non-jury docket	2335	495
Plaintiff failing to appear may be non-suited	2336	495
Proceedings, evidence etc., to conform to rules governing district courts, etc.	2337	495
Judgment on trial without jury	2338	495
Continuance	2329	494
Cause may be continued etc.	2329	494
Dockets, books and papers	2302-2307	489
Justice's docket	2302	489
Fee book	2303	489
Other books	2304	489
Custody of books, papers, etc.	2305	489
Books and papers to be delivered to successor	2306	489
Delivery of, may be enforced	2307	489
Justices, election and qualification of	2283-2290	486
Justices, election, bond, term of office	2283	486
Appointed, how, in unorganized counties	2284	486
Additional justices of the peace for unorganized counties	2285	486
Two justices in certain precincts	2286	487
Commission and qualification	2287	487
Vacancy, how filled	2288	487

	Article	Page
COURTS, JUSTICES—cont'd.		
Nearest justice to hold court, when	2289	487
Justice disqualified, when	2290	487
Execution	2380-2388	501
Judgments enforced by execution, etc.	2380	501
Returnable in sixty days	2381	501
Taxation of costs	2382	501
Execution to issue after ten days	2383	501
Within the ten days when	2384	501
Issued to another county to be attested by clerk	2385	501
Dormant judgment, etc.	2386	501
The rules governing executions generally apply, except, etc.	2387	501
Execution, stay of	2388	502
Stay of execution	2389-2390	502
Judgment and execution on	2389	502
General provisions	2390-2400	504
Certiorari to remove cause to county court	2398	504
Duty of justice on service of writ	2399	504
Rules governing district courts, etc., to apply, except, etc.	2399	504
Judgment	2400	504
Judgment upon verdict of jury	2364-2372	498
Case tried without jury, decision in open court	2364	498
Judgment	2365	498
Costs	2366	498
Judgment for specific articles	2367	498
Court may, in certain cases, enforce judgment by attachment, fine, etc.	2368	498
No judgment without citation, unless	2369	499
Confession of judgment	2370	499
Warrant of attorney to be filed	2371	499
Same rules as govern district courts, etc.	2372	499
New trials, etc.	2373	499
Judgments by default, etc. may be set aside	2374-2379	500
New trials may be granted	2374	500
Motion to be sworn to, except, etc.	2375	500
Notice	2376	500
Where motion granted, cause continued unless, etc.	2377	500
But one new trial to either party	2378	500
Pleadings	2379	500
Pleadings oral, but entered on docket	2326-2328	493
	2326	493

	Article	Page
COURTS, JUSTICES—cont'd.		
Pleadings to be in writing and under oath	2327	493
Pleadings amendable	2328	494
Justices, powers and jurisdiction	2291-2297	487
Jurisdiction in civil cases	2291	487
To enter forfeiture of bail bonds	2292	487
To punish contempts	2293	487
To issue writs of garnishments, etc.	2294	488
Other jurisdiction conferred by law	2295	488
No jurisdiction in certain cases	2296	488
To proceed with unfinished business	2297	488
Process and service	2321-2325	492
Process of justice's court, requisites of	2321	492
Citation to be issued, when	2322	492
Citation shall contain, what	2323	493
Justice may depute a person to serve process	2324	493
Rules of district courts, etc., govern as to issuance and service of process	2325	493
Security for costs	2319	492
Rules of justice's court, etc., apply as to security for costs	2319	492
Parties	2320	492
Same rules as to parties as in district courts, etc.	2320	492
Terms of the court	2298-2301	488
Monthly terms	2298	488
Times and places of holding	2299	488
May hold from day to day, etc.	2300	488
Failure of term	2301	488
Trial by jury	2339-2363	496
Jury trial may be demanded	2339	496
Time of demand and deposit of jury fee	2340	496
Jury trial day to be fixed	2341	496
Summons for jury to be issued, when, etc.	2342	496
Oath to sheriff, etc., summoning jury	2343	496
Duty of the officer	2344	496
Summons to juror, how served	2345	496
Venire of jurors to be called	2346	497
Excuses of jurors	2347	497
Defaulting jurors to be fined	2348	497
Other jurors summoned when necessary	2349	497
Call of jury docket	2350	497
Challenge to the array, when	2351	497

	Article	Page
COURTS, JUSTICES—cont'd.		
Challenge to the array, how made and proceedings thereon	2352	497
Drawing of jury	2353	497
Challenge for cause	2354	497
Challenge for cause, proceeding on, same as in district courts, etc. . .	2355	497
Peremptory challenges, when and how made..	2356	497
The jury	2357	497
When the jury is incomplete	2358	497
Jurors to be sworn	2359	498
Oath of jurors	2360	498
Mode of proceeding on trial before jury, same as in district courts, etc.	2361	498
Verdict for specific articles to assess their value separately.....	2362	498
Pay of jurors	2363	498
Venue	2308-2318	490
Suits to be brought in the county of defendant's residence, except, etc.....	2308	490
Residence of single men	2309	491
Where two justices in one precinct	2310	491
Where two justices in one city or town	2311	491
Where justice is disqualified	2312	491
Change of venue on affidavit	2313	491
By consent	2314	491
When justice is disqualified	2315	491
Term "nearest justice" defined	2316	491
Order of transfer	2317	491
Duty of justice in case of transfer	2318	491
COURTS, JUVENILE—2184-2201		466
Dependent and neglected children	2184-2190	466
"Dependent child" or "neglected child" defined	2184	466
County and district courts given jurisdiction over.....	2185	466
Who may institute proceedings in interest of child, and how.....	2186	466
Hearing; citation, etc.; service, etc.; representative; parents' rights forfeited, when.	2187	467
Hearing; facts to be ascertained; witnesses; county attorney to appear for petition or file same, etc., when..	2188	467
Adjudication; order disposing of child as		

	Article	Page
COURTS, JUSTICES—cont'd.		
deemed best for its welfare	2189	467
Child to be ward of custodian; his authority; maintenance, etc.; visitation; reports; change of guardianship; child may remain with parents, etc., when, etc... .	2190	467
Delinquent children.. 2191-2201		468
"Delinquent child" defined	2191	468
County and district courts given jurisdiction over; jury trial; records	2192	469
Proceedings; complaint, etc., filed by county attorney; requisites....	2193	469
Warrant, etc.; execution thereof; no incarceration unless; noting; verbal sureties; default; contempt; alias warrant, etc.; no incarceration with, when; bond	2194	469
County and district courts always in session for; child of sixteen or under if arrested to be taken before one of said courts; if taken before justice, etc., case transferred; hearing	2195	469
County judge may appoint probation officers, etc.; notice to; his authority and duties....	2196	470
Hearing may be continued; disposition of child; not to be committed beyond age of twenty-one; order, requisites, change of order and custody or discharge	2197	470
Custodian to report; give information; to be satisfactory to court....	2198	471
Prosecution under criminal laws may be ordered; no child under sixteen to be prosecuted without order; after conviction may stay and release, etc..	2199	471
District court may order dismissal of felony prosecution of person under sixteen and committed to juvenile court, etc.; after conviction may suspend judgment and release, etc.	2200	471

	Article	Page
COURTS, JUSTICES—cont'd.		
This chapter to be liberally construed in interest of child and its reformation	2201	471
Criminal district courts	2202-2235	472
COURTS MARTIAL—		
Articles of war regulating	5860	1245
Evidence, procedure, etc., in	5861-5887	1253
COURT, SUPREME—	1512-1579	349
Clerk of the supreme court	1530-1538	352
Appointment, qualification and bond	1530	352
Vacancy in vacation, how filled	1531	353
Term of office and salary ..	1532	353
Seal of court, clerk to procure	1533	353
Shall file and preserve transcripts, docket causes	1534	353
Shall record proceedings ..	1535	353
Deputies, appointment, etc., bond, compensation, duties	1536	353
Clerk to be librarian	1537	354
His duties as such	1538	354
Hearing causes	1548-1549	356
Order of trial of causes ..	1548	356
Death of parties no abatement, when	1549	356
Judges of the supreme court	1512-1517	349
Chief and associate justices	1512	349
Election and tenure of office	1513	349
Qualifications of judges ..	1514	349
Vacancies, how filled	1515	349
Disqualification of judges ..	1516	349
Equal division of judges ..	1517	350
Judgment of the court ..	1550-1560	357
Judgments in open court; opinions in writing	1550	357
Judgment on affirmance or rendition, etc.	1551	357
If judgment reversed, may remand to court of civil appeals or district court	1552	357
No reversal or dismissal for want of form	1553	357
When judgment shall become final	1554	357
Mandate to issue, when ..	1555	357
Same subject	1556	357
Affidavit of inability to pay or secure costs	1557	357
Mandate to issue to what court	1558	358

	Article	Page
COURT, SUPREME—continued.		
No mandate to be taken out after twelve months, in case of reversal and remand; certificate and dismissal	1559	358
Mandate recalled where judgment set aside	1560	358
Judgment, execution of ..	1566-1571	359
Process, how tested, directed and executed ..	1566	359
Judgment enforced, how ..	1567	359
Execution issued, when ..	1568	359
Execution returnable, when	1569	360
Officer failing to make return; remedy	1570	360
Money due clerk of court of civil appeals to be paid by clerk of supreme court; remedy ..	1571	360
Jurisdiction of the supreme court	1521-1529	351
Appellate jurisdiction ..	1521	351
Writs of error, in what cases	1522	351
Court to make rules, etc. ..	1523	351
To prescribe rules of practice	1524	351
May ascertain jurisdictional facts	1525	351
May issue writs	1526	351
May punish contempt	1527	352
May mandamus district judge to proceed to trial	1528	352
May issue writs of habeas corpus when, and admit to bail	1529	352
Proceedings in cases in the supreme court 1546-1547	356	
Trial of questions of law only	1546	356
Briefs filed	1547	356
Rehearing	1561-1565	358
Motion for, when and how made	1561	358
Notice of	1562	358
Service and return of officer	1563	359
Service on one of several parties	1564	359
When motion heard	1565	359
Reporter to the supreme court	1572-1579	361
Appointment and removal of	1572	361
Stationery, how furnished ..	1573	361
Records and manuscripts; duties of reporters ..	1574	361
Court to designate the cases to be reported ..	1575	361
Duties of printing board ..	1576	361
Requisites of volume	1577	361
Sale of reports	1578	362
Reports, how printed	1579	362
Stenographer	1539	354

	Article	Page
COURT, SUPREME—cont'd.		
Court stenographer and salary	1539	354
Terms of the supreme court	1518-1520	350
Terms of supreme court.	1518	350
Adjournments	1519	350
Bailiff; appointment and compensation	1520	350
Writ of error—proceedings to obtain, etc. ..	1540-1545	354
Petition for writ of error, requisites of and bond	1540	354
Filing; time of, etc.	1541	355
Petition with record etc., to be forwarded; provided deposit, etc.	1542	355
Conclusions of fact, may suspend action on petition to obtain.....	1543	355
Writ granted, when, etc.	1544	355
Bond required, when....	1545	355
COVENANTS—		
When implied in deed... ..	1112	264
CRAFTSMEN—		
Lien of.....	5644-5649	1194
CREDIT ASSOCIATIONS—		
Occupation tax on.....	7355	1574
CREDITORS—		
Arraignments for	91-106	53
General assignments, how made and construed; preferences void.....	91	53
Assignment acknowledged, etc., and recorded; inventory attached, what shall contain and how verified	92	53
Assignment for creditors accepting, etc., and discharging assignor.....	93	54
Notice of assignee's appointment, when and how given.....	94	54
How and when consenting creditors may accept	95	54
Where assignee shall reside, and his preliminary duties and bond approved by county or district judge.....	96	54
Fraud, etc., will not defeat assignment.....	97	55
Proof of claim, when and how made.....	98	55
Surplus in assignee's hands subject to garnishment	99	55
Property fraudulently sold by assignor		

	Article	Page
CREDITORS—cont'd.		
passes by the assignment and may be recovered by assignee, etc.	100	55
Failure to attach inventory presumption of fraud, but does not vitiate assignment; assignor, etc., may be examined	101	55
Verified claim shall be allowed by assignee, unless contested.....	102	56
Unmatured claims discounted and collateral securities estimated and deduction for same	103	56
Assignee may be removed and vacancy from any cause filled, how	104	56
Dividend declared, when and how, and allowance to assignee.....	105	57
Final report and discharge of assignee....	106	57
Conveyances to defraud, void	3966	819
Of corporations, rights of, etc.	2151	459
Of dissolved private corporations	1205-1211	291
In administration of community property of decedents	3604	747
Of decedent may sue executor, when.....	3363	706
Rights of, against distributees of estates of decedents	3389	710
Of estates of wards, orders to pay.....	4234	865
Of estates of decedents.	3247-3266	687
Of partnerships.....	6147	1310
CRIMINAL CASES—		
Forfeited bonds in, in county courts.....	1765	397
CROSSINGS—		
Of railroads under control of commission....	6701	1438
CROSS INTERROGATORIES—	3654	756
CRUELTY TO ANIMALS—		
City council may prohibit and punish for.....	834	209
CURRENT WAGES—		
Not subject to garnishment	306	90

D

	Article	Page
DAIRY AND FOOD COM- MISSIONER—		
Governor to appoint, du- ties, etc.....	4575-4595	931
Salary of.....	7070	1513
DALLAS—		
Criminal District court	2229-2235	476
DALLAS COUNTY—		
County court of, at law	1786-1798	401
DAMAGES—		
For neglect of adminis- trator, etc., to deliver property for distribu- tion	3555	739
Certain and uncertain not to be set off against each other	1329	319
For depredations of live stock	7224	1542
When awarded by courts of civil appeals.....	1627	372
In contested election cases	3068	652
Notice of claims for, rule as to.....	5714	1207
Taker up of estrays liable for	7201	1538
In cases of forcible entry and detainer	3960	817
Assessed for drainage pur- poses, how paid	2500	531
Assessed for drainage pur- poses, how paid.....	2520	535
For injuries resulting in death	4694-4704	956
None against irrigation companies, when.....	5007	1048
To public lands, suits to recover	5460-5474	1148
On liquidated demands, how assessed.....	1938	430
On unliquidated demands	1939	430
Mitigation of, for libel...	5596	1181
For depredations of cer- tain live stock.....	7251	1548
For right of way, etc., for railroads	6502	1390
Against railroads for fail- ure to furnish cars....	6690	1435
Against railroads in case of discrimination.....	6671	1428
For laying out of public roads	6865	1473
In trials of right of prop- erty	7787	1689
In trespass to try title...	7756	1684
Against warehousemen...	7826	1701
Against public weighers...	7835	1704
DAY LABORERS—		
Lien of.....	5644-5649	1194
DEAD ANIMALS—		
City council may regulate disposition of.....	850	211
DEAD BODIES—		
Regulations for delivery of to anatomical board..	5757	1221

	Article	Page
DEAF, ETC., ASYLUMS—		
The Deaf and Dumb, and the Blind, and other Asylums	171-232	68
Lunatic Asylums.....	107-165	58
Pasteur Hospital.....	166-170	67
Boards of trustees.....	171	68
Boards, how appointed and constituted.....	172	68
Organization of the boards	173	69
Meetings of the boards...	174	69
Powers of the boards....	175	69
May make requisition for improvements, etc....	176	69
Statement and itemized account to be filed with comptroller	177	69
Duplicate receipts to be taken	178	69
Reports of the trustees..	179	69
Compensation of trustees.	180	69
Superintendent, appoint- ment and term of office.	181	70
Oath and bond.....	182	70
Removal of superintend- ent	183	70
Powers of superintendent	184	70
Same subject.....	185	70
Reports of receipts and expenditures	186	70
Reports of superintendent	187	70
Blind asylum	188-189	71
Deaf and Dumb Asylum	190-195	71
Pupils to learn printing..	190	71
Instructor, how appointed	191	71
His salary and removal..	192	71
Public printing at asylum	193	71
Provisions for all deaf, dumb and blind chil- dren	194	71
Who to apply for.....	195	71
Orphan Asylum.....	196-204	71
Confederate Home.....	205-208	72
Deaf, Dumb, and Blind Asylum for Colored Youths	209-210	74
Epileptic Colony.....	211-232	74
Home for Lepers.....	233-239	78
Deaf, Dumb and Blind Asylum for Colored Youths.....	209-210	74
General provisions....	171-189	68
Qualifications and term of office of the superin- tendent for the asylum for colored youths....	209	74
Powers and duties of board of trustees, and regulations for asylum.	210	74
Other asylums	107-239	58
DEBT, PUBLIC.....	2401-2402	505
Bonds and obligations de- clared valid.....	2401	505
Laws to remain in force until obligations are dis- charged	2402	505

	Article	Page
DEBTS—		
Attachments on, issued when	243	80
Wife may contract, when. See "Indebtedness."	4624	943
DECEDENTS—		
Estates of	3206-3639	680
DEEDS—		
Acknowledgment and proofs of	6797-6820	1459
What deeds are not archives	84	51
County clerks may acknowledge	1751	395
To counties, valid, etc....	1369	326
Conveying estates of decedents	3508-3517	730
Certified copies of, evidence when	3702	763
Under forced sales	3765	773
To land to be recorded in county where land is situated	6827	1464
May be recorded again, when	6784	1456
To lands sold for back taxes	7675	1664
To property sold for taxes for taxes, requisites	7600	1649
No transfers, etc., to be withdrawn from land office, etc.	7639	1657
See "Conveyances."	5290	1105
DEEP WATER CORPORATIONS		
Corporations acting under authority of congress may purchase certain coast land from the state	1254	302
May purchase certain other lands	1255	302
Application for purchase, how made	1256	302
Regulating surveys, payment of purchase money, forfeitures, etc., under foregoing articles	1257	303
Right to construct docks, etc., charge tolls, subject to railroad commission and general laws regulating rights of said corporations	1258	303
Rights, powers and privileges granted shall not interfere with what...	1259	304
Shall file release with secretary of state of right of control by congress	1260	304
Corporations, private, generally	1117-1321	266
DEFAMATION—		
Of character	5595-5598	1181

	Article	Page
DEFAULTING JURORS—		
To be fined	5172	1084
DEFAULTING OFFICERS—		
May be sued where	1830	409
DEFICIENCIES—		
Comptroller to be notified of, when	4342	881
DEFINITIONS—		
Of certain terms in law ..	5504	1157
Of certain words	5504	1157
Of libel	5595	1181
Of terms used in medical practice act	5746	1218
Of terms under tax law ..	7506	1623
DEFUNCT CORPORATIONS		
	1205-1211	291
DELEGATES—		
Instruction of in primaries	3111	661
To national conventions ..	3175	673
DELINQUENT CHILD—		
Confined in state institution for training of juveniles, when	5228	1093
Juvenile courts for trial of	2191-2201	468
DELINQUENT TAXES. 7683-7700		
Land and improvements subject to taxation ..	7683	1665
Delinquent taxes a lien on land	7684	1665
Tax collector to list delinquent lands	7685	1666
County clerk to record delinquent lists	7686	1666
Delinquent tax lists to be published	7687	1667
Suits to foreclose tax liens on delinquent lands ..	7688	1667
Proceedings in suits to foreclose tax liens ...	7689	1668
Sheriff to execute deeds ..	7690	1668
Attorneys to represent state, fees, etc.	7691	1669
Assessor to list unpaid taxes annually	7692	1669
Law available to cities and towns	7693	1669
Exemptions from this chapter	7694	1670
Delinquent owners may redeem before sale ...	7695	1671
May redeem in two years by paying double	7696	1671
May redeem from state, when and how	7697	1671
Proceedings against unknown and non-resident owners	7698	1671
Similar proceedings by cities and towns	7699	1672

	Article	Page
DELINQUENT TAXES—cont'd.		
Lands to be platted and numbered	7700	1672
Collection of in improvement districts	5563	1173
Collection of in navigation districts	5986	1284
DELINQUENT TAXPAYERS—		
Assessors to furnish list of	7575	1645
List of to be furnished... Collectors to make lists of	7621	1654
Of defunct cities and towns, suits against... May not plead limitation.	1410	335
	1088	259
	7662	1661
DELINQUENT TAX RECORD—		
To be published.....	7709	1676
DE NOVO TRIALS—		
Of cases from inferior courts, etc.....	1950	431
DENTISTRY		
	2403-2416	506
Unlawful to practice without certificate, provided, etc.....	2403	506
Same subject.....	2404	506
Board of examiners created, powers.....	2405	506
Members of board appointed how; term, etc.; vacancies how filled.....	2406	506
Oath of members to be filed for record, etc.; fee of county clerk....	2407	506
Officers of board; meetings; quorum, etc.....	2408	506
Certificate to be obtained before commencing practice; examination, etc.....	2409	507
Examination fee.....	2410	507
Board to keep record of persons authorized to practice dentistry, requisites	2411	507
Member of board may grant license, valid only till next meeting of board; report of; inhibition	2412	507
Certificate to be filed with county clerk for record; fee	2413	507
Certificate may be revoked in what cases, procedure for	2414	507
Compensation of members of board, and expenses, paid how, etc.	2415	507
Special fund for meeting expenses; bond of secretary; annual report and account	2416	507

	Article	Page
DENTISTS—		
Medical practice act not to apply to, when.....	5742	1217
Prison commissioners shall employ	6226	1329
DEPARTMENTS—		
See "Heads of Departments."		
DEPENDENT CHILD—		
Care and treatment of	2184-2190	466
DEPOSITIONS—		
Commissioners of deeds to take	1101	261
In contested election cases	3070	652
County clerks may take..	1752	396
Notaries public may take.	6012	1288
Depositions of parties	3679-3686	759
Party may take his own deposition	3679	759
May take deposition of adverse party.....	3680	759
Where either party is a corporation no ex parte depositions	3681	759
Not necessary to give notice, etc.....	3682	759
Taken and returned as other depositions....	3683	759
Answer may embrace what—contradiction of	3684	759
Refusal to answer, etc...	3685	760
Objection to interrogatories, etc.....	3686	760
Depositions of witnesses	3649-3678	754
Depositions of witness may be taken, when..	3649	754
Notice and service thereof	3650	754
When notice may be given by publication.....	3651	755
When process was served by publication.....	3652	755
When suit has not been commenced	3653	755
Cross-interrogatories ...	3654	756
Commission to take deposition	3655	756
Requisites of.....	3656	756
Officers authorized to execute	3657	756
Witness to be summoned.	3658	756
Refusing to answer, may be attached.....	3659	756
Execution of the commission	3660	757
Interpreter	3661	757
Return of depositions....	3662	757
Depositions by oral examination and answer.	3663	757
Notice of taking deposition, requisites of....	3664	757
Any person may be compelled to appear and answer; proviso where deposition taken at distance over 100 miles..	3665	757

	Article	Page
DEPOSITIONS—cont'd.		
Service of notice, etc., noted on copy filed, etc., commission to issue after ten days.....	3666	757
Commission, how styled, etc.; requisites of.....	3667	758
Powers of officer taking deposition	3668	758
Written cross interrogatories may be filed.....	3669	758
Witness to be cautioned and sworn, etc.....	3670	758
Examination, how conducted, reduced to writing, etc., and subscribed	3671	758
Objections to testimony not to be sustained, etc.; but recorded and reserved for court, etc..	3672	758
Depositions certified and returned, how; rules as to use, etc.....	3673	758
Depositions opened.....	3674	758
Either party may use depositions, when.....	3675	758
Objections to depositions.	3676	758
Depositions to be read in evidence, subject, etc..	3677	759
Matter not responsive stricken out.....	3678	759
Evidence	3640-3713	753
Of witnesses in probate matters	3234	685
DEPOSITORIES	2417-2460	509
City, etc., depositories	2454-2460	518
Council to take bids for depository when and how; bids to state what; not to be opened until, etc.	2454	518
Award; bond.....	2455	519
Order designating depository; transfer of funds; penalty; penalty for failure to give bond; new bids, etc.....	2456	519
Warrants, how paid, etc., and charged; checks payable, when, bonds, etc., payment of.....	2457	520
If no depository selected, etc., may select at subsequent meeting, etc., period; new bond; penalty if not given.		
Treasurer not responsible, except.....	2458	520
Restrictions upon drawing, etc., of checks; treasurer's reports....	2459	520
Application of provisions of this chapter; definition of terms.....	2460	521
County depositories ..	2440-2453	515

	Article	Page
DEPOSITORIES—cont'd.		
Commissioners' court to call for bids for county depositories, when and how	2440	515
Bids when and how presented; to state what, other requirements....	2441	515
Bids to be opened when, etc.; award; interest how computed and paid; credited how, etc.	2442	515
Bond of depository.....	2443	516
Other designating depository; period; transfer of funds; penalty.....	2444	516
If no bids, etc., funds deposited where; interest; bond	2445	516
If two or more depositories, clearing house to be selected.....	2446	517
Treasurer's checks payable at county seat, penalty	2447	517
If depository not located at county seat, requirements	2448	517
Warrants, how paid, etc., and charged; statements, bonds, etc.....	2449	517
If no depository selected, etc., may be selected at subsequent term, etc., period	2450	517
New bond may be required; penalty if not given	2451	518
Treasurer not responsible for negligence of depository, but, etc.....	2452	518
Bids from adjoining county, when, requirements	2453	518
State depositories... 2417-2439	509	
State treasurer to designate bank as state depository; requirements, etc.....	2417	509
Any such bank may become bidder, etc.; further requirement; limitation of award....	2418	509
Other depository may be selected in lieu, etc....	2419	509
Treasurer to call for bids; etc.....	2420	509
Bids how presented, etc.; shall state what; opening of bids; selection of depository, etc., inhibition	2421	510
New bids to be taken, how, etc., requirements, award	2422	510
Bank complying to receive deposit, etc.....	2423	511

	Article	Page
DEPOSITORIES—cont'd.		
Bank to be solvent, and shall give bond, etc...	2424	511
Bonds to be deposited as collateral security, etc.	2425	511
Bonds to be delivered to treasurer; additional security when; inspection, recourse on; endorsement, etc.....	2426	511
Depository to pay interest on average daily balance, etc.....	2427	512
Collectors, etc., to deposit with nearest state depository, etc.; receipts; accounts....	2428	512
Deposits in excess of \$50,000 to be remitted to state treasurer, etc.; forfeiture for failure, etc.; notice; suit....	2429	512
Books, etc., of depository open to inspection, etc.	2430	512
Deposit of remittance made with or to whom, and how.....	2431	512
Treasurer, comptroller, and attorney general to make rules, etc.....	2432	513
State funds to be deposited in depositories, etc., provided, etc....	2433	513
Penalty for refusal to deposit state funds, etc.	2434	513
Depository shall act how long; forfeiture for what causes, etc., new depository, etc.....	2435	513
Balances in depositories to be equalized.....	2436	513
Depository to issue to treasurer on demand draft, etc., on U. S. reserve bank, etc.....	2437	513
Interest on deposits to become part of general revenue	2438	513
Other new bids to be taken, when, how, etc.; award; collateral securities; bonds, restrictions, etc., regulations, etc.	2439	514
Of school funds.....	2769	581
For school text-books....	2906	620
DEPOSITORS—		
In state guaranty banks, regulations as to....	445-517	120
DEPOSITS—		
Of bond investment companies	1309-1313	314
In savings banks.....	386-430	107
Savings banks may limit, etc.	396	109
In savings departments, investment of, etc.....	432	117

	Article	Page
DEPOTS—		
Duty of railroads to furnish suitable freight and passenger.....	6693	1436
Railroads shall locate, etc.	6550	1397
Railroad companies to erect	6589	1404
Railways to maintain, etc.	6654	1422
Railroad commission may order construction of union depots.....	6695	1437
DEPUTIES—		
For clerks of civil appeals courts.....	1602	367
To clerk of supreme court	1536	353
To clerk of court of criminal appeals.....	1665	380
Of county clerks.....	1748	395
Of county surveyors....	5308	1108
Constable may appoint... ..	7138	1525
District clerks may appoint	1690	385
To game, fish and oyster commissioner	4004	828
Of inspector of hides and animals	7263	1550
Officers may appoint, compensation how paid... ..	3903	808
For public weighers.....	7831	1703
Sheriffs may appoint....	7125	1523
Tax assessors may appoint	7539	1634
Of tax collector.....	7612	1651
DERAILING SWITCHES—		
Shall place on sidings when	6568	1400
DESCENDANTS—		
Term "children" includes	7868	1711
DESCENT AND DISTRIBUTION—		
Where intestate leaves no husband or wife.....	2461-2474	522
Where intestate leaves husband or wife....	2461	522
No distinction on account of source of property, except in cases of adoption	2462	522
Rule as to whole and half blood.....	2463	523
No corruption of blood, forfeiture of estate, etc.	2464	523
Persons not in being....	2465	523
Advancement brought into hotchpotch.....	2466	523
Per capita and per stirpes	2467	523
Rule as to community estate	2468	523
Passes charged with debts	2469	523
Jus accrescendi abolished	2470	524
	2471	524

	Article	Page
DESCENT AND DISTRIBUTION—cont'd.		
Illegitimate children and issue of void marriages	2472	524
Bastards inherit from mother	2473	524
Alienage no bar to inheritance	2474-524	
DETAINER—		
See Forcible Entry and Detainer."		
DETECTIVES—	2475-2476	525
Employment of non-resident detectives prohibited	2475	525
Penalty	2476	525
DILIGENCE—		
What is sufficient in fixing liability under mechanics lien, etc.....	5627	1190
DINING CAR COMPANIES—		
Gross receipts tax on....	7375	1581
DIRECTORS—		
Meetings of directors and stockholders of railroad companies...6472-6480	1386	
Annual meeting of directors	6472	1386
Annual meeting of stockholders	6473	1386
Directors and stockholders may meet at same time and place.....	6474	1386
Quorum of directors and stockholders	6475	1386
Special meeting of stockholders	6476	1386
Notice of special meeting.	6477	1387
If quorum of stockholders should not meet.....	6478	1387
Proxy must be dated within what time....	6479	1387
What stock shall not vote	6480	1387
Of banking corporations, duties of, etc.....	378	104
Of cemetery corporations, chosen how.....	1288	310
General duties of...1286-1302	310	
Of educational corporations, powers, etc..1225-1230	295	
Of insurance companies... 4714	959	
Of irrigation districts... 5024	1053	
Of life, health and accident insurance companies, powers, etc.....	4736	965
Of mutual fire, storm and lightning insurance companies	4908	1021
Of private corporations, liability of.....1198-1200	289	
Of private corporations, quorum and annual elections	1153	280

	Article	Page
DIRECTORS—cont'd.		
Duties, etc.....	1160	280
Of railroad companies... 6438	1382	
Of railroad companies may require payment of stock, etc.....	6454	1384
Meetings of.....6472-6480	1386	
Of religious, charitable, etc. corporations..1212-1224	293	
Of savings banks to regulate interest rate....	402	110
Of savings banks, when and how compensated.	418	113
Of savings departments, duties, etc.....	439	118
Of state banks, may appoint or remove officers	530	140
DISABILITIES—		
Of minors removed.....	5947	1273
DISASTERS—		
Issuance of bonds for funding, etc., indebtedness in case of.....660-677	170	
DISCONTINUANCE—		
Of suits in district and county courts....1886-1901	420	
DISCRIMINATIONS—		
Against employes.....594-604	156	
DISEASED SHEEP—		
Duties of inspector as to	7883	1715
DISORDERLY HOUSES—		
City councils may regulate	833	209
DISORGANIZED COUNTY—		
To be attached to other county, until, etc.....	1360	324
DISTRESS WARRANTS—		
How issued, etc.....	5479	1151
DISTRIBUTION—		
Of estates of decedents	3527-3562	734
See "Descent and Distribution."		
DISTRICT ATTORNEYS—		
Legislature may provide for election of, etc....	338	96
What districts shall elect district attorneys....	339	96
Bond and oath of.....	340	96
Failure to attend court, shall forfeit, etc.....	341	96
Assistant district attorney appointed when; qualifications; bond, etc., authority; term.....	342	96
Compensation of assistant district attorney.....	343	97

	Article	Page
DISTRICT ATTORNEYS—		
cont'd.		
Removal of assistant district attorney.....	344	97
Vacancy in office of, how filled, etc.....	345	97
General provisions applicable to both district and county attorneys..	352-369	99
Shall be licensed attorneys	352	99
Duties and powers of....	353	99
Residence of.....	354	99
Shall notify attorney general and comptroller of residence, etc.....	355	99
Shall give opinion, etc., to officers	356	99
With consent of attorney general, to buy property for state.....	357	99
With consent of attorney general may sell property of state so purchased	358	99
With consent of commissioners court, may sell property of county so chased	359	100
Shall give receipt for money collected.....	360	100
Shall report collections for state, etc.....	361	100
Shall report collections for county.....	362	100
Shall pay over money collected in thirty days, less commissions.....	363	100
Shall keep register of official acts.....	364	100
Shall not receive fee, etc., to prosecute case.....	365	101
Shall institute proceedings against officers, when, etc.....	366	101
To sue for penalty against railroads....	367	101
To institute quo warranto proceedings	368	101
Admissions made by shall not prejudice the state	369	101
Shall make report of county finances, etc....	1424	337
Contest of election for..	3046	649
To file petition for escheat proceedings	3187	676
To represent the state in suits for estates of decedents from state treasury	3591	744
Duties as to employment of children in factories, etc.	5242	1096
Proceedings for removal of, commenced where	6053	1294
Duty in suits against officers guilty of nepotism	6077	1297

	Article	Page
DISTRICT ATTORNEYS—		
cont'd.		
To sue for taxes on personal property.....	7661	1661
To represent state in collecting delinquent taxes	7691	1669
See "Attorneys."		
DISTRICT CLERKS—		
May take acknowledgment to deeds, etc., for record	6797	1459
Election of, duties, etc.	1685-1704	384
Duty of, in appeals from probate court.....	3637	752
Duties of, in selecting jurors in cities of certain population...	5151-5158	1081
Duties of, as to jury lists	5135-5150	1978
To make jury list and deliver to sheriff.....	5159	1083
Duties of in formation of juries	5202	1088
To keep jury dockets...	5184	1086
To keep medical register.	5737	1216
Issuance of sequestration by	7094	1517
Fees of.....	3855-3859	794
General provisions..	3880-3926	804
DISTRICT CONVENTIONS—	3136	665
DISTRICT COURTS—		
The judge of.....	1671-1684	382
Election, qualifications and residence.....	1671	382
Term of office.....	1672	382
Oath of office.....	1673	382
Vacancy in office, how filled	1674	382
Disqualification, causes of	1675	382
Disqualification; exchange of district judges; or special judge agreed upon, when	1676	382
Record of election or appointment of.....	1677	383
Special judge elected....	1678	383
Electoral body, how constituted	1679	383
Mode of conducting election	1680	383
Failure of clerk or sheriff to act.....	1681	383
Record of election.....	1682	393
Effect of such record....	1683	383
Other similar elections..	1684	384
The clerk of.....	1685-1704	384
The powers and jurisdiction of the district court and of the judge thereof	1705-1717	387
Original jurisdiction....	1705	387
Jurisdiction in probate matters	1706	387

	Article	Page
DISTRICT COURTS—cont'd.		
Motions against officers..	1707	387
To punish contempts....	1708	387
May transfer probate proceedings to county court	1709	387
Clerk to transmit papers, records, etc.....	1710	388
Judgments transferred and enforced.....	1711	388
To hear and determine all cases of legal and equitable cognizance..	1712	388
To grant all remedial writs	1713	388
Judge may exercise all powers, etc., in vacation by consent of parties, except, etc.....	1714	388
Judges may alternate, etc.	1715	388
May appoint attorney for pauper	1716	388
Other powers and authority	1717	389
Terms of the district court	1718-1726	389
Miscellaneous provisions	1727-1730	391
Appellate jurisdiction of probate cases.....	3631-3639	751
Appeals from justice courts taken to, when.	2392	503
Criminal	2202-2235	472
Duties of, in payment of indebtedness of defunct cities and towns.....	1086	258
Duties in contested primary elections.....	3154	669
Executions on judgments of	3714-3784	767
Has jurisdiction of suits concerning bills, notes, etc.	579	153
Jurisdiction over suits against public utility corporations	1025-1032	247
Given jurisdiction over dependent and neglected children	2185	466
Given jurisdiction of juvenile courts.....	2192	469
Jurisdiction of, in estates of decedents.....	3207	680
Jurisdiction of, over guardians	4044	836
Have jurisdiction of divorce suits.....	4630	944
Jurisdiction and supervision over oil etc. wells	7853	1708
Jury commissioners for	5122-5131	1076
Proceedings of, in selection of jurors....	5135-5150	1078
County court commissioners to prepare jury list for	5146	1079
Verdicts of juries in	5214-5217	1090
Practice in	1812-2201	406

	Article	Page
DISTRICT COURTS—cont'd.		
Sheriffs to attend	7129	1524
May grant writs of injunction, when	4643-4693	497
See "Courts, District." Also "Courts, District and County."		
DISTRICT JUDGES—		
Shall appoint committees to examine into county finances	1453	340
May appoint official reporters, etc.....	1920	426
Shall approve bonds of assignees	96	54
May order writ of certiorari to justice's courts	743	189
Contest of election for..	3047	649
To charge grand jury as to local option law ...	5730	1213
To charge grand jury with retail liquor dealers law	7462	1611
To establish boards of arbitration	72	47
Officers removable by...	6030	1292
Salary of	7059	1511
Supreme court may mandamus to, etc.	1528	352
DISTRICT OFFICES—		
Placed on primary ballot, how	3100	659
Removal of	6017-6027	1290
Removal of certain, etc.	6028-6057	1291
DISTRICTS—		
Land districts	5293-5299	1106
DISTRICT SURVEYORS—		
.....	5300-5334	1107
Fees of	3876	802
General provision..	3880-3926	804
Certain other duties of.. ..	5335-5360	1112
DISTURBANCE OF THE PEACE—		
City council may prohibit, etc.	858	212
DIVIDENDS—		
In assignments declared how	105	57
Of banking corporations, further regulations as to	549	145
Of state banks, may be declared, when	469	125
Of savings banks, regulations of	409	112
Of insurance companies, regulations as to	4944	1034
Of private corporations..	1161	280

		Article	Page			Article	Page
DIVORCE—	4630-4642	944		DOUBLE TRACKS—			
Marriage may be annulled, when	4630	944		Of railroads, issuance of stocks and bonds for..	6732	1445	
Divorce may be granted in what cases	4631	944		DRAINAGE—	2477-2625	526	
Plaintiff must be resident in state and county ..	4632	944		Drainage by counties, separately, or co-operating, assessments..	2477-2510	526	
Husband and wife may testify	4633	945		Commissioners' court authorized to construct drains, etc.	2477	526	
Division of property ..	4634	945		Prerequisites to construction; petition; bond...	2478	527	
Connivance and collusion	4635	945		Jury of view, appointment of	2479	527	
Legitimacy of children, etc.	4636	945		Oath of viewers	2480	527	
Death and alienations after suit	4637	945		Duties and powers of jury of viewers, with surveyor; survey; map; profile; table; estimate; specifications ..	2481	527	
Inventory and appraisal, etc.	4638	945		Estimate to be made by viewers in special case	2482	528	
Temporary orders, etc...	4639	945		To report whether proposed ditch or drain will be of public utility	2483	528	
Alimony	4640	945		Assessment of benefits by viewers	2484	528	
Custody of children	4641	946		Notice by viewers to land owners as to time when they will lay out ditch, etc., and when they will assess damages	2485	528	
Costs	4642	946		Land owners may appear before viewers and oppose	2486	528	
Suits for, brought where	1830	410		Assessment of benefits by viewers, how made ...	2487	529	
				Benefits to public road or railroads	2488	529	
DIVORCE SUITS—				Report signed by majority of viewers sufficient	2489	529	
Change of name in	5954	1274		Report to be accompanied by what; public record, etc.	2490	529	
				Compensation of viewers	2491	529	
DOCK CORPORATIONS—	1249-1253	300		Hearing before commissioners, their duties...	2492	529	
				Assessment, etc., of benefits by commissioners' court; lien; separate roll	2493	529	
DOCKETS—				Assessment divided into installments	2494	530	
Of justice's courts..	2302-2307	489		Appeal from commissioners' court to county court; conditions of...	2495	530	
Of probate courts ..	3211-3217	681		Burden of proof on such appeal	2496	530	
				Collection of assessments	2497	530	
DOGS—				Lien, remedies, etc., for collecting assessments.	2498	531	
City council may tax, etc.	851	211		A special fund, how disbursed	2499	531	
				Damages paid out of county treasury	2500	531	
DOMESTIC CORPORATIONS—							
To forfeit charter for refusal to permit examination of books, etc. ..	1190	287					
Shall pay franchise tax..	7393	1587					
DOMESTIC SCIENCES—							
To be taught in Sam Houston normal.....	2695	570					
Taught in southwest Texas normal.....	2710	573					
Taught in west Texas normal	2717	574					
Taught in north Texas normal	2705	572					
DOMESTIC VESSELS—							
Liens on	5650-5651	1195					
DONATIONS—							
To public roads.....	6968	1489					
To University of Texas..	2628	561					
DORMANT JUDGMENTS—	3717.	767					
DOUBLE HEADER TRAIN—							
No assumed risk by employes	6647	1418					
Use prohibited when ...	6706	1438					

	Article	Page
DRAINAGE—continued.		
Damages assessed against county, paid by same, how	2501	531
Construction let to lowest responsible bidder, etc.	2002	531
Contractor to give bond ..	2503	531
Land owner may do what part of work; conditions	2504	531
Work done under direction of engineer; report	2505	531
Engineer to give estimate	2506	531
Contractor paid out of road and bridge fund; how returned from assessment collected, etc.	2507	532
Where drain extends into two or more counties, procedure	2508	532
Joint viewers to cooperate, under orders, etc.	2509	532
Ditch to be kept open by land owner	2510	532
Drainage by counties, separately—Taxation	2511-2541	533
Commissioners' court authorized to construct drains, etc., within any of the counties of the state	2511	533
Prerequisites to construction; petition; bond ..	2512	534
Jury of view, appointment of	2513	534
Duties and powers of jury of view, with county surveyor; estimate; survey; map; table; specifications	2514	534
Right to enter on land for preliminary survey, etc., may condemn, how	2515	534
Notice by viewers to landowner of time when they will lay out ditch, etc., or when commissioners' court will assess damages	2516	535
Report to be accompanied by what; public record, etc.	2517	535
Appeal to county court from commissioners' judgment estimating damages; bond	2518	535
Hearing on appeal suspended until election approving construction	2519	535
Only damages determined on appeal	2520	535
Consolidation of cases on appeal; precedence ...	2521	535
Burden of proof on appeal to county court	2522	535
Appeal from county court when, etc., precedence	2523	535

	Article	Page
DRAINAGE—continued.		
Election to be ordered in what case, to authorize tax, etc., regulations as to	2524	536
Election, further regulations as to	2525	536
If election carried, result announced, levy or drainage tax authorized, requirements	2526	536
If election carried no petition for repeal in less than five years	2527	536
If election defeated another petition granted in one year	2528	536
Order granting second, etc., petition may fix what rate	2529	537
Commissioners may lower rate without petition, when, etc.	2530	537
Election to repeal, levy to be ordered upon proof of what	2531	537
Repeal not to affect contract	2532	537
Assessment and collection of tax, report, accounting and disbursement, etc.	2533	537
Liens, remedies, etc., for collecting assessments..	2534	537
Taxes collected to be known as drainage fund	2535	537
Construction to be let to lowest responsible bidder, when	2536	537
Contractors' bond	2537	537
Work to be done under direction of engineer, report, etc.	2538	537
Land owner may do what part of work; conditions	2539	538
Contractor, etc., paid out of fund so collected, how, etc.	2540	538
Commissioners to audit claims and order payment	2541	538
Drainage by districts, included in one or more counties—Bonds.	2542-2566	538
County commissioners' court may establish drainage districts, to be included in one or more counties; incidental powers; election for bonds	2542	538
On petition, etc., district may be created when, etc.	2543	539
Petition, requirements as to; jury of view; surveyor, etc.; survey; report with profile and		

	Article	Page
DRAINAGE—continued.		
map, showing benefits, etc., to be filed, etc...	2544	539
Oath of viewers and engineer	2545	540
Compensation of viewers and engineers.....	2546	540
Land owners, etc., resident, notified; hearing; remonstrances, etc.; order establishing district and directing improvements; objections thereto	2547	540
Name or number for such district	2548	540
District may sue and be sued; judicial knowledge of	2549	540
Appeal to county court; procedure and issues on	2550	540
Election to be held in what case; if carried, improvements made and bonds issued.	2551	541
Time and place of election, state election law applies	2552	541
Proposition and ballots, requirements as to ..	2553	541
Bonds, period, terms and requirements as to	2554	541
Expenses of jury of reviewers, election, etc., how paid	2555	541
Tax, improvement, for interest and sinking fund	2556	541
Sinking fund, investment of; attorney general's approval	2557	542
Trustees elected, when; duties	2558	542
Trustees, commissioners may act as, if, etc.	2559	542
Money and bonds in keeping of county treasurer	2560	542
Specifications for bids; advertisement; contract	2561	542
Payment for construction, how made	2562	542
Eminent domain, right of conferred	2563	542
Road, public, assessment against county for benefit to, etc.....	2564	542
Obstructions in drains prohibited; provisions as to removing	2565	543
Where course of improvements extend into, etc., two or more counties, procedure, rights, etc.	2566	543
Drainage by districts, one or more in each county		
—Bonds	2567-2625	544

	Article	Page
DRAINAGE—continued.		
Drainage districts established, how; scope; may make improvements; bonds for	2567	544
Petition for drainage district, requisites; set for hearing; notice; fees..	2568	544
Hearing of petition; contest; exclusive and final jurisdiction of commissioners' court over subject matter, except, etc.	2569	545
Finding of commissioners' court, and record of same	2570	545
If finding for petition, civil engineer appointed; assistants; pay ..	2571	545
Bond of civil engineer..	2572	546
Survey and location of canals, drains, etc., designation of streams, etc. estimates; report to commissioners	2573	546
Canals, drains, etc., how located	2574	546
Report to be accompanied by map, showing what	2575	546
Hearing before county commissioners; notice; objections	2576	546
Action of court on report	2577	547
Election to be ordered after approval of engineer's report	2578	547
Notices of election, requisites	2579	547
Regulations for holding election	2580	547
Same subject	2581	548
Returns; canvass; declaration of result	2582	548
Order establishing drainage district	2583	548
Drainage districts may sue and be sued; judicial knowledge of	2584	548
Drainage commissioners appointed; qualifications; pay; term; elected when	2585	549
Oath of drainage commissioners	2586	549
Bond of drainage commissioners	2587	550
Organization of drainage commissioners, quorum, etc.	2588	550
Drainage commissioners may employ counsel, etc.	2589	550
Right of eminent domain	2590	550
May acquire right of way how, etc.	2591	550
Civil engineer; salary; term; to make map and profiles, requisites	2592	550

	Article	Page
DRAINAGE —continued.		
Further requisites of maps and profiles	2593	551
No trespass to go upon land for examination and location, etc.	2594	551
Drainage bonds; order for issuance; modifications	2595	551
Bonds, requirements as to validating provisions	2596	552
Submission to attorney general; data; examination; certificate	2597	552
Registration of bonds, etc., certificate preserved of record; effect as evidence, etc.	2598	552
Record of bonds, before issuance, open to inspection	2599	563
Sale of bonds and disposition of proceeds	2600	553
Bond of county judge before sale; compensation	2601	553
Construction and maintenance fund; expenses paid out of, unless proposition defeated; deposit to meet expense in such case	2602	553
Tax for interest and sinking fund; powers of assessor and collector; lien, etc.,	2603	554
Additional tax books; assessment of property in drainage district; compensation; penalty forfeiture	2604	554
Collector charged with assessment rolls; compensation; bond required; penalty for failure to give	2605	555
Collector to report delinquents to commissioners' court, duty of court	2606	555
Treasurer to keep accounts with drainage district, rendered when; payments on vouchers	2607	555
Treasurer's bond; compensation	2608	555
Surety company bonds allowed	2609	555
Contract let to lowest bidder, etc., how, etc.; proviso	2610	555
Bids how presented, etc.	2611	556
Contracts, how made	2612	556
Bond of contractor	2613	556
Engineer to furnish profile, etc., to contractor, supervise work, etc.; report	2614	556
Inspection of work by drainage commissioner, and payment for same	2615	556

	Article	Page
DRAINAGE —continued.		
Payment as work progresses	2616	557
Bridges and culverts across, etc., railways, etc.	2617	557
Bridges and culverts over canals, drains, etc.	2618	557
Canals, drains, etc., public property of district, rights of land owners, etc.	2619	557
No drainage into canal, etc., without acquiring right; how, etc.	2620	557
Permitted on condition of enlargement when necessary	2621	558
Enlargement of canals, drains, etc., how done, etc.	2622	558
Drainage commissioners to keep canals, drains, etc., in repair; authority, etc.	2623	558
Annual report of drainage commissioners	2624	559
County judge, etc., not to be interested in contract	2625	559
DRAINAGE CORPORATIONS —	1261-1267	305
Authority for incorporation	1261	305
Corporation may contract for drainage and charges subject to control of legislature; lien	1262	305
Drains, etc., to be reported to and approved by commissioners' court	1263	305
May acquire lands for business, how	1264	305
May borrow money for construction, etc., issue bonds, mortgage property, etc.	1265	305
Lands to be alienated, except	1266	305
Excepted lands	1267	305
Corporations, private 1117-1321		266
Drainage 2479-2625		526
Drainage of public roads 6990-7012		1495
What roads are public; commissioners to cause drains to be constructed	6990	1495
Shall not change natural course of streams	6991	1496
Petition	6992	1496
Notices	6993	1496
Protests, hearing	6994	1496
Surveyor employed	5995	1496
Survey made; report	6996	1497
Jury of viewers; duties report	6997	1497
Oath of viewers	6998	1498
Assessment of abutting owners	6999	1499

	Article	Page
DRAINAGE—continued.		
Action of commissioners' court on protests final	7000	1499
Objections and claims submitted in writing to viewers; failure to submit same a waiver of claim	7001	1499
Appeals	7002	1499
Trial on appeal	7003	1500
Appropriation; construction	7004	1500
Special overseer employed, when; duties, powers and compensation	7005	1501
List of assessments; certificates to issue	7006	1501
County treasurer to collect on certificates....	7007	1501
Enforcement by suit	7008	1501
Operates a lien	7009	1501
Compensation of viewers and surveyor	7010	1501
Abutting owners may con-		

	Article	Page
DRAINAGE—continued.		
struct lateral ditches..	7011	1501
This act cumulative....	7012	1502
DRAINAGE DISTRICTS—		
State levee and drainage commissioner to confer with representatives of	5529	1164
DRILLS—		
Military organizations shall undergo, etc....	5837	1241
DRUGS—		
Inspection of by dairy and food commissioner	4575-4595	931
DRUNKARDS—		
Guardians for	4043-4301	836
Who are habitual drunkards	4047	836
DRUNKENNESS—		
Not habitual defined....	6037	1292

E

EASEMENT—		
Interurban railroad may condemn	6737	1447
EDUCATION—		
Duties of state superintendent of public instruction relative to ..	4509-4520	916
Of state convicts	6203	1323
EDUCATIONAL CORPORATIONS	1225-1230	295
Faculty of, and their powers	1225	295
Directors, etc., may make by-laws, etc....	1226	295
May procure shops, etc., for manual labor purposes	1227	295
May convert property into stock or scholarships..	1228	295
Limitation as to debts and liability of directors...	1229	295
May change location, etc.	1230	295
Corporations, private, generally	1117-1321	266
EDUCATION, PUBLIC—		
.....	2626-2909	560
University of Texas..	2626-2654	560
Agricultural and Mechanical college.....	2655-2681	564
Texas industrial institute and college for the education of white girls of the state of Texas in the arts and sciences..	2682-2690	568

EDUCATION, PUBLIC—		
continued.		
Sam Houston normal institute	2691-2698	570
North Texas state normal college	2699-2706	571
Southwest Texas state normal school....	2707-2711	572
West Texas state normal college	2712-2717	573
Prairie View state normal and industrial college..	2718-2724	574
Available fund.....	2725-2726	576
State board of education	2727-2743	577
Duties of comptroller and treasurer as to school funds	2744-2749	581
County superintendent and other officers.	2750-2773	582
Scholastic census...	2774-2779	588
Teachers' certificates and examinations	2780-2814	590
Common school districts,	2815-2849	600
Independent districts.	2850-2866	608
Exclusive control by cities and towns—		
independent districts..	2867-2883	612
Independent district school trustees...	2884-2895	616
General provisions...	2896-2904	618
State text-book board...	2905-2909	619
EFFECTS—		
Defined	5504	1157

	Article	Page
ELECTION DAYS—		
Sale of liquor prohibited on	7452	1608
ELECTIONS—		
	2910-3175	622
Contesting elections	3046-3078	649
Contest of election for district attorney	3046	649
Contest of election for district judge	3047	649
Contest of election for appellate judge	3048	649
Contest of election for county judge	3049	649
Other contested elections	3050	649
Notice of contest	3051	649
Reply to notice of contest	3052	650
Service of notice	3053	650
Copy of notice and reply to be filed	3054	650
Cause to have precedence; procedure in contest for district clerk	3055	650
Rules of evidence and procedure on trial	3056	650
Contestee in certain cases to execute bond.....	3057	650
Contestee failing, contestant to execute bond...	3058	650
Execution of bond certified to governor	3059	651
Contestant commissioned, when	3060	651
Contestee commissioned, when	3061	651
Fraudulent votes not to be counted	3062	651
Election to be declared void, when	3063	651
Bonds subject to suit	3064	651
Appeal available, and shall have precedence..	3065	651
Transcript on appeal....	3066	651
Costs, how taxed.....	3067	652
Measure of damages	3068	652
Record, copies of, how sent up	3069	652
Depositions in such case	3070	652
Who may take depositions	3071	652
Depositions, how returned	3072	652
Procedure in the house in which contest is pending	3073	652
Committee on privileges and elections, powers and duties	3074	653
Produce on trial by the body; fees, etc.....	3075	653
Contest for governor, lieutenant governor, etc. . .	3076	653
Other contested elections	3077	653
Parties defendant under preceding article	3078	653
Manner of conducting elections and making returns thereof....	2991-3045	639
Oaths of officers of election, instruction cards	2991	639

	Article	Page
ELECTIONS—continued.		
Polls, preliminary arrangements of and examinations; regulations as to ballots, instruction cards, distance markers, notices as to electioneering, loitering, etc.	2992	640
Instruction card posted in booth	2993	640
Judges, appointment by voters, when; certificate; presiding judge to appoint assistants, when	2994	640
Judge may administer oaths; powers of presiding judge	2995	641
Ballot boxes, preliminary inspection of	2996	641
Poll tax receipts	2997	641
Poll tax receipt, etc., receiving; testing voter, etc.	2998	641
Examination of challenged voter on oath; noted on poll list	2999	641
Challenged vote in certain cities, proceedings on..	3000	642
Poll tax receipt stamping delivery of ballot with signature of presiding judge; preparing ballot	3001	642
Marked ballot or memorandum; powers and duties of judge.....	3002	642
One voter at a time in booth; assistance of illiterates; regulations as to interpreter; supervisors may be present.	3093	642
Judges, etc., shall not electioneer, etc.....	3004	642
Ballots, delivery by voter, deposit and requirements connected therewith	3005	642
Mutilated, etc., ballots; rule as to.....	3006	643
Ballot boxes and ballots, custody; admission to polls; information....	3007	643
Defective, etc., ballots in Box 4; return, statement, opening, etc....	3008	643
Deposit and count, using Boxes 1 and 2 alternately; voted ballots put in Box 3; return, etc.	3009	643
Unfolding ballots, etc., forbidden	3010	643
Signature of judge on ballots; no ballot without, counted.....	3011	644
Ballots which shall not be counted.....	3012	644

	Article	Page
ELECTIONS—continued.		
Nominee dying before election, etc., vote counted, etc.....	3013	644
Supervisors may be present	3014	644
Announcement of vote at each exchange of boxes	3015	644
Status of count announced, when, etc., memorandum public...	3016	644
No information except as herein permitted.....	3017	644
Arrest, privilege from...	3018	644
Loitering and electioneering within 100 feet of booths; special constables	3019	645
Carriages, etc., forbidden, unless, etc.....	3020	645
Barroom, etc., not to be opened on election day, nor intoxicating liquor sold, etc.....	3021	645
Intoxicating liquor sold on election day, how...	3022	645
Refreshments	3023	645
Return of elections, how and to whom made....	3024	645
Same subject.....	3020	645
Returns, with election supplies; voting booths stored, etc.....	3026	646
Ballots, etc., to be placed in a box and delivered to county clerk.....	3027	646
Ballots, etc., shall be burned, when.....	3028	646
Presiding officer shall retain one poll and tally list	3029	646
County commissioners shall open returns, when	3030	646
Returns shall not be estimated, unless, etc....	3031	646
Certificates of election to county and precinct officers	3032	646
Additional regulations by certain cities.....	3033	646
When a county is a representative or senatorial district.....	3034	647
Returns of elections for certain state and district officers.....	3035	647
Such returns shall be counted, when and by whom	3036	647
Governor shall give certificate of election, when	3037	647
Returns for governor and lieutenant-governor	3038	647
Secretary of state shall keep returns, etc.....	3039	647

	Article	Page
ELECTIONS—continued.		
Returns for members of the legislature.....	3040	647
Returns shall be transmitted how, and to whom	3041	648
Duty of county judge...	3042	648
Count may be made before thirtieth day, when	3043	648
County judge shall certify to secretary of state the officers elected and qualified.....	3044	648
Governor shall commission officers, except, etc.	3045	648
Miscellaneous Provisions		
.....	3079-3083	654
County commissioners shall act, when.....	3079	654
County judge shall certify death of certain officers to the secretary of state	3080	654
Provisions of this title shall apply to all elections	3081	654
Persons not eligible to hold office.....	3082	654
Certificate of election shall not issue, unless, etc.	3083	654
See "Primary Elections."		
Official ballot.....	2964-2975	634
Ballot, vote shall be by; safeguards, etc.; no registration; cities included	2964	634
Ballot, official, required; to contain what.....	2965	635
No candidate on ballot, except, etc.....	2966	635
Candidates of certain parties not on ballot unless, etc.....	2967	635
Vacancy; where nominee declines or dies, etc., substitution on ballot.	2968	635
Ballots, how printed; form, etc.; manner of voting	2969	635
Ballot, further regulations as to.....	2970	636
Constitutional amendment and other questions, how submitted.....	2971	636
Ballot, any at school election, city, etc.....	2972	636
Ballots, how many furnished	2973	636
Ballots (counted), etc., delivered to judges...	2974	636
Ballots, voters may provide when.....	2975	636
Officers of election.....	2920-2928	624
Judges and clerks of election; presiding judge; appointment, qualification and duties.....	2920	624

	Article	Page
ELECTIONS—continued.		
Judges and clerks of election in precincts of over 100 poll tax receipts, appointment and duties	2921	624
Disqualifications for being judges, etc., or members of executive committees	2922	625
Supervisors of elections, appointment, etc., powers and duties	2923	625
Supervisors appointed, how, etc.; duties	2924	625
Compensation of judges and clerks	2925	625
Compensation of judges and clerks	2926	625
Precincts, order defining to be served on precinct judges	2927	626
Presiding officers in unorganized counties	2928	626
Ordering elections, etc.	2929-2937	626
Proclamation of election by governor	2929	626
Order for election, by county judge, etc.; writs of election, etc.	2930	626
Writs of election, how served	2931	626
Invalidated—election not	2932	626
Notice of election by whom given; requirements as to	2933	627
In cities, towns, etc., ordering elections, notice, officers, supervisors	2934	627
Vacancy, order for election to fill, etc.	2935	627
In case of a tie another election shall be held	2936	627
Forms of blanks, furnished by secretary of state	2937	627
Suffrage	2938-2963	628
Qualifications for voting— who not qualified	2938	628
Qualifications for voting— who qualified	2939	628
Qualifications for voting in city elections	2940	629
Residence defined	2941	629
Poll tax collected from whom; when paid; receipt	2942	629
Poll tax, who not required to pay	2943	629
Mode of paying poll tax	2944	629
Same subject	2945	629
Tax receipt not to be delivered to agent	2945	629
Candidate, etc., not to pay poll tax of another; provided	2946	630
No one to give money to another to pay poll tax	2947	630

	Article	Page
ELECTIONS—continued.		
No one to keep poll tax of another, except	2948	630
Poll tax receipt shall show what	2949	630
Poll tax receipt, form of	2950	630
Poll tax receipt, etc., in case of removal to another ward of city of over 10,000	2951	631
Poll tax receipt, etc., in case of removal to another county or precinct, proviso	2952	631
Exemption certificates, in cities over 10,000; requisites, etc., form	2953	631
Minor reaching majority between Feb. 1 and election day, certificate	2954	632
Poll tax in unorganized counties	2955	632
Poll tax receipt, etc., books furnished by commissioners to collectors, requisites	2956	632
Poll tax deputy to be appointed in certain counties	2957	633
Collector may administer oaths, etc.	2958	633
Residence, proof of, when; false statement reported to grand jury	2959	633
False swearing to be reported to grand jury	2960	633
Lists of poll taxpayers, etc., furnished by collector to board, and by board to judges; requisites, etc.	2961	633
Poll tax receipts duplicates to be securely kept, etc.	2962	634
Poll tax receipts, statement of, by collector	2963	634
Supplies, arrangements, and expenses of election	2976-2990	637
Booths, voting, required in cities of 10,000 and over	2976	637
Booths, voting, and guard rails	2977	637
Same subject	2978	637
Booths, voting	2979	637
Guard rail and screened shelf, etc., when booths not required	2980	637
Ballot boxes	2981	638
Ballot boxes, how made	2982	638
Board to provide election supplies	2983	638
Ballot boxes, etc., presiding judge to procure, when	2984	638
Supplies, report to county commissioners	2985	638

	Article	Page
ELECTIONS—continued.		
Collector's fees, and how paid	2986	638
Sheriff's and constable's fees	2987	638
Expenses for election supplies, how paid.....	2988	638
Expenses of city election paid by city.....	2989	639
Mayor, etc., to perform duties required of county judge, etc.....	2990	639
Time and place of holding elections	2910-2919	622
Elections, general, time of holding	2910	622
Elections, special, time of holding	2911	622
Polls, hours of opening and closing.....	2912	622
Precinct election, formed how and when; publication	2913	622
Precincts in cities and towns, how formed...	2914	622
Unorganized counties, precincts, and voting in...	2915	623
Voters shall vote in precinct where they reside	2916	623
Collector; order fixing precincts to be served on	2917	623
Polling-places and poll tax lists in towns, etc., under general law.....	2918	623
But one election poll in certain cities and towns	2919	623
Of attorney general.....	4411	894
Required for the issuance of county and municipal bonds.....	605	159
For issuance of county bonds	628	163
For compromise of bonded indebtedness..	695	175
In certain counties to authorize bonds for causeways, viaducts, bridges, etc.....	642	165
Of commissioner of agriculture	4434	897
Of comptroller.....	4320	878
Of constables.....	7137	1522
For detaching portions of county, ordered when.....	1349-1355	323
For organization of counties	1356-1364	324
In unorganized counties.	1364	325
For county seats.....	1387-1399	330
Of clerks of county courts	1743	394
Of county commissioners	2236	478
Of county treasurer.....	1499	347
In cities and towns for commission form of government	1070-1076	255
To abolish corporate existence of cities and towns	1077-1096	256

	Article	Page
ELECTIONS—continued.		
Of county and district surveyors	5300	1107
For drainage by counties.	2524	536
For drainage districts in counties	2578	547
For bonds for drainage districts, etc.....	2542-2566	538
Of county judges, etc....	1731	392
Of special county judges.	1741	394
Of justices of the peace.....	2283-2290	440
Of judges of corporation courts	905	221
Directors of private corporations	1153	280
Of judges of district courts	1671	382
Of special district judges	1678	383
Of clerks of the district court	1685	384
Of judges of Dallas county court at law...	1790	402
Of judges of courts of civil appeals.....	1581	363
Of judges of the court of criminal appeals.....	1653	378
Of judges of the supreme court	1513	349
For creation of improvement districts.....	5541	1167
For incorporation of towns and villages 1033-1069		249
Of directors of insurance companies	4715	959
To prohibit sale of intoxicating liquors, local..	5715	1209
To change boundaries of irrigation districts	5065-5087	1063
In irrigation districts to reduce bonded indebtedness	5048	1060
To destroy unsold bonds.	5050	1060
For organization of irrigation districts	5017	1052
For officers of irrigation districts	5034	1055
For issuance of bonds by independent school districts	2858	609
Of commissioner general land office	4392	891
For formation of navigation districts	5963	1277
Of officers of towns and villages	1047	251
Of officers of cities and towns	784-802	197
For extermination of prairie dogs	6320	1352
Of presidential electors.....	3176-3185	674
For directors of railroad companies	6440	1382
For levy of special road tax	7042	1507
Of sheriffs	7119	1522

	Article	Page
ELECTIONS—continued.		
For stock law	7209	1540
To determine lawful fence	7231	1544
For hide and animal inspector	7306	1558
To prevent horses, etc., from running at large	7235	1545
Of school trustees	2818	601
For special common school tax	2828	603
To abrogate, increase or diminish, school tax...	2833	604
For issuance of school house bonds	2837	605
Of school trustees in cities	2885	616
By cities and towns for control of public school	2869	612
For local city school tax	2877	613
Of superintendent of public instruction	4509	916
For issuance of seawall bonds, etc.	5588	1179
For levy of street improvement tax	1016	244
Of speaker of house of representatives	5514	1159
Of officers of house of representatives	5515	1159
Of state treasurer	4362	886
Of tax assessor	7533	1633
Of tax collector	7605	1650
To fill vacancies in city offices	798	200
ELECTIONS, CONTEST OF—		
.....	3046-3078	649
ELECTIONS, PRIMARY—		
Nominations by primary elections and otherwise	3084-3174	655
Candidates of parties of 100,000 votes and over to be nominated by primary election	3084	656
Primary election defined.	3085	656
Primary election day and second primary; special primaries; city, etc., primaries	3086	656
Place of holding primaries	3087	656
Polls, primary, hours for opening and closing, etc.	3088	657
Officers, etc., of primary election; appointment and qualifications	3089	657
Judges of primary election, powers and duties	3090	657
Majority or plurality vote, question of determined, how; second election ..	3091	657
Majority or plurality vote, question of determined, how	3092	657
Qualifications for voting; poll tax in cities of 10,-		

	Article	Page
ELECTIONS, PRIMARY—		
continued.		
000 and over; additional qualifications, etc...	3093	657
Expenses of primary election, how met	3094	658
Ballot, official, at primaries, form of etc., of and manner of voting.	3095	658
Ballot, primary, no symbol, etc., on, except, etc., ballot without test not counted	3096	658
Ballot, primary or general, no symbol, etc., on, etc.	3097	658
Referendum on U. S. senator	3097	658
Ballot, primary, candidate for state office placed on, how	3098	659
State executive committee to meet when and certify names of candidates in primary to county chairman	3099	659
Ballot, primary, candidates for district office placed on how, certification	3100	659
Ballot, primary, candidate for county, etc., placed on how	3101	660
Candidates before primary, certificates of presented to county committee by chairman ..	3102	660
Primary committee; appointment; to make up official ballot	3103	660
No candidate placed on ballot who has not paid pro rata expenses	3104	660
Order of names on ballot, determined how, and when	3105	660
Order of names on ballot determined how, and when	3106	660
County executive committees, county and precinct chairman, elected at primary, etc.	3107	661
County chairman, voted for; member of district committee, etc., term	3108	661
Chairman, county or precinct, where no candidate for, blanks	3109	661
Referendum on platform demands, and submission of same, upon ..	3110	661
Referendum, instruction of delegates by, method, etc.	3111	661
Supplies, executive committee to supervise and distribute	3112	662

		Article	Page			Article	Page	
ELECTIONS, PRIMARY—				ELECTIONS, PRIMARY—				
continued.				continued.				
If presiding officer fails to obtain supplies, to whom delivered	3113	662	State executive committee to canvass returns as to nominations for state offices; statement of vote; list of delegates, etc.				3138	665
Booths, etc., for general election, used for primary	3114	662	State convention to canvass vote for candidates for state offices and declare result, according to plurality in primary certified by chairman and secretary of convention to secretary of state				3139	666
Safeguards against fraud; list of voters; stamping, etc.	3115	662	State convention; time of meeting; further duties				3140	666
List of voters furnished, to be used in primary, etc.	3116	662	Every certificate of nomination to state, what.				3141	666
Same subject	3117	662	Convention vote of each county, in state or district convention				3142	666
Precaution to secure purity of ballot	3118	662	Mandamus to compel performance of duties ..				3143	666
Ballots, others furnished where mutilated, etc.	3119	662	Errors and violations of law, immaterial, not to vitiate election, etc. ...				3144	667
Intoxicating liquors, sale of prohibited; officers not to partake	3120	663	Expenses of candidates, statement of				3145	667
Returns of primary elections, ballot boxes, etc.	3121	663	Expenses of manager of political headquarters, etc., statement of required, etc.				3146	667
Returns to county chairman; canvass by executive committee, when ..	3122	663	Contests of primary elections, decided by executive committee or district court				3147	667
Canvass of result of primary election by county executive committee, when	3123	663	Place of hearing contests of primary elections by committee				3148	667
Tie in primary election, as to county and precinct office, determined by lot, etc.	3124	663	Contest before executive committee; procedure, etc.				3149	668
List of nominees made by committee, and certified by chairman to county clerk	3125	663	Ballot boxes may be opened by committee when ..				3150	668
County chairman to prepare statement of vote, etc., mail to state and district chairmen, presented to committees. .	3126	663	Certificate and printing name on ballot, on decision by committee, unless appeal				3151	668
Nominee for state, etc., offices published and certified to whom ...	3127	663	Same, where such appeal not perfected				3152	668
Ballots accounted for ..	3128	664	Appeal from executive committee to district court; procedure ...				3153	668
Boxes and ballots, disposition of	3129	664	Review of certificates of nomination, by district court; procedure ...				3154	669
County clerk to publish, etc., nominees	3130	664	Ballot boxes may be opened by court, when; disposition of				3155	669
Objections to nominations to be made within five days	3131	664	Judgment of court final in what cases				3156	669
Names printed on ballot, when and how	3132	664	Certifying judgment, and printing names on ballot				3157	669
County clerk to post names of candidates ten days before printing on ballot, etc.	3133	664						
County conventions	3134	664						
County convention may be held at time for meeting of executive committee	3135	665						
District conventions	3136	665						
Place for state convention, fixed how	3137	665						

	Article	Page
ELECTIONS, PRIMARY—		
continued.		
Appeal to court of civil appeals in what cases; advanced	3158	669
May nominate, how	3159	669
Nominations of such parties, state committee to determine mode	3160	669
Nominations of such parties for district offices	3161	670
Nominations of such parties to be certified by whom	3162	670
Poll tax requirement in such primary convention	3163	670
Non-partisan and independent candidates names placed on ballot, how	3164	670
Same subject	3165	670
Same subject	3166	670
Same subject	3167	671
Same subject, in county, or town elections	3168	671
Nominations, local, of parties having no state organization	3169	671
Cities and towns, elections, nominations for, how made; executive committee	3170	671
Executive committee, in cities and towns, powers of	3171	672
Nomination declined, how; vacancy how filled, etc.; posters used when, etc.	3172	672
No executive committee to nominate, except	3173	672
Parties, new, etc., name of, regulated	3174	672
ELECTION SUPPLIES—		
How furnished, etc.	2976-2990	637
For primary elections	3112	662
ELECTORS—		
Of president and vice-president	3176-3185	674
Time of election of electors, and who are qualified to be electors and to vote for electors	3176	674
Mode, places, etc., for election of electors	3177	674
Returns of election by precinct officer	3178	674
Returns of election by counties	3179	674
Secretary of state shall count returns, when, etc.	3180	674
Contests filed, when tried	3181	675
Electors shall convene when and where, etc.,		

	Article	Page
ELECTORS—cont'd.		
continued.		
place of absent or disqualified electors, how supplied	3182	675
Governor shall cause list of electors to be made, etc.	3183	675
Governor shall issue proclamation, etc.	3184	675
Compensation of electors	3185	675
ELECTRIC HEADLIGHTS		
Railroads shall provide..	6565	1400
ELECTRIC LIGHT COMPANIES—		
Gross receipts, tax on...	7371	1580
Occupation tax on	7355	1574
ELECTRIC LIGHT PLANTS—		
City councils may regulate, etc.	1018-1024	245
Courts may regulate, etc.	1025-1032	247
ELECTRIC LIGHTS—		
Powers of city over....	769	193
ELEEMOSYNARY INSTITUTIONS—		
State board of education may create school districts for	2733	578
State purchasing agent for	7325-7338	1562
See "Asylums."		
EMBALMING BOARD 4596-4605		987
Embalming board; how constituted, term of office, qualifications, how removed	4596	937
Board, when appointed; vacancies, when filled	4597	937
Certificates of appointment, members qualify	4598	937
Duties and powers of board	4599	938
Application to engage in business, free; skill required	4600	938
Renewal of license, fee for	4601	938
License to be revoked, when, how	4602	938
Department to be self-sustaining; moneys received, how appropriated..	4603	938
Unlawful to practice without license.	4604	939
Provisions of chapter do not apply to what	4605	939
EMERGENCY FREIGHT RATES		
Railroad commission may make	6660	1424

	Article	Page
EMPLOYEES—		
Liability of railroad companies for injuries to	6640-6652	1417
Liable for injuries to fellow servants	6640	1417
Who are vice-principals	6641	1417
"Fellow servants" defined	6642	1417
Contract limiting liability void	6643	1417
Contributory negligence a defense, except, etc...	6644	1417
When assumed risk not available as a defense.	6645	1418
No assumed risk where safety appliance not provided	6646	1418
Double-header trains, no assumed risk by employees	6647	1418
Liable for injury or death of employe	6648	1418
Contributory negligence, rule as to	6649	1418
Assumed risk, rule as to	6650	1419
Contract changing liability void	6651	1419
Articles of this chapter construed	6652	1419
Of railroad companies limited to sixteen hours labor	6584	1403
Of railroads to be notified of reduction of wages..	6620	1411
EMPTY CARS—		
Railroad commission to make rates for transportation of	6654	1422
ENCLOSED LANDS—		
Rights of owner as to running public road through	6867	1473
ENDORSERS—		
Of negotiable instrument may be sued, how	587	154
ENGINEERS—		
Commissioner of agriculture to employ	4449	900
Drainage	2505)	531
Drainage	2538	537
For drainage districts..	2545	540
For drainage districts ..	2571	545
Appointed for improvement districts	5535	1166
For improvement districts, appointed, etc...	5549	1169
For navigation districts.	5972	1279
For navigation districts to supervise work	5996	1285
ENGLISH LANGUAGE—		
Deeds, etc., for record to be written in	6826	1464

	Article	Page
ENLISTMENTS—		
In Texas national guard..	5821	1229
ENROLLED BILLS—		
Of legislature, secretary of state to receive and bind	4306	876
ENTOMOLOGIST—		
Board of directors of Agricultural and Mechanical college to employ	2665	565
Duties, etc., of state, in reference to diseases among bees.....	575-578	152
EPILEPTIC COLONY—		
General provisions	171-189	68
Asylum established and name	211	74
Managers appointed by the governor, powers..	212	74
Support and management	212	74
Who admitted to colony.	213	74
Transfer of epileptics from insane asylums..	214	75
Transfer of transcripts and histories	215	75
Transportation, etc., expenses, how paid	216	75
Classification of transferred patients	217	75
Classification of patients admitted	218	75
Indigent public patients defined; supported by state	219	75
Non-indigent public patients defined; maintained by state, but reimbursement; suit; duties of county attorney and superintendent ..	220	75
Private patients admitted how; maintained at own expense or that of relatives, etc., contract and terms	221	76
Application for admission of public patients; requisites	222	76
Certificates to accompany application; requisites	223	76
County judge's duty if not satisfied	224	76
County judge's duty if applicant appears entitled	225	76
Where applicant appears not indigent	226	76
Compensation of county judge	227	76
Patients to be received when there is room; preference to indigents and to public patients	228	77

	Article	Page
EPILEPTIC COLONY—		
continued.		
Clothing to be supplied patients	229	77
Clothing and transportation of indigent patients paid by county; that of non-indigents by them	230	77
Clothing, etc., non-indigent to pay for	231	77
Escort, pay of	231	77
Object of colony	232	77
Other asylums	107-239	58
EQUIPMENT—		
Of railroads, regulated..	6709	1439
For ranger force, furnished how	6761	1451
ERRORS—		
In records, how corrected	6852	1469
ESCAPED CONVICTS—		
Rewards for	6229	1329
ESCAPES—		
From state institution for training of juveniles..	5234	1094
ESCHEAT—	3186-3205	676
(See "Estates of Decedents.")		
When estates shall escheat; evidence; service of process	3186	676
District attorney to file petition for escheat, when; venue; requisites of petition.	3187	676
Clerk to issue citation to those alleged to be in possession	3188	677
Citation published and its requisites	3189	677
Claimants may appear and plead	3190	677
If no person appears	3191	677
If any person appears, issue and trial	3192	677
Judgment for the state, when	3193	677
Costs against the state, how paid	3194	677
Judgment to contain description, vest title in state, and stay writ of possession	3195	677
Claimant not personally served may sue to divest title, etc.	3196	678
Writ of seizure and proceedings thereunder	3197	678
Appeal or writ of error	3198	678
Comptroller to keep accounts	3199	678
Heirs afterward appearing may bring suit, etc.	3200	678

	Article	Page
ESCHEAT—continued.		
Order of court in favor of claimant	3201	678
Proceeds of escheated property subject to disposition by the state..	3202	679
Final decree of probate court may be revised, when	3203	679
Governor may cause proceedings to be instituted, when	3204	679
Suit must be in name of state	3205	679
Aliens may convey lands before proceedings for	19	7
ESTATES—		
Conveyances of	1103-1116	263
Descent and distribution	2461-2474	522
When, shall escheat, etc.	3186-3205	676
Of minors, etc., see "Guardian and Ward."		
Suits against, for lands..	1837	413
ESTATES OF DECEDENTS—	3206-3639	680
Administration of community property	3592-3614	745
Community property liable for community debts, etc.	3592	745
Where there is no child administration is not required	3593	745
Where there is a child survivor holds subject, etc.	3594	745
Application for community administration	3595	745
Court shall appoint appraisers	3596	745
Inventory, appraisal, and list of indebtedness sworn to and returned, etc.	3597	746
Bond of survivor	3598	746
Action of court upon inventory, etc.	3599	746
After order of court, survivor has control, etc..	3600	746
Survivor shall keep account, etc.	3601	746
New appraisal and bond may be required	3602	746
Duty of survivor to pay debts	3603	747
Creditor may have survivor to make exhibit, when	3604	747
Action of the court upon exhibit	3605	747
Sureties on survivor's bond shall be cited, when	3606	747

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Creditor may sue upon bond, when	3607	747
Action of court when survivor fails to make exhibit	3608	747
Surviving wife shall have same rights, etc.	3609	747
“Survivor” applies alike to sane and insane persons	3610	748
Rights of wife cease when she marries again ...	3611	748
Persons entitled to estate may have partition, when	3612	748
Recovery of insane spouse stops action hereunder	3613	748
Duty of guardians in such cases	3614	748
Administration under a will	3358-3378	705
Directions in will to be executed, unless, etc...	3358	705
Proceedings to annul directions in will.	3359	705
Citation to executor, etc., in such case	3360	705
Order of the court in such case	3361	706
Testator may provide that no action be had in court, except probate of will, etc.	3362	706
Creditor may sue executor in such case	3363	706
Executor without bond may be required to give bond, when	3364	706
Order requiring bond ...	3365	706
Bond in such case	3366	706
Should the executor fail to give required bond, etc.	3367	706
Estate shall be partitioned and divided by court, when	3368	707
Heirs, etc., may be required to give bond, when	3369	707
Upon failure to give bond, estate shall be administered under direction of the court	3370	707
Bond shall be filed and recorded	3371	707
Creditor may sue on bond, etc.	3372	707
Costs of such proceedings to be paid by whom ..	3373	707
Executor may sell property without order of court, when	3374	707
Personal property reserved from sale by will..	3375	708

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Administration under will same as in intestates' estate, except, etc. . .	3376	708
Legatee or devisee may obtain order for delivery of legacy or bequest, when and how..	3377	708
Naming an executor in a will does not release him from a debt, etc.	3378	708
Allowance to widow and minor children ..	3404-3412	713
Allowance to widow and minor children to be made, when	3404	713
Amount of allowance and with reference to what time	3405	713
Allowance shall not be made, when	3406	713
Order fixing allowance..	3407	713
To whom allowance shall be paid	3408	713
Widow or guardian may take property for allowance	3409	713
Sale shall be ordered to raise allowance when.	3409	713
Allowance to be paid in preference to other debts or charges, except, etc.	3411	714
Allowance apportioned, how	3412	714
Appeals to the district court	3631-3639	751
Right of appeal	3631	751
Appeal bond, requisites of	3632	751
Bond not required of executors, etc., unless, etc.	3633	751
Affidavit that party is too poor to give bond	3634	751
Duty of county clerk to make and transmit transcript, etc.....	3635	752
Transcript to be transmitted, when, etc.	3636	752
Duty of district clerk who receives transcript, etc.	3637	752
Appeals shall be tried de novo in regular order upon the docket.	3638	752
Certified copy of judgment of district court to be transmitted to county court	3639	752
Applications for the probate of wills and for letters	3247-3266	687
Application for letters must be filed within four years after death of testator or intestate, exception	3247	687

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Wills shall not be probated after lapse of four years	3248	687
Administration not barred, when	3249	687
Applications shall be in writing and filed	3250	688
Application for probate of written will produced in court shall state, what.....	3251	688
Will shall be filed with the application, etc. . .	3252	688
What the application shall state where the will can not be produced in court.....	3253	688
Application for probate of nuncupative will shall state, what	3254	688
Application for letters of administration shall state, what	3255	688
Citation to issue, and shall state, what	3256	689
Service of such citation, how made	3257	689
Citation where will can not be produced or where it is nuncupative	3258	689
Service of such citation, how made	3259	689
Service of such citation by publication, when	3260	689
No action shall be had until service of citation..	3261	689
Application may be made, by whom	3262	689
Administration may be prevented, how.....	3263	689
One creditor may apply in behalf of several, etc.	3264	690
Bond shall be filed, etc..	3265	690
Lien upon estate to secure bond	3266	690
Classification and payment of claims ..	3458-3471	721
Classification of claims..	3458	721
Claims to be paid pro rata, when	3459	721
Order of payment of claims	3460	721
Claim shall not be paid, unless, etc.	3461	721
Owner of claim may obtain order for payment, when	3462	721
Proceeds of sale of property on which there is mortgage or other lien	3463	722
Exhibit of condition of estate after twelve months	3464	722
Penalty for failure to return exhibit	3465	722

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Order for the payment of claims in full	3466	722
Order for the payment of claims pro rata	3467	722
Claims presented after twelve months, paid when	3468	723
Exhibit may be required, when	3469	723
Liability of executor, etc., for failure to pay money, etc.	3470	723
Executor or administrator shall not purchase claim against estate ..	3471	723
Costs	3621-3630	750
Commissions allowed executors and administrators	3621	750
Commissions not allowed on certain moneys ...	3622	750
Shall be allowed expenses, etc.	3623	750
Account for expenses shall be filed and acted upon by the court	3624	750
Costs of appraisers	3625	750
Costs of commissioners..	3626	750
When costs shall be adjudged against executor, etc.	3627	750
Same subject	3628	750
When application, etc., is defeated, costs shall be adjudged against applicant, etc.	3629	750
Security for costs may be required, when	3630	751
Executors and administrators, certain rights, etc., of	3350-3357	704
What care to take of property of estate ...	3350	704
Duty in regard to plantation, manufactory or business	3351	704
Action of executor, etc., in regard to plantation, etc., etc., may be controlled by court	3352	704
Ordinary diligence shall used to collect claims and recover property of estate	3353	704
Property may be purchased, compromises made, etc., under order of the court	3354	704
Power to release mortgages	3355	705
Acts of one co-executor or co-administrator valid	3356	705
Preceding article does not apply, when	3357	705

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Final settlement, etc.	3563-3573	740
Duty of executor, etc., to present a c c o u n t for final settlement, when	3563	740
What the account shall show	3564	740
What shall be sufficient under the preceding article	3565	741
Executor, etc., may be cited to present such account	3566	741
Citation shall issue	3567	741
Service and return of citation	3568	741
County judge may order other notice to be given	3569	741
Action of court upon account	3570	741
Partition of estate on hand shall be made	3571	741
Executor, etc., shall be discharged, when	3572	741
Order for discharge of executor, etc., when, etc.	3573	742
General provisions	3218-3246	683
Decisions, etc., of court shall be rendered in open court	3218	683
And shall be entered on record, etc.	3219	683
Probate docket disposed of promptly	3220	683
No trial by jury in probate matters	3221	683
Duty of clerk to file papers, etc.	3222	683
Clerk shall issue all notices, etc.	3223	683
Power of court to attach and imprison executors, etc.	3224	683
Person having will, etc., may be attached, etc.	3225	683
Execution in probate matters	3226	684
County judge may enforce orders, etc., of previous court	3227	684
Requisites of citation in probate matters	3228	684
Service of citation	3229	684
Service of posting	3230	684
Mode of posting citation and return of same	3231	684
Citation by publication	3232	684
Rights, etc., of executor, etc., regulated by common law, etc.	3233	684
Depositions and rules of evidence	3234	685
In whom property vests upon death of testator or intestate	3235	685

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Any person interested in an estate may file opposition, etc.	3236	685
Duty of county judge to call dockets, etc.	3237	685
Meaning of "term of court," "docket" and "minutes"	3238	685
Duty of judge to sign the minutes, etc.	3239	685
Attachment for property of estate may issue, when	3240	685
Annual exhibits required; final settlement, when	3241	686
Twenty days' notice of filing of exhibit shall be given, etc.	3242	686
When an executor or administrator shall be deemed to have qualified.	3243	686
Depositions and rules of evidence	3244	686
Titles made by executors, etc., valid, although, etc.	3245	686
Sales by foreign executors validated	3246	686
Granting letters	3277-3296	692
Who are disqualified from being executors or administrators	3277	692
Where a will has been probated letters testamentary shall be granted	3278	692
When administration shall be granted	3279	692
Administration shall not be granted, unless, etc.	3280	692
Order in which letters shall be granted	3281	692
Where applicants are equally entitled	3282	693
Certain persons entitled to letters may waive right in favor of another, how	3283	693
Letters revoked and granted to person having prior right	3284	693
Letters revoked and granted to executor upon attaining lawful age	3285	693
Executor absent from state, etc., may qualify, within what time, etc.	3286	693
Letters shall not be revoked, except upon application and citation	3287	693
Where will is discovered after grant of administration	3288	694
Executor of will proved in another state entitled		

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
to letters within this state, when	3289	694
Bond shall be required as in other cases	3290	694
Further administration shall be granted, when	3291	694
Executor, etc., who has been removed shall not afterwards be appointed, etc.	3292	694
What facts must appear before granting letters testamentary	3293	694
What facts must appear before grant of letters of administration	3294	695
Order of court granting letters	3295	695
Grant of letters may be opposed, etc.	3296	695
Heirship, etc.—adjudication of.	3521-3526	732
County court may determine and declare heirship, etc., when; venue	3521	732
Who may maintain action and how; requisites of petition; parties	3522	732
Notice, citation, etc., cause to be transferred when, and to what court	3523	733
Hearing and procedure on judgment, to declare and contain what; effect of	3524	733
Certified copy of judgment to be filed for record, etc., where, etc.; constructive notice ..	3525	734
Provisions of chapter cumulative	3526	734
Hiring and renting 3472-3478		724
Executor, etc., may hire out or rent property of estate	3472	724
May obtain order of the court to hire out or rent the same	3473	724
When, without order of court, responsible, etc.	3474	724
Note with security for hire or rent shall be taken	3475	724
Report of hiring or renting	3476	724
Action of court on report	3477	724
Person interested in estate may file complaint to have property hired or rented	3478	725
Setting apart homestead and other exempt property to widow and children	3413-3429	714

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Court shall set apart exempt property, etc...	3413	714
Allowance in lieu of exempt articles.....	3414	714
Such allowance shall not exceed, what.....	3415	714
To whom the exempt property shall be delivered	3416	715
Allowance shall be paid, how	3417	715
To whom allowance shall be paid.....	3418	715
Sale to raise allowance, when	3419	715
Property upon which liens exist shall not be set aside, etc.....	3420	715
When estate proves to be solvent	3421	716
When estate proves to be insolvent	3422	716
Exempt property, etc., not to be considered in ascertaining solvency	3423	716
When homestead shall not be partitioned....	3424	716
When homestead may be partitioned	3425	716
No distinction between separate and community homestead.....	3426	716
Homestead not liable for debts, except, etc.....	3427	716
Other exempt property, liable for what debts..	3428	716
Homestead rights of surviving husband.....	3429	716
Inventory, appraisalment and list of claims. 3330-3349		701
Appointment of appraisers	3330	701
Same subject.....	3331	701
Inventory and appraisalment	3332	701
Appraisalment shall be sworn to.....	3333	701
List of claims	3334	701
Inventory and list shall be sworn to.....	3335	701
Shall be returned within sixty days.....	3336	701
Court shall approve or disapprove	3337	702
Order of approval.....	3338	702
Order of disapproval....	3339	702
Duty of executor to make additional inventory..	3340	702
May be cited to make, etc.	3341	702
Order requiring additional inventory, etc... ..	3342	702
Erroneous inventory or list may be corrected ..	3343	702
New appraisalment may be required.....	3344	702
Order for same.....	3345	702

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
New appraisalment in place of original.....	3346	703
Not more than one reappraisalment	3347	703
Shall be evidence, to what extent	3348	703
Where more than one executor, etc., qualifies, and some neglect to return inventory, etc.	3349	703
Issuance of letters. 3325-3329		700
Clerk shall issue letters, when	3325	700
What constitutes letters.	3326	700
Letters and certificates of letters made evidence.	3327	700
Letters shall issue to each one qualifying... ..	3328	700
Other letters may be issued, when	3329	700
Jurisdiction	3206-3210	680
Probate jurisdiction of county court.....	3206	680
Probate jurisdiction of district court.....	3207	680
Proceedings of probate of will, etc., void when, etc.	3208	680
In what counties will shall be probated and letters granted.....	3209	681
In case of concurrent jurisdiction of several courts	3210	681
Oath and bond of executors and administrators	3305-3324	697
Oath of executor or administrator with will annexed	3305	697
Oath of administrator... ..	3306	697
Oath of temporary administrator	3307	697
Oath may be taken before any officer authorized to administer oaths, etc	3308	697
Bond of executors and administrators	3309	698
Form of bond.....	3310	698
Oath and bond, within what time.....	3311	698
Bonds shall be filed and recorded	3312	698
Where will provides that no bond shall be required	3313	698
Bond of married woman.	3314	698
Bond of husband or wife, who is a minor.....	3315	699
When new bond may be required	3316	699
Duty of county judge to require new bond, when	3317	699
Any person interested in an estate may demand new bond.....	3318	699

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Sureties may ask to be discharged, and for new bonds.....	3319	699
Citation to executor or administrator	3320	699
Order requiring new bond After order requiring new bond, functions of executor, etc., suspended	3321	699
.....	3322	700
Sureties discharged when new bond is approved.	3323	700
Bond shall not be void on first recovery, etc....	3324	700
Partition and distribution		
.....	3527-3562	734
Application for partition and distribution.....	3527	734
Citation in such cases... ..	3528	734
Service of citation.....	3529	735
Executor, etc., shall also be cited.....	3530	735
Application may be made, when	3531	735
Upon return of citation served, court shall proceed, etc.....	3532	735
Court shall ascertain what facts.....	3533	735
Shall appoint guardians for minors, etc.....	3534	735
Decree of partition....	3535	736
Where estate consists of money or debts only..	3536	736
Court shall appoint commissioners, when.....	3537	736
Writ of partition shall issue	3538	736
Service of writ.....	3539	736
Manner of making partition by commissioners	3540	736
Report of commissioners when division is made.	3541	737
Action of court upon report of commissioners.	3542	737
Court to make special finding as to property incapable of division, and value of same....	3543	737
Distributee may pay appraised value and take property incapable of division	3544	737
May take it on credit, when	3545	737
Decree of court in such cases vesting title....	3546	737
New appraisalment of property, when.....	3547	737
If no distributee take property it shall be sold, etc.....	3548	738
Distributee purchasing at sale shall pay only the excess of his share... ..	3549	738

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Court may order sale, when	3550	738
If property is not sold, commissioners in county where it is situated shall be appointed, etc.	3551	738
Majority of commissioners may act.....	3552	738
Court shall order executor or administrator to deliver property, when..	3553	738
To whom property shall be delivered.....	3554	738
Damages for neglect to deliver property, etc...	3555	739
Surviving husband or wife may have partition of common property	3556	739
Action of court, and bond in such case.....	3557	739
Lien upon property delivered, etc.....	3558	739
Common property shall be held by executor, etc., until, etc.....	3559	739
Joint owners with estate may have partition...	3560	739
Expenses of partition to be paid by whom.....	3561	740
Court may appoint another guardian, etc., when, etc.	3562	740
Payment of estates into the treasury	3574-3591	742
If distributee does not demand his portion in six months after the partition, same shall be paid to state treasurer.	3574	742
When those entitled to estate do not appear and claim, shall be paid to state treasurer.....	3575	742
Property uncalled for shall be sold, etc.....	3576	742
Executor, etc., shall make report	3577	743
While property remains under control of executor, etc., distributees may have partition...	3578	743
Certified copy of order for payment of treasurer shall be sent by the clerk to the treasurer	3579	743
Clerk shall take certificate of postmaster, etc.	3580	743
Penalty for neglect of such duty.....	3581	743
Executor, etc., shall take receipt of treasurer, etc.	3582	743
Distributees shall recover funds paid into treasury	3583	743

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Mode of recovery.....	3584	744
Citation to county or district attorney.....	3585	744
Proceedings in suit to recover funds.....	3586	744
Costs shall be paid by plaintiff	3587	744
Penalty when executor, etc., fails to pay funds to treasurer.....	3588	744
Treasurer may apply to county court to enforce payment, and duty of court in such case....	3589	744
Treasurer may also sue upon bond.....	3590	744
Duty of county or district attorney to represent state	3591	744
Presentment, etc., of claims against an estate	3430-3457	717
Notice of issuance of letters shall be given....	3430	717
Copy of notice to be filed and recorded.....	3431	717
Same subject.....	3432	717
One notice sufficient....	3433	717
Penalty for neglect to give notice	3434	717
Claims shall be postponed if not presented in twelve months.....	3435	717
Claims for funeral expenses and of last sickness to be presented in sixty days.....	3436	718
Time of absence of executor, etc., not to be computed	3437	718
Estate charged with joint obligation	3438	718
Affidavit to claim.....	3439	718
Claim lost or destroyed may be presented, how.	3440	718
Affidavit made before whom	3441	718
Allowance or approval without affidavit, void.	3442	718
Memorandum of allowance or rejection....	3443	718
Failure to indorse or annex memorandum....	3444	718
When claim is allowed shall be presented for approval, etc.....	3445	719
Claims shall be acted upon by the court....	3446	719
Action of the court upon claims	3447	719
Any person interested in estate may oppose approval of a claim....	3448	719
When claim has been rejected the owner may bring suit.....	3449	719

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Judgment establishing claim shall be filed, etc.	3450	719
Costs of suit to be adjudged against claimant, when	3451	719
Action of court on claim a judgment, etc.	3452	720
Claim of executor or administrator	3453	720
Action of court thereon, etc.	3454	720
Provisions of this chapter do not apply to certain claims	3455	720
Claim shall not be allowed after order for partition	3456	720
Judgment shall not be rendered in favor of claim which has not been presented and rejected	3457	720
Probate of wills	3267-3276	690
How a written will which is produced in court may be proved	3267	690
How written will not produced may be proved	3268	609
Nuncupative will shall not be proved, when	3269	690
Nuncupative will must be proved, how	3270	691
Facts which must be proved	3271	691
Further proof in case of will which can not be produced in court	3272	691
All testimony shall be committed to writing, etc.	3273	691
Order shall be entered, will, etc., shall be recorded, when	3274	691
Certified copy of record, etc., may be read in evidence, etc.	3275	691
Will probated in another state or country may be filed and recorded in this state	3276	691
Record Books	3211-3217	681
Judge's probate docket	3211	681
Probate minutes	3212	681
Claim docket	3213	681
Probate fee book	3214	682
Record books shall be indexed, etc.	3215	682
Shall be evidence	3216	682
What papers shall be recorded in probate minutes	3217	682
Removal of executors and administrators	3393-3396	711
In what cases may be removed without notice	3393	711
In what cases may be removed with notice	3394	711

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Citation need not be served, when	3395	711
Order of removal shall set forth cause	3396	711
Resignation of executors and administrators	3397-3403	712
Application to resign must be accompanied by exhibit and account	3397	712
Citation in such case	3398	712
How served	3399	712
Exhibit and account shall be examined, etc., by court	3400	712
Order approving exhibit and account	3401	712
Order of discharge	3402	712
Shall not be discharged until, etc.	3403	712
Sales	3479-3507	725
Advantage of estate to be considered in ordering sale	3479	725
No sale without order of court	3480	725
Sale may be on what terms	3481	725
Sales at public auction of personal property same as under execution	3482	725
Purchaser shall give note and security, when, etc.	3483	725
Property liable to perish or be wasted shall be sold	3484	726
Sale of crops	3485	726
Duty of executor, etc., to sell personal property, etc.	3486	726
Sale of stock	3487	726
Order for sale of property mortgaged, etc.	3488	726
Duty of executor, etc., to apply for sale of real estate, when	3489	726
Requisites of such application	3490	727
Citation in such case	3491	727
Posting and returning of citation	3492	727
Action of the court on application	3493	727
Real estate shall be sold on twelve months' credit, except, etc.	3494	727
May be sold for cash, etc., when	3495	727
Sale of real estate may be private, when	3496	727
Twenty days' notice of sale to be given	3497	727
What notice of sale shall state	3498	728
Time and place of sale	3499	728
Sale may be ordered to be made in county where land is situated	3500	728

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Order of court for sale of property	3501	728
Any person interested in an estate may apply for an order of sale...	3502	728
Any person interested in an estate may oppose an application for sale	3503	728
Executor or administrator shall not purchase property of the estate.	3504	728
Bidder failing to comply with bid shall be liable, etc.....	3505	729
Public sale may be continued from day to day	3506	729
Notice of private sale need not be given, unless, etc.....	3507	729
Sales, reports of, etc.	3508-3517	729
Sales shall be reported in thirty days.....	3508	729
Requisites of report of sale	3509	729
Report may be made, when	3510	729
Action of court on report of sale.....	3511	729
Sale shall be set aside, when	3512	730
Conveyance of property sold	3513	730
Conveyance of real estate	3514	730
Conveyance of real estate shall not be delivered, until, etc.....	3515	730
Penalty for neglect to take note and mortgage	3516	730
Note holds vendor's lien.	3517	730
Specific performance of contracts — enforcing	3518-3520	731
Proceedings to enforce specific performance of bond, etc.....	3518	731
Action of the court on complaint	3519	731
Conveyance under this chapter	3520	731
Subsequent executors and administrators ...	3379-383	708
Subsequent administrator under a will shall succeed to rights of executor, except, etc...	3379	708
Powers of subsequent administrator	3380	708
How subsequent administration shall proceed.	3381	709
Same as to executor after administration	3382	709
Inventories, etc., to be returned in one month..	3383	709

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
Temporary administration	3297-3304	696
County judge may appoint temporary administrator, when.....	3297	696
Appointment may be made without application, etc.....	3298	696
Oath and bond required.	3299	696
Appointment shall cease to be of force, when..	3300	696
Pending contest, the county judge may appoint temporary administrator	3301	696
Rights and powers of temporary administrator	3302	696
List, return of sales, exhibit and account shall be made.....	3303	696
List, etc., shall be acted upon by the court....	3304	697
Transfer of administration	3615-3620	748
Court shall transfer administration on application, when.....	3615	748
Applicant shall pay fees due	3616	749
Order of court for transfer	3617	749
Duty of clerk to record all papers not recorded	3618	749
Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made	3619	749
Administration in district court shall be transferred to county court.	3620	749
Withdrawing estates from administration ...	3384-3392	709
Persons entitled to estate may cause executor or administrator to be cited, etc.....	3384	709
May give bond to pay debts of estate, etc....	3385	709
Bond shall be filed and recorded and order of court thereon.....	3386	710
Partition may be had of estate	3387	710
Lien on property in hands of distributees	3388	710
Creditor whose claim has been allowed, etc., may sue on bond.....	3389	710
Other creditor may sue and recover, to what extent	3390	710
Creditor may also sue distributee	3391	710
Order discharging executor or administrator.		

	Article	Page
ESTATES OF DECEDENTS		
—continued.		
and closing estate....	3392	710
Inheritance tax on.	7487-7502	1619
Provisions governing, to govern guardianship..	4051	837
ESTATES OF WARDS—		
Annual accounts	4185-4193	859
Claims against	4206-4237	862
Powers and duties of guardians of	4122-4133	849
ESTRAYS—	7185-7208	1536
Who may take up stray animals	7185	1536
Oath, appraisalment and bond	7186	1536
Ownership, how proved..	7187	1537
Proof of respectability, when	7188	1537
When taker-up not entitled to compensation.	7189	1537
Estrays not to be used until	7190	1537
When county commissioners to return.....	7191	1537
County clerk to record papers, etc.....	7192	1537
Two or more animals to be in one entry.....	7193	1537
Clerks to advertise.....	7194	1537
Property in estrays, etc..	7195	1538
Return of sale.....	7196	1538
Sale, when to be made...	7197	1538
Hogs, sheep, etc., how estrayed	7198	1538
Not to be estrayed until.	7199	1538
Names of bidders to be given	7200	1538
Taker-up liable for damage	7201	1538
Taker-up may use, when.	7202	1539
Death, etc., of estrays to be reported.....	7203	1539
Proceeds of sale, how disposed of.....	7204	1539
If taker-up refuses to deliver, liable for damages	7205	1539
When owner may reclaim money	7206	1539
Notice to be sent by county clerk, when...	7207	1539
Penalty for failure to send such notices	7208	1539
Accounts for.....	1429	337
EVIDENCE—	3640-3713	753
Depositions of parties	3679-3686	759
Party may take his own deposition	3679	759
May take deposition of adverse party	3680	759
Where either party is a corporation no ex parte depositions	3681	759

	Article	Page
EVIDENCE—continued.		
Not necessary to give notice, etc.....	3682	759
Taken and returned as other depositions....	3683	759
Answer may embrace what—contradiction of	3684	759
Refusal to answer, etc..	3685	760
Objection to interrogatories, etc.....	3686	760
Depositions of witnesses.	3649-3678	754
Depositions of witness may be taken, when..	3649	754
Notice and service thereof When notice may be given by publication...	3651	755
When process was served by publication.....	3652	755
When suit has not been commenced	3653	755
Cross interrogatories...	3654	766
Commission to take deposition	3655	756
Requisites of.....	3656	756
Officers authorized to execute	3657	756
Witness to be summoned.	3658	756
Refusing to answer, may be attached.....	3659	756
Execution of the commission	3660	757
Interpreter	3661	757
Return of depositions...	3662	757
Depositions by oral examination and answer...	3663	757
Notice of taking deposition, requisites of...	3664	757
Any person may be compelled to appear and answer; proviso where deposition taken at distance over 100 miles..	3665	757
Service of notice, etc., noted on copy filed, etc., commission to issue after ten days...	3666	757
Commission, how styled, etc.; requisites of...	3667	758
Powers of officer taking deposition	3668	758
Written cross interrogatories may be filed.....	3669	758
Witness to be cautioned and sworn, etc.....	3670	758
Examination, how conducted, reduced to writing, etc., and subscribed	3671	758
Objections to testimony not to be sustained, etc., but recorded and reserved for court, etc..	3672	758
Depositions certified and returned, how; rules as to use, etc.....	3673	758
Depositions opened.....	3674	758

	Article	Page
EVIDENCE—continued.		
Either party may use depositions, when....	3675	758
Objections to depositions	3676	758
Depositions to be read in evidence, subject, etc..	3677	759
Matter not responsive stricken out.....	3678	759
General provisions.	3687-3713	760
Common law rules of evidence	3687	760
Color or interest does not disqualify	3688	760
Husband or wife not disqualified except, etc...	3689	760
In actions by or against executors, etc., certain testimony not allowed.	3690	760
Religious opinions, etc., do not disqualify.....	3691	761
Printed statutes evidence, when	3692	761
Certified copies of acts, etc., evidence.....	3693	761
Copies of records of public officers and courts to be prima facie evidence	3694	761
Record of surveys as evidence	3695	761
Copies and certificates from certain officers are evidence.....	3696	761
Notarial acts and copies thereof are evidence..	3697	761
In suits against delinquent officers, transcript from comptroller's office is evidence.	3698	761
Copies of certain instruments prior to 1837 are evidence.....	3699	762
Recorded instruments admitted in evidence without proof, when..	3700	762
Record books, certain, declared valid records, etc.; certified copies; effect of.....	3701	762
Certified copies of deeds, etc., to land in Archer county, recorded in Jack county, when, etc., evidence when.....	3702	763
Transcribed records, certified copies of, evidence, etc.....	3703	763
Transcribed records, effect of.....	3704	763
Certain abstracts of title evidence, when.....	3705	763
Certified copy of instrument sued on is evidence, when.....	3706	764
Certified copies from heads of departments, evidence	3707	764
Assessment or payment of taxes may be proven, how	3708	765

	Article	Page
EVIDENCE—continued.		
Rate of interest in this state presumed, unless, etc.	3709	765
Execution of notes and other instruments presumed, unless, etc.....	3710	765
Evidence of appointment and qualification of executor, etc.....	3711	765
Suit on sworn account...	3712	765
Records of corporation are evidence.....	3713	765
Personal attendance of witnesses	3640-3648	753
Witness subpoenaed....	3640	753
Form of subpoena.....	3641	753
Service of.....	3642	753
Witness shall attend, etc.	3643	753
Fees of witnesses.....	3644	753
Witness refusing to testify	3645	753
Privileged from arrest..	3646	754
Party may be examined as a witness.....	3647	754
Interpreter may be summoned and appointed.	3648	754
Evidence in trust cases.	7810-7818	1694
Evidence preliminary to prosecutions, how secured	7810	1694
Witnesses examined; books and papers produced, etc.; defendants produce witnesses, books, etc.....	7811	1695
Evidence, how taken....	7812	1695
Judgment by default on failure to produce papers, documents, etc.	7813	1696
Notice to attorneys, failure to produce evidence; judgment by default, when.....	7814	1696
Special commission to take testimony when; powers of and compensation	7815	1697
Ten days' notice to require witnesses to appear	7816	1697
Witnesses testifying not subject to prosecution.	7817	1698
Provisions of this chapter cumulative	7818	1698
In proof of handwriting.	6809	1461
Rules of in justice court.	2337	495
missible as.....	821	208
Required in applications for pensions.....	6280	1340
Certified copies of railroad commission rates to be.....	6674	1429
In trials of right of property	7789	1689

	Article	Page
EVIDENCE—continued.		
Records of adjutant general's department admissible as.....	5813	1238
Recorded instruments shall be, when.....	6856	1470
Rules of in court martial	5861	1253
Rules of in partition suits.	6123	1307
Rules of in probate matters	3234	685
In trust cases.....	7810-7818	1694
In proving wills.....	7876	1712
EXAMINATIONS—		
Of applicants for law licenses	313	92
Of applicants to practice medicine	5739	1216
For officers in military service	5805	1235
Of applicants to practice nursing	5751	1219
By board of pharmacy...	6290	1543
Of teachers for certificates	2780-2814	590
EXAMINERS—		
Of state banks, commissioner may employ	518-574	134
EXCUSES—		
Of jurors, court may hear	5171	1084
EXECUTIONS—		
Of judgments in justice courts	2380-2388	501
Judgments enforced by execution, etc.	2380	501
Execution	2381	501
Returnable in sixty days	2382	501
Taxation of costs	2383	501
Execution to issue after ten days	2384	501
Within the ten days, when	2385	501
Issued to another county to be attested by clerk	2386	501
Dormant judgments, etc.	2387	501
The rules governing executions generally apply, except, etc.	2388	502
Stay of execution	2389-2390	502
Execution on judgment of district and county court issued, when...	3714	767
Execution before adjournment, when	3715	767
Execution issued before adjournment, superseded, when	3716	767
When judgment shall become dormant	3717	767
Execution from justice's court	3718	768
Execution issued on removal of property, etc.	3719	768

	Article	Page
EXECUTIONS—continued.		
On death of plaintiff, execution issued how ..	3720	768
On death of executor, etc.	3721	768
On death of nominal plaintiff	3722	768
On death of defendant, no execution for money..	3723	768
On death of defendant, execution for property..	3724	768
Terms "plaintiff" and "defendant" defined..	3725	768
County to which execution for money shall issue	3726	769
Execution for property shall issue	3727	769
To different counties ..	3728	769
Requisites of an execution	3729	769
Returnable, when	3730	769
Indorsements by officer	3731	769
Execution levied on property of surety, when..	3732	769
On death, etc., of officers enforced by successor..	3733	770
Enforced without delay..	3734	770
Levy of execution	3735	770
Failure of defendant to designate property	3736	770
Property not to be designated	3737	770
Property sold, etc., can not be levied on when	3738	770
Levy on real estate	3739	770
On personal property ..	3740	770
On stock running at large	3741	770
On shares of stock, etc..	3742	771
Interest of partner	3743	771
Goods pledged or mortgaged	3744	771
Shares of stock may be sold	3745	771
Duty of officer as to property in his hands	3746	771
Expenses for keeping property	3747	771
Defendant may give delivery bond and keep property	3748	771
Property may be sold by defendant	3749	771
Forfeited delivery bond..	3750	771
Real property sold, how	3751	771
Sale of land elsewhere than at court house door	3752	772
Lots in city or town, how sold	3753	772
Lands not in a city, etc., sold in lots, when....	3754	772
Sale of lots shall cease, when	3755	772
Expenses of selling lots, how paid	3756	772
Notice of sale of real estate	3757	772

	Article	Page
EXECUTIONS—continued.		
“Court house door” defined	3758	773
Real estate sales under deeds of trust, how made	3759	773
Sale of personal property	3760	773
Notice of sale of personal property	3761	773
Personal property present at sale, except	3762	773
Sale of stock running in range	3763	773
When execution not satisfied	3764	773
Conveyance to purchaser	3765	773
Deeds to the state in usual form	3766	774
Conveyance made after the death of purchaser	3767	774
Purchaser deemed innocent	3768	774
Penalty for making sale otherwise than as authorized by law	3769	774
Officer or deputy shall not purchase	3770	774
Purchaser failing to comply	3771	774
Re-sale of property	3772	774
Return of execution by mail	3773	774
Money to be paid over	3774	774
Failure to pay over money	3775	774
Failure to levy or sell, penalty for	3776	775
Failure to return execution	3777	775
Surplus to be paid to defendant	3778	775
Return of execution	3779	775
Death of defendant operates as supersedeas, when,	3780	775
Death of plaintiff does not abate writ	3781	775
Execution docket	3782	775
Index to execution docket	3783	775
Penalty for failure to keep docket and index	3784	775
For costs	3918	810
Shall not issue against counties	1368	326
Against guardians	4235	865
Of judgment in justice courts	2380-2388	501
Excess over homestead, how subjected to	3794-3818	778
Limitation on motion for return of	5697	1205
Shall issue under judgment on replevy bond, when	7109	1519
Of judgments in trials of right of property	7791	1690
Of judgments against railroads	6628	1413

	Article	Page
EXECUTIONS—continued.		
Levied first on property of principal	6332	1354
On property for taxes	7628	1655
Injunction to stay, etc.	4648	949
EXECUTIVE COMMITTEE.		
To certify names of candidates, etc.	3099	659
For counties, elected at primary	3107	661
Of counties to canvass returns of primary elections	3122	663
EXECUTIVE DEPARTMENTS—		
Mode of supplying fuel to	7339-7348	1567
EXECUTIVE MANSION—		
How controlled	6386	1369
EXECUTIVE OFFICERS—		
Salaries of	7047-7054	1509
Salary of governor	7047	1509
Secretary of state	7048	1509
Attorney general	7048a	1509
Comptroller, treasurer and commissioner of the general land office	7049	1509
Superintendent of public instruction	7050	1509
Commissioner of agriculture	7051	1509
Commissioner of insurance and banking	7052	1509
Railroad commissioners	7053	1509
Adjutant general	7054	1509
No mandamus to issue against, except	5732	1214
EXECUTORS—		
Actions against, certain testimony not allowed	3690	760
Appeal bond of	2106	452
Application for letters	3247-3266	687
May arbitrate	69	46
Banking corporations may qualify as	540	143
Without bond to give bond in certain cases	3364	706
Bulk sales by, not void, etc.	3973	820
Commissions allowed	3621-3630	750
On death of, execution issued how	3721	768
Certain rights and duties of	3350-3357	704
Withdrawing estates from	3384-3392	709
Property bequeathed to, taxed how	7489	1620
To pay claims in what order	3458	721
Shall not purchase claim against estate	3471	723

	Article	Page
EXECUTORS—continued.		
May hire or rent property of estate	3472-3478	724
May sell estates of decedents	3479-3507	725
Shall not purchase property of estate	3504	728
To report sales of estates of decedents	3508-3517	730
Duties, etc., of, in partition and distribution of estates of decedents	3527-3562	734
Duties of in final settlement of estates	3563-3573	740
Payments of estates of decedents into state treasury	3574-3591	742
Evidence of appointment, etc., of	3711	765
Fidelity, etc., insurance companies may act as	4928	1027
General provisions relating to	3218-3246	683
Granting letters to	3277-3296	692
Issuance of letters to	3325-3329	700
Judgment against	2004	437
Limitation on bonds of	5689	1204
Probate court may attach, when	3224	683
Removal of	3393-3396	711
Resignation of	3397-3403	712
Rights of, governed by common law, except	5493	1155
Scire facias to, etc.	1887	420
May bring suit for injuries resulting in death	4700	956
Suits by	1836	413
May be sued, where	1830	409
Venue of suits against in justice courts	2308	490
EXEMPTION CERTIFICATES—		
In certain cities	2953	631
EXEMPTIONS—		
Excess over homestead, etc., how set apart and subjected to execution	3794-3818	778
Voluntary designation of and who may set aside homestead	3794	778
Mode of setting it apart	3795	778
Instrument to be recorded	3796	778
Excess subject to execution, etc.	3797	778
Owner to be notified to set apart	3798	778
Notice, what	3799	778
Service of notice	3800	778
Return of service	3801	779
Return prima facie evidence	3802	779

	Article	Page
EXEMPTIONS—continued		
Defendant may designate homestead	3803	779
Mode of making designation by defendant	3804	779
Designation to be recorded	3805	779
Effect of, when made by defendant	3806	779
Proceeding when defendant fails	3807	779
Commissioners to designate	3808	779
Requisites of such designation	3809	779
To be returned and recorded, effect of	3810	779
Sheriff's return	3811	780
Compensation of commissioners and surveyors	3812	780
Fees of clerk, etc.	3813	780
Fees taxed as costs	3814	780
Excess to be sold	3815	780
Defendant may change, but, etc.	3816	780
Provisions cumulative	3817	780
Personal property may be designated	3818	780
Property exempt from forced sale	3785-3793	776
Property exempt from, to every family	3785	776
"Homestead" defined	3786	776
Proceeds of sale of homestead exempt for six months	3787	776
Property otherwise exempt	3788	776
Ferryboat, etc.	3789	777
Public property exempt	3790	777
Public libraries	3791	777
Homestead exemption does not apply, when	3792	777
Other exemptions not applying	3793	777
Of jurors	5114-5121	1074
Of members of militia from certain taxes	5841	1242
From military service	5766	1224
From road duty	6983	1493
From public road service	6970	1490
Of counties from road law	6976	1491
Of property from taxation	7507	1624
EXPERIMENT STATIONS—		
Establishment of	4476	907
EXPERT PRINTER—		
May be employed, etc.	6341	1356
EXPIRED LEASES—		
Regulations as to	5454	1146
EXPRESS COMPANIES—		
.	3819-3825	781
Express companies de-		

	Article	Page
EXPRESS COMPANIES—cont'd.		
clared common carriers, and duties defined....	3819	781
Railroad commission to regulate rates, etc....	3820	781
Penalties against, and railroad commission to enforce	3821	781
Powers of commission		

	Article	Page
EXPRESS COMPANIES—cont'd.		
over, same as over rail- roads	3822	782
To keep general office in this state, etc.	3823	782
To furnish information to railroad commission...	3824	782
To give notice of place of general office	3825	782
Gross receipts tax on....	7369	1579

F

FACTORIES—		
Commissioner of labor may enter, etc., when	5241	1096
FACTORS—		
Factors and commission merchants	3826-3832	784
Commission merchant de- fined	3826	784
Bond of	3827	784
Bond made where suit in same county	3828	784
Factors, etc., prohibited from being interested in their own sales ..	3829	784
Factor to render account of sales and give par- ticulars under penalty	3830	784
No charge allowed for mending, etc., unless the same has been ac- tually done	3831	785
Drawbacks, rebates, etc., prohibited	3832	785
Shall employ only public weighers	7833	1704
FACTORY OPERATIVES—		
Liens of.....	5644-5649	1194
FACULTY—		
Of educational corpora- tions, their powers	1225-1230	295
FALSE—		
Weights and measures..	7844	1706
FALSE STATEMENTS—		
By railroads to secure registration of bonds..	6728	1444
FALSE SWEARING—		
As to poll taxes	2960	633
FARM HANDS—		
Liens of	5644-5649	1194
FEEES OF OFFICE—	3833-3926	786
Certain state officers....	3833-3845	786
.....		
Certain state officers to furnish copies and cer- tificates	3833	786

FEEES OF OFFICE—cont'd.		
Fees of such officers therefor	3834	786
Shall not charge certain officers therefor	3835	786
Shall keep fee book and render account of fees quarterly	3836	787
Fees of state department	3837	787
Minimum fees in certain cases	3838	788
Pending suit not affected	3839	788
Fees paid in advance to secretary and by him to treasury monthly ..	3840	788
Fees of attorney general	3841	788
Fees of commissioner of general land office ...	3842	788
Fees of comptroller	3843	790
Fees of commissioner of insurance and banking	3844	790
Fees of railroad commis- sion	3845	790
Clerks of the supreme court and courts of civil appeals	3846-3848	791
Fees of clerk of supreme court	3846	791
Fees of clerks of courts of civil appeals	3847	791
Compensation for services not provided for.....	3848	792
County officers....	3849-3879	793
Fees of county judge in probate	3849	793
Commissions to county judge	3850	793
Fees in lunacy cases.....	3851	794
Compensation for ex of- ficio services.....	3852	794
Fees for testing weights and measures, etc.	3853	794
Fees for hiring out county convicts	3854	794
Fees of clerks of the dis- trict court	3855	794
Clerk shall compare and certify copies, etc.; fees	3856	795
Fees in probate matters	3857	795
Compensation for ex of- ficio services	3858	795
No compensation for as- sessing damages.....	3859	796

	Article	Page
FEES OF OFFICE—cont'd.		
Fees of clerks of county court	3860	796
Compensation for preserving records, etc.	3861	797
Compensation for ex officio services	3862	797
No compensation for assessing damages	3863	798
Sheriffs' fees.....	3864	798
Sheriffs' fees for serving process from supreme court, etc.	3865	799
Compensation for ex officio services	3866	799
Justices' fees	3867	799
Constables' fees	3868	800
Fees for services in district or county courts	3869	800
Per diem pay of county commissioners	3870	800
Assessors' compensation.	3871	801
Collectors' compensation.	3872	801
County treasurers' commissions	3873	801
Commissions on school fund	3874	801
Commissions shall not exceed \$2,000 annually..	3875	802
District and county surveyors' fees	3876	802
Fees of inspector of hides and animals	3877	802
Fees of notaries public..	3878	802
Fees of public weighers..	3879	803
General provisions..	3880-3926	804
Official failing to take out commission shall not receive fees or compensation	3880	804
Maximum amount of fees allowed	3881	804
Maximum fees in certain counties	3882	805
Maximum fees in certain counties	3883	805
County attorney, compensation in certain counties	3884	805
District attorney, compensation of	3885	805
County judge, compensation as superintendent of public instruction...	3886	805
Last U. S. census to govern as to population of cities	3887	806
Amounts allowed to be retained out of fees collected; state not responsible	3888	806
Excess fees to be paid to county treasurer	3889	806
Officer not collecting maximum fees, etc., may retain out of delinquent fees collected, remainder paid to treasurer	3890	806

	Article	Page
FEES OF OFFICE—cont'd.		
Fees of district clerks in counties having more than one district.....	3891	806
Delinquent fees, collection of, commissions on, remainder paid to treasurer	3892	806
Compensation for ex officio services, etc., may be allowed by commissioners' court, proviso	3893	806
Officials named in arts. 3881-3886 to keep accounts; duties of grand jury and district judge as to	3894	806
Officers to make sworn statement, etc., to show what	3895	807
Fiscal year defined, and regulation of reports..	3896	807
Sheriff not required to include in reports and statement certain expenses	3897	807
Certain officers not required to report fees or keep accounts, proviso as to district attorney	3898	807
Collector and assessor to file with comptroller copies of sworn statements	3899	807
Officer recovering money or fees belonging to another shall inform him and pay over on demand	3900	807
Officers to report fees collected, etc., requisites of report.....	3901	808
Officers to pay over fees, etc., to treasurer after four years, etc.; statements; disposition ...	3902	808
Officer may appoint deputies how; county judge not to attempt to influence appointment, etc.; compensation, how paid.	3903	808
Office rent, stationery, etc., to clerks of supreme court and courts of appeals	3904	809
Stationery, etc., allowed certain county officers	3905	809
No fees allowed on motions for security for costs, etc.	3906	809
Judgment containing several orders, one fee only shall be charged	3907	809
Fees of officers for taking acknowledgments, etc.	3908	809

	Article	Page
FEES OF OFFICE—cont'd.		
Clerks are prohibited from acting as conveyancers, etc.	3909	809
Fees in suits to be taxed against party cast, etc.	3910	809
No charge for copies of papers, when	3911	809
No fees for examination	3912	809
Officers shall keep fee books	3913	809
Fee bill shall be produced, etc., before fees are collectible	3914	809
Penalty for demanding, etc., fees unlawfully..	3915	810
Certain officers shall keep list of fees posted, etc.	3916	810
Fees shall not be demanded in advance, etc.	3917	810
Execution for costs	3918	810
Bill of costs shall accompany execution ...	3919	810
Execution shall issue on demand of person entitled to costs	3920	810
Preceding articles, etc., do not apply to executors, etc.	3921	810
Execution for costs shall not issue, until, etc....	3922	810
No fee allowed for filing certain papers	3923	810
Any other fees of office..	3924	810
State's attorney fees in school land litigation..	3925	810
Defense attorney fees in such cases	3926	811
Miscellaneous fees—		
Of prosecuting attorney in blacklisting cases..	598	157
Of constable in towns and villages	1057	252
For collecting costs, etc.	2034	442
Of attorney general in suits for recovery of public lands	5474	1150
Of hide and animal inspector	7310	1558
For examining state banks	522	135
Of board of legal examiners	320	93
Of officers under retail liquor dealers' license law	7463	1611
For examination of applicants to practice medicine	5739	1216
For examination of applicants to practice nursing	5752	1220
Of board of pharmacy..	6292	1343
For gathering oysters, etc.	3999	827
Of game, fish and oyster commissioner	4017	830

	Article	Page
FEES OF OFFICE—cont'd.		
Of clerk of Galveston and Harris county criminal district court	2213	473
For land patents, etc. 5378-5382	1120	
For conveying patients of lunatic asylums home	149	64
Of officers in lunacy cases	165	66
Of non-indigent patients in Pasteur hospital used how	169	67
Of recorders, etc., how prescribed, etc.	920	224
Of jurors and witnesses in corporation courts ...	915	223
Of witnesses	3644	753
Of attorney general in suits against trusts..	7806	1693
Of wreck-masters	7894	1717
FELLOW SERVANTS—		
Liability of railroads for injuries to	6640	1417
FELONIES—		
Persons convicted of, not to be granted law licenses	323	93
Procedure in cases of military convictions of...	5879	1256
FEMALE CONVICTS—		
In counties, to be kept separate	6241	1331
Shall be kept separate, etc., in state prisons..	6209	1325
FEMALES—		
Deposits in name of, in savings banks	399	110
FEME COVERTS—		
See "Married Women."		
FENCE LAWS—		
Commissioners' courts may establish, in connection with irrigation, etc.	4990	1044
FENCES—	3927-3934	812
"Sufficient fence" defined	3927	812
Complaint and proceedings thereon	3928	812
Stock may be impounded, when	3929	812
Owner not liable, when..	3930	812
Liability for injuring stock	3931	812
Unlawful removal of dividing fence	3932	812
Lawful removal of same..	3933	813
Adjacent owners required to remove fence, how..	3934	813
What constitutes lawful fence for horses, etc...	7254	1548
What is lawful fence....	7227	1543

	Article	Page
FERRIES—	7121-7041	1504
Who are entitled to license to keep	7021	1504
Can not be kept for hire without license	7022	1504
When stream is part of state boundary	7023	1504
License, how obtained.	7024	1504
Rates of ferriage shall be established	7025	1504
Change of rates	7026	1504
When owner refuses to keep ferry at established rates	7027	1504
License and bond to be renewed annually	7028	1505
License not to issue until	7029	1505
Rates of, to be delivered to person obtaining license	7030	1505
Rates of, to be posted at ferry	7031	1505
Where ferryman delays or refuses, etc., to pass persons	7032	1505
Duties of ferryman	7033	1505
Where ferryman charges more than, etc.	7034	1506
Penalty for keeping, etc., without license	7035	1506
Proceedings against sureties	7036	1506
Suit on bond	7037	1506
Temporary license	7038	1506
License tax	7039	1506
Where stream is part of county boundary	7040	1506
Charge on cattle, etc., swimming stream	7041	1507
Ferry corporations	1279-1281	308
See "Roads, Bridges and Ferries."		
FICTICIOUS DIVIDENDS—		
By railroad companies void	6470	1386
FIELD-NOTES—		
Of county line surveys.	1380	328
Of surveys of counties, etc.	5335-5360	1112
County surveyors to record, etc.	5305	1108
FINAL SETTLEMENT—		
Of estates of decedents.	3563-3573	740
Of estates of wards.	4267-4279	870
FINES—		
Prescribed by city paid into treasury	822	208
Aldermen of towns and villages may prescribe	1051	252
County clerk to report.	1759	396
In corporation courts, paid into city treasury	913	223

	Article	Page
FINES—continued.		
Against corporations, lien of state for	1193-1197	287
District clerks shall report	1696	385
Clerks and justices of the peace to report, etc.	1421	336
Assessed by military courts, how paid	5882	1257
FIREARMS—		
City councils may regulate carrying of, in cities.	827	208
City council may regulate the use of	970	234
FIRE DEPARTMENTS—	965-978	233
City council may regulate and control the erection of wooden buildings	965	233
May prohibit, etc., dangerous condition of chimneys, etc.	966	234
May prevent the deposit of ashes in improper places	967	234
May require inhabitants to keep fire buckets, etc.	968	234
May regulate carrying on of business dangerous in promoting fires.	969	234
May regulate, etc., use of fireworks and firearms	970	234
May control, etc., the storing of gunpowder, etc.,	971	234
May regulate, etc., the building of parapets and party walls	972	234
May compel owners of buildings to have scuttles, etc.	973	234
May provide regulations for extinguishment of fires	974	234
Same subject	975	234
May procure fire engines, etc.	976	234
Buildings may be blown up, etc., when, and the damage in such case.	977	235
Damage satisfied, how.	978	235
City council	813-902	206
FIRE ENGINES—		
Exempted from taxation	7507	1625
FIRE INSURANCE—		
Fire and marine insurance companies	4862-4875	1004
Marine, fire and other than life and health insurance companies, may do what	4862	1004

	Article	Page
FIRE INSURANCE—cont'd.		
Commissioner may permit capital stock of company to be reduced, when	4863	1004
When company is called upon to make good its capital stock, shall do what	4864	1004
Stockholders failing to pay when called upon, what course shall be taken	4865	1004
Company may create and dispose of new stock, when	4866	1005
Unlawful dividends	4867	1005
Penalty for making unlawful dividends	4868	1005
Insurance companies shall not purchase or hold real estate, except ...	4869	1005
Shall file bond	4870	1006
May deposit securities in lieu of bond	4871	1006
Annual statement of company	4872	1006
What the annual statement shall exhibit ...	4873	1006
Policy shall be considered a liquidated demand ..	4874	1007
Reinsurance	4875	1008
Mutual fire, storm and lightning insurance companies	4905-4918	1020
Incorporation of, and by what law regulated...	4905	1020
Application for permit, etc.	4906	1020
Conditions, etc., for obtaining charter and fee	4907	1020
Organization, and qualification of officers and directors	4908	1021
Funds to be invested, how	4909	1021
Procedure in case of failure to pay loss	4910	1021
Funds, how used and disposed of	4911	1022
Who are members, their right to vote, etc....	4912	1022
Permit canceled and charter forfeited, when	4913	1022
Tax on gross premiums..	4914	1022
Funds set apart for payment of losses, etc....	4915	1023
What mutual companies subject to this chapter	4916	1023
Local companies shall report annually and pay fee	4917	1024
Venue of suits against..	4918	1024
Printers' mutual fire and storm insurance companies ..	4919-4921	1024
How incorporated	4919	1024

	Article	Page
FIRE INSURANCE—cont'd.		
Certificate to do business, how obtained	4920	1024
Shall report annually and pay fee	4921	1024
General provisions ..	4943-4972	1034
FIRE MARSHAL—		
Of state insurance board	4880	1010
FIREWORKS—		
City council may regulate use of	970	234
FISCAL YEAR	3935-3939	814
Termination of fiscal year	3935	814
Accounts to be closed and reports compiled	3936	814
Secretary of state to have reports printed	3937	814
Legislators to be furnished with copies of reports	3938	814
Purpose of title	3939	814
FISHERMEN—		
Registration of	3984	823
FISH, OYSTERS, ETC.—		
.....	3980-4021	822
Public rivers, etc., property of state, etc.; under jurisdiction of commissioner, etc.....	3980	822
Private and public oyster beds defined.....	3981	822
Riparian rights prescribed	3982	822
Special tax on fish, oysters, etc., taken from coast waters	3983	823
Registration of fishermen, etc., in coast waters; application; certificate; fees; marking boats, etc.	3984	823
Permit to sell, with receipt of seizure and sale; proceeds how disposed of	3985	823
License to catch or take fish, oysters, etc., prerequisites to issue of..	3986	824
Licenses to wholesale dealers in fish and oysters; definition.....	3987	825
Application; requisites, agreement for inspection, record, forfeiture, etc.	3988	825
Issuance of license, requirements, fee.....	3989	825
Commissioner may arrange with applicants; amount, etc.....	3990	825
Location for planting oysters; who may obtain; application; fee	3991	825

	Article	Page
FISH, OYSTERS, ETC.— continued.		
Examination of location; survey	3992	826
Certificate; requisites; fee	3993	826
Certificate to be filed and recorded, fee, evidence.	3994	826
Locator protected in pos- session	3995	826
Location limited and for- eign corporations ex- cluded	3996	826
Owner of private location and assignee to keep stakes in place; may fence, provided.....	3997	826
Rents to be paid for loca- tions; forfeitures, etc..	3998	827
Permit to gather seed oys- ters, to whom and by whom granted, etc.; on what beds, etc.; fees, etc.	3999	827
Duties of commissioner..	4000	827
Commissioner to keep record, to show what..	4001	827
Commissioner to keep ac- counts with locators...	4002	828
Commissioner to make annual report to gover- nor, to be printed, etc.; requisites; penalty....	4003	828
Deputies in coast counties; special deputies over entire coast; appoint- ment, powers.....	4004	828
Deputies in interior coun- ties; appointment, pow- ers, duties, charges....	4005	828
Qualifications of deputy fish commissioner, etc..	4006	829
Oath and bond of deputy commissioner, etc.....	4007	829
Duties of deputy fish com- missioner, etc.....	4008	829
Weekly reports by depu- ties; with remittances; annual reports.....	4009	829
Commissioner responsible for his deputies.....	4010	829
Fish and oyster fund....	4011	829
Fines, etc., to go to gen- eral fund of the county	4012	829
Fines distributed, how...	4013	829
Disposition of funds col- lected by coast deputies	4014	829
Compensation of commis- sioner	4015	830
Compensation of deputy commissioners	4016	830
Fees of commissioner...	4017	830
Commissioners' court may appropriate money for stocking waters with fish; deputy for, etc...	4018	831
Improving, etc., the nat- ural oyster beds in Mat-		

	Article	Page
FISH, OYSTERS, ETC.— continued.		
agorda bay; expendi- ture authorized, pro- vided, etc.....	4019	831
Drag seine in breeding grounds taken charge of, when, by, commis- sioner	4020	831
Commissioner may pur- chase patrol boats and employ deputies for same, etc., compensa- tion	4021	831
Game, Fish, Oysters, etc.	3974-4042	821
FLOODS—		
Issuance of bonds for funding, etc., indebted- ness in case of	660-677	170
FOOD—		
City council may regulate inspection of	841	210
For state prisoners	6205	1323
See "Pure food."		
FOOT PEDDLERS—		
Occupation tax on	7355	1572
FORCED SALES—		
Property exempt from forced sale	3785-3793	776
Property exempt from, to every family	3785	776
"Homestead" defined ...	3786	776
Proceeds of sale of home- stead exempt for six months	3787	776
Property otherwise ex- empt	3788	776
Ferryboat, etc.....	3789	777
Public property exempt..	3790	777
Public libraries	3791	777
Homestead exemption does not apply, when..	3792	777
Other exemptions not ap- plying	3793	777
Arms, etc., of military companies exempt from	5556	1244
Excess over homestead, how subjected to ..	3794-3818	778
Forced sales under execu- tion	3714-3784	767
FORCIBLE ENTRY AND DETAINER— ..	3940-3964	815
In what cases the action will lie	3940	815
"Forcible entry" defined	3941	815
Other cases of forcible de- tainer	3942	815
Venue	3943	815
Citation	3944	815
Requisites of the com- plaint	3945	816

	Article	Page
FORCIBLE ENTRY AND DETAINER—cont'd.		
Service and return of citation	3946	816
Either party may demand a jury; precept for and service	3947	816
Other jurors may be summoned, when	3948	816
Docketing and trial	3949	816
Right of possession only issue	3950	816
Trial may be postponed for cause	3951	816
Hearing and judgment without jury	3952	816
Jury cases, impaneling; hearing; verdict	3953	816
Judgment of the court, writ, etc.	3954	816
Writ of restitution not to issue for two days	3955	817
May appeal, when and how	3956	817
Form of appeal bond	3957	817
Duty of justice in case of appeal	3958	817
Trial de novo	3959	817
Damages may be proven, when	3960	817
Judgment by default, when	3961	817
Judgment of county court final, etc., except, etc.	3962	818
Writ of restitution, etc.	3963	818
Shall not bar action for trespass, etc.	3964	818
Limitation on action of	5698	1205
FOREIGN CORPORATIONS—	1314-1321	315
Permit to do business, etc., in state must be obtained and how	1314	315
Permit may be limited to one or more of several purposes of incorporation	1314	315
Permit to do business, affidavit as condition of issuance; requisites of Secretary of state to require proof in what case	1315	315
Rights under permit	1316	316
Right to purchase, hold, sell, mortgage, etc., real and personal estate; provisos as to alienation	1317	316
No such corporation can maintain any suit, etc.	1318	316
Corporations exempted from provisions hereof	1319	316
Permit to extend for period of ten years	1320	316
Evidence	1321	316
Corporations, private	1117-1321	266

	Article	Page
FOREIGN CORPORATIONS— continued.		
None, except national banks, to do banking business in this state	559	147
Discriminating against employes, penalty for	596	157
To forfeit permit for refusal to permit examination of books, etc.	1189	286
Service of citations on	1861	416
Not permitted to locate oyster beds	3996	826
Doing insurance business in this state, requirements of	4972	1040
Certain, to pay franchise tax	7394	1587
Violating anti-trust law	7803	1693
FOREIGN JUDGMENTS—		
Actions on, barred when	5691	1204
FOREIGN WILLS—		
May be proved, how	7875	1712
FOREMAN—		
Of jury in trial of cases	1956	432
FORFEITED BONDS—		
In criminal cases, jurisdiction of county court	1765	397
FORFEITURES—		
Of purchases of public lands	5405-5459	1126
Of mining claims	5915	1266
Of charters of railroad companies	6425	1379
Of railroad charters	6633-6636	1415
Of railroad charters for illegal issuance of stock	6726	1443
Of licenses of liquor dealers	7434	1600
FORGERY OF WILLS—		
Limitation in case of	5700	1205
FOUL BROOD—		
Bees affected with	575-578	152
FRANCHISE TAX—	7393-7406	1587
Tax to be paid by domestic corporations	7393	1587
Tax to be paid by foreign corporations	7394	1587
Only part of the tax to be paid, when	7395	1588
Certain affidavits may be required	7396	1588
Reports to be filed, etc.	7397	1588
Supplemental tax to be paid when capital increased	7398	1589
On failure to pay tax charter forfeited, when; penalty	7399	1589
Notice of forfeiture	7400	1589

	Article	Page		Article	Page
FRANCHISE TAX—cont'd.			FRATERNAL INSURANCE—		
Foreign corporations may withdraw	7401	1590	continued.		
No business to be done after forfeiture; penalty	7402	1590	Commissioner to issue certificates to agents	4858	1002
Certain corporations not required to pay tax, when	7403	1590	Local companies exempt from chapter, shall file statement	4859	1003
Attorney general to bring suit, when	7404	1591	Associations exempt from all insurance laws	4860	1003
Forfeiture of charter by court; duty of clerk	7405	1591	May issue term payment certificate	4861	1003
Payment of franchise tax by corporations in process of liquidation	7406	1591	Need not invest in Texas securities	4788	981
Not required of fraternal orders.	1223	294	Not affected, etc.	4957	1037
FRATERNAL INSURANCE—			FRATERNAL ORDERS—		
Fraternal beneficiary associations	4827	993	May incorporate, how	1214	293
Defined	4827	993	FRAUDS—		
Lodge system defined	4828	993	In assignments by assignees	91-106	53
Representative form of government defined	4829	993	Frauds and fraudulent conveyances	3965-3973	819
Exemptions	4830	993	Written memorandum required to maintain certain actions	3965	819
Benefits	4831	994	Conveyances to defraud creditors, etc., void	3966	819
Benefits confined to whom	4832	994	Voluntary conveyances	3967	819
Qualifications for membership	4833	994	Gift of goods, etc.	3968	819
Certificate	4834	994	Loan of chattels	3969	819
Funds	4835	995	Mortgage of chattels void, when	3970	820
Investment of funds	4836	995	Merchandise, sales in bulk, void when, etc., unless, etc.	3971	820
Annual sworn statement	4837	995	Purchaser conforming to provisions, not accountable	3972	820
Distribution of funds	4838	995	Not applicable in what cases	3973	820
Organization	4839	996	In case of, where suit may be brought	1830	409
Powers retained, reincorporation amendments	4840	997	Safeguards against, in primary elections	3115	662
Transfer of membership	4841	997	FRAUDULENT VOTES—		
Annual license	4842	998	Not to be counted in contest	3062	651
Admission of foreign association	4843	998	FREE SCHOOL FUNDS—		
Powers of attorney and service of process	4844	999	See "School Fund."		
Place of meeting, location of office	4845	999	FREIGHT—		
No personal liability	4846	999	Refusal of railroad companies to transport	6554	1398
Cannot waive provisions of law	4847	999	To be delivered by railroad companies, when	6558	1399
Separate jurisdiction, provisions	4848	999	Railroads to receive from connecting lines	6608	1407
Constitution and by-laws, amendments	4849	999	FREIGHT RATES—		
Annual reports	4950	1000	Railroad commission to fix	6654	1422
Examination of domestic associations	4851	1000	FRUIT TREES—		
Application for receiver, etc.	4852	1001	Commissioner of agriculture shall supervise protection of	4458	902
Examination for foreign associations	4853	1001			
Revocation of license	4854	1001			
Exemption of certain associations	4855	1002			
Exempt from taxation	4856	1002			
Shall secure additional members or forfeit permit	4857	1002			

	Article	Page
FUEL—		
Mode of supplying fuel to the executive and other departments	7339-7348	1567
Board of contractors	7339	1567
Advertisement for proposals	7340	1567
Proposals, how made	7341	1567
Contract awarded to lowest bidder	7342	1567
Bids to be guaranteed	7343	1567
Contractor's bond	7344	1567
Rescission of contract	7345	1567
No officer to be interested in contract	7346	1568
Rate for fuel	7347	1568
Record of proceedings	7348	1568

	Article	Page
FUGITIVES—		
Sheriffs shall furnish list to adjutant general	7133	1524
FULL CREW—		
Unlawful to run passenger trains without	6573	1401
FUNERAL EXPENSES—		
Claims for, against estates of decedents	3436	718
FURNITURE—		
Household and kitchen exempted from taxation	7507	1625

G

GALLOWES—		
Jails to be equipped with	5110	1073
GALVESTON—		
And Harris counties, criminal district courts	2202-2228	472
GAMBLING—		
Forbidden in state prison	6230	1329
GAME—		
4022-4042	832	
Wild animals, birds, etc., property of public	4022	832
Hunting licenses required of non-residents, requisites and duration; fee	4023	832
Non-resident licensee may take home game lawfully killed, provided, etc.	4024	832
Hunting licenses required of residents, when; requisites; authority given, duration; fee	4025	833
County clerk to issue local hunting licenses, etc., keep stubs of, etc.	4026	833
County clerk to keep record	4027	833
Monthly report of licenses by county clerk, in duplicate, to commissioner and comptroller	4028	833
Commissioner to enforce laws for protection, etc., bring actions, etc., for fines, etc.; powers	4029	833
Power to seize birds and animals, when; disposition of	4030	834
Commissioner to keep record; to contain what	4031	834
Monthly report by commissioner	4032	834

GAME—continued.		
Commissioner may appoint chief deputy; office in capitol; oath; duties	4033	834
Bond of chief deputy	4034	834
Commissioner may appoint deputy game commissioners; powers	4035	834
Disposition of fees and fines received by commissioner	4036	834
Disposition of fines by court or deputy commissioner	4037	834
Disposition of license fees received by county clerk	4038	834
Hunting license fund, a separate salary, etc., fund	4039	835
Compensation of commissioner and deputies	4040	835
Chief deputy to furnish blank hunting licenses to county clerks; accounts	4041	835
Commissioner and deputies made fire commissioners; duties	4042	835
GAME, FISH, OYSTERS—		
3974-4042	821	
Fish, oysters, etc.	3980-4021	822
Public rivers, etc., property of state, etc; under jurisdiction of commissioner, etc.	3980	822
Private and public oyster beds defined	3981	822
Riparian rights prescribed	3982	822
Special tax on fish, oysters, etc., taken from public coast waters	3983	823
Registration of fishermen, etc., in coast waters; application; certificate; fees; marking boats, etc.	3984	823

	Article	Page
GAME, FISH, OYSTERS— continued.		
Permit to sell, with receipt of seizure and sale; proceeds how disposed of.....	3985	823
License to catch or take fish, oysters, etc., prerequisites to issue of..	3986	824
Licenses to wholesale dealers in fish and oysters; definition.....	3987	825
Application; requisites, agreement for inspection, record, forfeiture, etc.	3988	825
Issuance of license, requirements, fee.....	3989	825
Commissioner may arrange with applicants; amount, etc.....	3990	825
Location for planting oysters; who may obtain; application; fee.....	3991	825
Examination of location; survey	3992	826
Certificate; requisites; fee	3993	826
Certificate to be filed and recorded, fee, evidence.	3994	826
Locator protected in possession	3995	826
Location limited and foreign corporations excluded	3996	826
Owner of private location and assignee to keep stakes in place; may fence, provided.....	3997	826
Rents to be paid for locations; forfeitures, etc..	3998	827
Permit to gather seed oysters, to whom and by whom granted, etc.; on what beds, etc.; fees, etc.	3999	827
Duties of commissioner..	4000	827
Commissioner to keep record, to whom, what.	4001	827
Commissioner to keep accounts with locators..	4002	828
Commissioner to make annual report to governor, to be printed, etc.; requisites; penalty.....	4003	828
Deputies in coast counties; special deputies over entire coast; appointment, powers...	4004	828
Deputies in interior counties; appointment, powers, duties, charges...	4005	828
Qualifications of deputy fish commissioner, etc.	4006	829
Oath and bond of deputy commissioner, etc.....	4007	829
Duties of deputy fish commissioner, etc.....	4008	829

	Article	Page
GAME, FISH, OYSTERS— continued.		
Weekly reports by deputies; with remittances; annual reports.....	4009	829
Commissioner responsible for his deputies.....	4010	829
Fish and oyster fund....	4011	829
Fines, etc., to go to general fund of the county	4012	829
Fines distributed, how...	4013	829
Disposition of funds collected by coast deputies	4014	829
Compensation of commissioner	4015	830
Compensation of deputy commissioners	4016	830
Fees of commissioner....	4017	830
Commissioners' court may appropriate money for stocking waters with fish; deputy for, etc...	4018	831
Improving, etc., the natural oyster beds in Matagorda bay; expenditure authorized, provided, etc.....	4019	831
Drag seine in breeding grounds taken charge of, when, by commissioner	4020	831
Commissioner may purchase patrol boats and employ deputies for same, etc., compensation	4021	831
Game, fish and oyster commissioner	3974-3979	821
Office created.....	3974	821
Qualifications of.....	3975	821
Office where kept.....	3976	821
Oath and bond.....	3977	821
Seal	3978	821
General duties and powers	3979	821
Salary of.....	7083	1513
GAMING—		
Use of premises for, may be rejoined.....	4685	954
GARNISHMENT—	271-308	84
Attachment	240-270	79
Writ of garnishment, who may issue and when...	271	84
Bond to be executed in certain cases.....	272	84
Application for the writ, etc.	273	84
Proceeding by, shall be docketed, etc.....	274	85
Requisites of writ when incorporated company, etc., is garnishee.....	275	85
Form of writ.....	276	85
To be dated and tested, etc., how.....	277	85
Sheriff, etc., to execute and return forthwith..	278	85
Effect of service of, defendant may replevy...	279	86

	Article	Page
GARNISHMENT—cont'd.		
Answer to, must be under oath, in writing and signed	280	86
Garnishee to be discharged in answer, when.....	281	86
Judgment by default, when	282	86
Residing in another county and failing to answer, proceedings against	283	86
Form of commission.....	284	86
Tested, how.....	285	87
Duty of commissioner to issue writ.....	286	87
Form of writ in such cases	287	87
Writ, tested, how.....	288	88
To be executed and returned immediately ...	289	88
Duty of commissioner when garnishee in another county appears and answers	290	88
Duty when garnishee fails to appear or to answer	291	88
Judgment of the court in such cases	292	88
Judgment of garnishee when he is indebted	293	88
For effects	294	88
Attachment against garnishee for refusing to deliver effects.....	295	88
Judgment against incorporated companies, etc., for shares, etc.....	296	89
Sales of such shares, etc., how made.....	297	89
Effect of such sale.....	298	89
Traverse of answer of garnishee, by plaintiff.	299	89
By defendant.....	300	89
Trial of issue on controverted answer.....	301	89
When garnishee resides in another county, proceeding to be certified to such county.....	302	89
Duty of clerk or justice, of such county in such cases	303	89
Notice, to whom directed and how executed.....	304	90
Issue, how tried.....	305	90
Current wages not subject to garnishment.....	306	90
Costs in garnishment proceedings	307	90
Garnishee discharged from liability to defendant..	308	90
Surplus in assignee's hands, subject to.....	99	55
Justice of the peace to issue writs of.....	2294	488

	Article	Page
GAS COMPANIES—	1303-1308	312
City councils may regulate, etc.....	1018-1024	245
Courts may regulate, etc.	1025-1032	247
Occupation tax on.....	7355	1573
Gross receipts tax on....	7371	1580
Powers of city over.....	769	193
GAS AND WATER CORPORATIONS—	1282-1283	308
Privileges of such corporations	1282	308
May contract with cities, etc.	1283	308
Corporations, private	1117-1321	266
GAS WELLS—		
Regulations as to...7847-7854		1707
GATES—		
On public roads, right to erect	6899	1478
GAYULE—		
On public lands, reservation of.....	5433	1139
Sale of.....	5434	1139
GENERAL ELECTIONS—		
Time for holding.....	2910	622
GENERAL LAND OFFICE—		
.....5280-5292		1104
General land office established	5280	1104
Commissioner to have custody of books, etc.....	5281	1104
Night watchman.....	5282	1104
Papers to be kept in land office, how.....	5283	1104
Examination of papers permitted, when.....	5284	1104
Clerk to examine papers after, etc.....	5285	1104
Lithographic copies of maps to be printed, etc.	5286	1104
To be copyrighted, etc...	5287	1104
To be sold at fifty cents, etc.	5288	1104
Proceeds to be placed where	5289	1105
No transfers to be withdrawn	5290	1105
Receipts for papers, etc..	5291	1105
Commissioner and sureties responsible, when.....	5292	1105
Archives of general land office	82-85	50
What shall be considered archives of the general land office.....	82	50
Effect to be given to archives deposited in the general land office.	83	51
Deeds, etc., which are not archives	84	51

	Article	Page
GENERAL LAND OFFICE—		
continued.		
How such deeds, etc., may be withdrawn.....	85	51
Other public archives.....	86-90	51
Transcripts of land under land deeds furnished by, when.....	5324	1111
Registration of copies of deeds, etc., from.....	6831	1465
Commissioner of general land office.....	4392-4410	891
See "Commissioners."		
GENERAL LAWS—		
Secretary of state shall furnish to what officers	4310	876
GENERAL OFFICES—		
Of railroad companies to be kept in state.....	6423	1378
GIFTS—		
Void, when.....	3968	819
GINNERS—		
Commissioner of agriculture to require reports from.....	4451	900
GIRLS' INDUSTRIAL INSTITUTE—	2682-2690	568
Diplomas from.....	2807	596
GLANDERS—		
Inspection of live stock affected with.....	7161	1531
GOATS—		
Marks and brands of.....	7151-7160	1528
GOVERNOR—		
Shall appoint boards of managers for lunatic asylums.....	109	58
Shall appoint boards of trustees of various asylums.....	171	68
Shall appoint board of trustees for confederate home.....	205	72
Shall appoint board of managers for epileptic colony.....	212	74
Shall appoint superintendent of home for lepers.....	236	78
May appoint tax collectors for cities in certain cases.....	898	219
Shall appoint clerk for Galveston and Harris county criminal district court.....	2208	473
To appoint board of dental examiners.....	2406	506
To appoint board of regents of university of Texas.....	2636	562

	Article	Page
GOVERNOR—continued.		
To appoint board of directors of agricultural and mechanical college	2658	565
To appoint board of regents for girls industrial institute.....	2683	568
Proclamation of, ordering elections.....	2929	626
Shall give certificates of election, when.....	3037	647
Returns of election for... Shall commission officers except, etc.....	3038	647
Contests of election for..	3045	648
Shall cause list of electors to be made, etc.....	3076	653
May cause escheat proceedings to be instituted	3183	675
To appoint game, fish and oyster commissioner...	3204	679
To appoint secretary of state.....	3974	821
To appoint assistant attorney general.....	4302	875
To order suits, etc.....	4432	896
To appoint commissioner of insurance and banking.....	4434	897
State superintendent of public instruction to report condition of schools to.....	4485	909
To appoint state board of health.....	4515	917
To issue quarantine proclamation, when.....	4521	919
To appoint local health officer in cases of quarantine.....	4554	927
To appoint dairy and food commissioner.....	4561	929
To appoint commissioner of labor.....	4575	931
Authorized to purchase land for state use, etc.	5236	1095
.....	5247-5251	1098
May cede United States jurisdiction, when....	5275	1102
To appoint board of medical examiners.....	5733	1215
To appoint board of nurse examiners.....	5749	1219
To be commander-in-chief of military forces....	5767	1225
May order enrollment for military service.....	5769	1225
Duties of, as to the reserve militia	5768-5777	1225
Duties as to Texas National Guard	5778-5893	1228
To appoint adjutant general.....	5786	1230
To appoint assistant adjutant general.....	5797	1232
To appoint boards of examiners for military service.....	5806	1235

	Article	Page
GOVERNOR—continued.		
May appoint second lieutenant, etc.....	5826	1239
May call out militia, when	5831	1240
May order active militia to assist civil authorities	5835	1241
To draw arms, etc., from U. S. government.....	5857	1244
May order arrest of militiamen	5873	1255
To appoint one member of state mining board.	5924	1268
Shall appoint notaries public	6002	1287
To appoint board of pardon advisers.....	6086	1300
To appoint board of pharmacy	6286	1342
To appoint commissioners of pilots.....	6299	1347
To appoint branch pilots.	6305	1349
To appoint superintendent of public buildings, etc.....	6380	1368
Shall appoint commissioners for San Jacinto park	6396	1371
To fill vacancies in railroad commission.....	6653	1421
To appoint quartermaster for ranger force....	6757	1451
Ranger force under command of.....	6758	1451
Shall make regulations for ranger force.....	6766	1452
Salary of.....	7047	1509
May appoint inspector of hides and animals, when	7257	1549
To appoint live stock sanitary commission.....	7312	1559
May proclaim quarantine of live stock.....	7315	1560
Members of board to calculate tax rate.....	7349	1569
To appoint state revenue agent	7366	1578
To appoint state tax commissioner	7407	1592
To appoint certain public weighers	7828	1702
To procure standards of weights	7838	1705
GOVERNOR'S MESSAGES—		
Shall be printed, etc.....	6349	1360
GRADE CROSSINGS—		
Of railroads, expenses paid by whom.....	6703	1438
GRAIN—		
Weights of.....	7837	1705

	Article	Page
GRAMMATICAL ERRORS—		
Shall not vitiate laws....	5503	1156
GRAND JURIES—		
Duties in enforcing local option laws.....	5730	1213
How selected.....	1720	389
GROSS RECEIPTS TAX—		
Taxes based upon gross receipts	7369-7392	1579
Express companies.....	7369	1579
Telegraph companies....	7370	1579
Gas, electric lights, electric power or water works plants.....	7371	1580
Collecting or commercial agency	7372	1580
Car companies.....	7373	1580
Pipe line companies.....	7374	1581
Sleeping car, palace car or dining car companies	7375	1581
Insurance companies....	7376	1582
Wholesale dealers in oils, "wholesale dealer" defined.....	7377	1582
Interurban and electric railway companies....	7378	1583
Wholesale dealers in or distributors of liquors; "wholesale dealer" defined	7379	1583
Dealers in pistols.....	7380	1584
Text or law book publishers	7381	1584
Telephone companies....	7382	1584
Oil well companies.....	7383	1585
Terminal companies.....	7384	1585
Tax to be paid when business is begun after beginning of quarter....	7385	1585
Penalty for failure to report	7386	1585
Penalty for failure to pay tax	7387	1585
Penalties to be recovered by attorney general...	7388	1585
Permit not granted until tax is paid.....	7389	1586
Tax in addition to all other taxes.....	7390	1586
Comptroller may require additional reports....	7391	1586
Revenue agent to examine books, etc., when.....	7392	1586
GUARANTORS—		
Suits against.....	1842	413
GUARANTY—		
Of bank deposits.....	445-517	120
Guaranty and insurance companies	4928-4940	1027
General provisions ..	4943-4972	1034

	Article	Page
GUARANTY FUND—		
Of savings banks.....	407	111
Capital stock of savings banks shall be.....	394	109
Of state banks.....	445-517	120
GUARDIAN AND WARD—		
.....	4043-4301	836
Annual accounts....	4185-4193	859
Of guardian of the person	4185	859
Of guardian of estate....	4186	859
Shall be continued one term	4187	859
Citation on annual account	4188	859
Account must be proved by vouchers or other evidence	4189	859
Action of the court on account	4190	859
Citation to return account, when.....	4191	859
Penalty for failing to return	4192	860
This chapter not applicable to certain estates, unless, etc.....	4193	860
Appeal, bill of review and certiorari	4290-4301	873
Right of appeal.....	4290	873
Notice of appeal.....	4291	873
Transcript on appeal....	4292	873
Several appeals may be embraced in same transcript, when.....	4293	873
Transcript shall be made out, etc., within what time	4294	873
Appeal shall not suspend decision, etc., unless, etc.	4295	873
Appeal suspends decisions, etc., without bond, when.....	4296	873
Judgment of district court shall be entered of record, etc.....	4297	874
Judgment dismissing appeal	4298	874
Appeal shall be tried de novo	4299	874
Bill of review may be brought	4300	874
Certiorari	4301	874
Appointment of guardians	4080-4090	841
Court may appoint, when	4080	841
What facts must appear before appointment is made	4081	841
Only one guardian of the person or estate shall be appointed, except..	4082	842
Order of appointment, requisites	4083	842
Minor having guardian may select another, when	4084	842

	Article	Page
GUARDIAN AND WARD—		
continued.		
Another guardian shall be appointed, when.....	4085	842
Guardian of minor continues in office, until, etc.	4086	842
Guardian of person of unsound mind, etc., continues in office, until, etc.	4087	842
Court may appoint receiver, when.....	4088	842
Guardianship of estate of non-resident minor....	4089	843
Letters shall issue, when, and shall state, what..	4090	843
Claims against the estate	4206-4237	862
Guardian may pay claim without authentication, when	4206	862
Claim shall not be allowed unless supported by affidavit, etc.....	4207	862
Claim not founded on written instrument, affidavit shall state facts	4208	862
When claim belongs to corporations, who shall make affidavit	4209	862
Affidavit by officer of corporation, executor, etc., shall state what.....	4210	863
Affidavit may be made before what officers....	4211	863
Memorandum of allowance or rejection on claim	4212	863
Failure to make memorandum	4213	863
Rejected claim barred, when	4214	863
Memorandum evidence....	4215	863
When claim is allowed, shall be presented, etc.	4216	863
Claims shall be examined, etc., by the court....	4217	863
Any person may contest claim	4218	863
Court shall hear evidence on claim	4219	863
Order of approval or disapproval is a judgment	4220	863
Appeal may be taken from action of court on claim	4221	863
Action of court on claim..	4222	864
Lost claim, how proved..	4223	864
Claim by guardian established, how.....	4224	864
When a claim is "exhibited"	4225	864
When a claim is "established"	4226	864
When claims may be exhibited	4227	864
Limitation is interrupted, how	4228	864

	Article	Page
GUARDIAN AND WARD—		
continued.		
Guardian shall not purchase claim.....	4229	864
Claim established by judgment shall be filed, etc.	4230	864
Costs incurred in exhibiting, etc., a claim, taxed, how	4231	864
Claim docket.....	4232	865
Payment of claims.....	4233	865
Order to pay creditor....	4234	865
Execution against guardian	4235	865
Sureties on guardian's bond shall be cited, when	4236	865
Citation and judgment in such case.....	4237	865
Compensation of guardians, expenses and costs of guardianship..	4280-4289	872
Guardian of person serves gratis	4280	872
Commissions of guardian	4281	872
Extra compensation, when allowed.....	4282	872
Expenses incurred to be allowed	4283	872
Pay of appraisers.....	4284	872
Costs shall be adjudged against guardian, when	4285	872
Costs shall be adjudged against applicant, when	4286	872
In proceedings against persons of unsound mind, etc.....	4287	872
Same subject.....	4288	872
Cost laws apply to guardianships	4289	873
Death, resignation and removal of guardians..	4194-4205	860
When guardian dies.....	4194	860
Resignation of guardian.	4195	860
Citation in such case....	4196	860
Service of such citation..	4197	860
Action of the court upon application and account	4198	861
Removal of guardian without notice, when..	4199	861
Removal after citation..	4200	861
Order removing guardian shall state, what.....	4201	861
Person removed shall not be re-appointed.....	4202	861
Procedure on death of guardian	4203	861
Subsequent guardian shall account for what	4204	861
Subsequent guardian.....	4205	862
Final settlement....	4267-4279	870
Guardianship, when settled	4267	870

	Article	Page
GUARDIAN AND WARD—		
continued.		
Guardian shall file account for final settlement; requisites of... ..	4268	870
Guardian may be cited to make final settlement, etc.	4269	870
Citation when account is filed	4270	870
Same subject.....	4271	871
Same subject.....	4272	871
Action of court upon account	4273	871
Account shall be restated, when.....	4274	871
Must produce vouchers, etc.	4275	871
Court shall appoint attorney to represent ward, when	4276	871
Debts that could not be collected to be excluded	4277	871
Labor or service of ward to be accounted for, etc.	4278	871
Guardian may be attached, etc.....	4279	871
General provisions..	4043-4055	836
Jurisdiction of county court over.....	4043	836
Jurisdiction of district court over.....	4044	836
Who are minors.....	4045	836
Who are persons of unsound mind.....	4046	836
Who is an habitual drunkard	4047	836
Record book of estates shall be used.....	4048	837
What papers shall be recorded	4049	837
Order, etc., of court shall be at a regular term, unless, etc.....	4050	837
Provisions governing estates of decedents govern guardianships....	4051	837
Contest of proceedings..	4052	837
Cases of guardianship shall be called at each term	4053	839
Meaning of "term of court"	4054	837
Appeals, etc., may be taken under the rules, etc., provided by law..	4055	837
Guardianship of persons of unsound mind and habitual drunkards..	4238-4255	866
County judge shall issue warrant on information	4238	866
Duty of county officer to file information, when.	4239	866
Requisites of information	4240	866

	Article	Page		Article	Page
GUARDIAN AND WARD—			GUARDIAN AND WARD—		
continued.			continued.		
Jury shall be impaneled..	4241	866	Bond of guardian of the person	4098	845
Proceedings and trial...	4242	866	Bond of guardian of the estate	4099	845
If verdict is against defendant, guardian shall be appointed.....	4243	866	What sureties required..	4100	845
New trial may be granted, when.....	4244	866	Premium on surety company bond to be paid by guardian	4101	846
Provisions as to minors apply to persons of unsound mind, etc.....	4245	867	Surety company bonds validated	4102	846
Order for support of ward's family.....	4246	867	Bond where same person is guardian of both person and estate.....	4103	846
Priority in guardianship.	4247	867	No bond required when will, etc., has dispensed with it.....	4104	846
Restraint of enraged ward	4248	867	Bond of married woman as guardian.....	4105	846
Insane person at large...	4249	867	Bond of father or mother under twenty-one years of age valid.....	4106	846
Who are liable to maintain persons of unsound mind.....	4250	867	New bond may be required, etc.....	4107	846
Expenses of confinement.	4251	867	Guardian shall cease to act as such, when....	4108	846
County may recover expenses	4252	867	Surety may be relieved in same manner, etc..	4109	846
Proceedings to discharge ward from guardianship	4253	867	Oath and bond to be presented within twenty days	4110	846
Same subject.....	4254	868	Oath and bond to be recorded, etc.....	4111	846
Court may discharge from guardianship without jury, when...	4255	868	Sureties released, when, etc.	4112	846
Inventory, appraisal and list of claims.	4113-4121	847	Persons entitled to be appointed guardians, and persons who are disqualified	4068-4079	840
Inventory shall be returned, when.....	4113	847	Father entitled, where parents live together....	4068	840
List of claims.....	4114	847	Parents equally entitled, when	4069	840
Affidavit of guardian to inventory	4115	847	Surviving parent entitled to	4070	840
Property held in common shall be specified....	4116	847	Surviving parent may appoint guardian by will, etc.	4071	840
Additional inventory, when	4117	848	Who entitled to guardianship of orphans.....	4072	840
Appraisers to be appointed in such case, when	4118	848	Where ascendants are equally entitled.....	4073	840
Additional inventory to be required, when.....	4119	848	Collateral kin entitled, when	4074	840
Inventory may be corrected	4120	848	Where no one who is entitled applies, court shall appoint, etc.....	4075	840
Inventories, etc., evidence	4121	848	Who entitled in case of persons of unsound mind, etc.....	4076	840
Non-resident guardians and wards.....	4256-4260	868	Court shall appoint, when	4077	841
Non-resident guardian may obtain letters in this state, how.....	4256	868	Who are not qualified...	4078	841
Such guardian may remove property out of state, etc.....	4257	868	Minor fourteen years of age may select his guardian	4079	841
Resident executor, etc., may be ordered to deliver property.....	4258	868	Powers and duties of guardians	4122-4133	849
Property shall not be removed until debts are paid, etc.....	4259	869	Of the person.....	4122	849
Benefits of this chapter shall not extend, etc...	4260	869			
Oath and bond of guardians	4097-4112	845			
Oath of guardian.....	4097	845			

	Article	Page
GUARDIAN AND WARD—		
continued.		
Same subject.....	4123	849
Guardian of the estate...	4124	849
Of both person and estate	4125	849
Guardian of the estate shall manage same prudently.....	4126	849
Duty to collect estate....	4127	849
Shall use diligence to collect claims.....	4128	849
May take property for debt due ward, when..	4129	849
Guardian of estate shall pay to guardian of person, etc.....	4130	849
Ward's education and maintenance.....	4131	850
Property in common with others.....	4132	850
Guardian shall not dispute ward's title, except, etc.....	4133	850
Proceedings, commencement of.....	4061-4067	839
Commenced by written application.....	4061	839
Who may make application, and what the same shall contain.....	4062	839
Clerk shall issue citation, which shall state what citation shall be served, how.....	4063	839
Return of citation.....	4064	839
Minor fourteen years old, or over shall be personally cited.....	4065	839
County judge shall commence proceedings, when.....	4066	839
Proceedings shall be commenced, where...4056-4060	838	
Guardianship of estate of minor shall be commenced where parents reside.....	4056	838
Where the parents reside in different counties..	4057	838
Proceedings for guardianship of orphan commenced, where.....	4058	838
Persons of unsound mind, etc.....	4059	838
Where a guardian has been appointed by will	4060	838
Removal of guardianship.....4261-4266	869	
Application to remove guardianship to another county.....	4261	869
Citation to sureties in such case.....	4262	869
Action of court on application.....	4263	869
Transcript on removal...	4264	869
When order shall take effect.....	4265	869

	Article	Page
GUARDIAN AND WARD—		
continued.		
Guardianship when removed shall be proceeded with.....	4266	870
Renting and leasing property, and investing and loaning money of ward.....	4134-4152	850
Guardian may carry on or rent farm, etc., under order of court.....	4134	850
Duty of guardian to rent out property, when, etc.	4135	850
May rent improved property, other than, etc., without order.....	4136	851
Court may order improved property rented	4137	851
Unimproved land may be leased.....	4138	851
Guardian may be cited to show cause why he should not rent land..	4139	851
Money shall be invested, how.....	4140	851
Security for money loaned; approval by county judge, order, etc.....	4141	851
County judge not relieved from responsibility on bond.....	4142	851
Investing money in real estate.....	4143	851
Notice of application to invest in real estate...	4144	852
Order of court on such application.....	4145	852
Contract of investment must be approved by the court.....	4146	852
Title to be made to ward, and property to be inventoried, etc.....	4147	852
Guardian may be cited to show cause why he should not invest funds	4148	852
County judge shall see that fund is invested, etc.....	4149	852
Guardian's liability for interest.....	4150	852
Shall not be personally responsible for money loaned, when.....	4151	852
Shall report renting to court.....	4152	853
Reports of sales and action of the court thereon.....4174-4184	857	
Sales shall be reported, when.....	4174	857
Report of sale, its requisites.....	4175	857
May be in term time or vacation.....	4176	857
Action of court upon the report.....	4177	857

	Article	Page
GUARDIAN AND WARD—		
continued.		
Sale to be set aside, when	4178	875
Conveyance of property sold	4179	857
Conveyance of real estate, etc.	4180	857
No conveyance until, when	4181	858
Penalty for neglect to take note and mortgage	4182	858
Vendor's lien to be retained	4183	858
When property is not sold at time ordered.	4184	858
Sales	4153-4173	853
Certain property to be sold	4153	853
Sales of wild stock.	4154	853
When real estate may be sold	4155	853
Guardian shall apply for order to sell real estate, when	4156	854
Guardian shall be cited, when	4157	854
Citation upon such application	4158	854
No order to be made until due notice given.	4159	854
Considerations in ordering sale.	4160	854
May be for cash or credit, as court deems the advantage	4161	854
Order of sale shall state, what	4162	854
In what county real estate sold	4163	854
Terms of sale.	4164	854
Guardian shall not purchase property belonging to the ward.	4165	855
Bidder failing to comply with bid, liable, when.	4166	855
Sales may be continued.	4167	855
Guardian sales governed by the same rules as executions	4168	855
Notice of private sale not required	4169	855
Sale of mortgaged property to be under terms as court may direct.	4170	855
Mortgage dischargeable without sale.	4171	856
Guardian may reduce rate of interest on ward's debts, how.	4172	856
Renew evidence of debt, when	4173	856
Temporary guardian.	4091-4096	844

	Article	Page
GUARDIAN AND WARD—		
continued.		
County judge may appoint temporary guardian of person and estate, etc., of minor, when, etc.	4091	844
Order shall say, what.	4092	844
Court to determine contest; pending what temporary guardian to act; exhibit where appointment set aside.	4093	844
Appointment not effective till oath and bond.	4094	844
Upon appointment citation to issue; requisites	4095	844
Provisions of Title 51 apply	4096	844
None of person when minor is apprenticed.	55	44
May arbitrate.	69	46
Banking corporation may qualify as.	540	143
May be sued where.	1830	409
Suits by.	1836	413
Scire facias to, etc.	1887	420
Ad litem for minors, etc.	1942	430
Judgments against.	2004	437
Appeal bond of.	2106	452
Sued in justice courts where	2308	490
Court shall appoint, in partition and distribution of estates of decedents	3534	735
Court may appoint another, when	3562	740
Of insane spouse, duties in administration of community property.	3614	748
Actions against, certain testimony not allowed.	3690	760
Evidence of appointment, etc., of.	3711	765
On death of, execution issued how.	3721	768
Must consent to marriage of minor ward.	4611	941
Fidelity, etc., insurance company may act as.	4928	1027
Limitations on bonds of.	5689	1204
May change name of minor, how.	5952	1274
GUARDS—		
For county convicts.	6237	1330
Sheriffs may employ.	7127	1523
GUNPOWDER—		
City councils may control the storing of.	971	234

H

HABEAS CORPUS—
 Power of court of criminal appeals to issue writ of..... 1660 379
 Supreme court may issue writ of..... 1526 351
 Supreme court may issue writ, when..... 1529 352
 Galveston and Harris county criminal district court may grant writ of 2218 474

HABITUAL DRUNKARD—
 Sale of liquor to, forbidden 7452 1608
 Habitual drunkenness defined 6035 1292

HACKS—
 City council may regulate and prescribe charges.. 870 214

HANDWRITING—
 May be proved when... 6809 1461

HARBORS—
 Gulf cities may issue bonds for..... 883 216

HARRIS—
 And Galveston counties, criminal district court 2202-2228 472

HEADS OF DEPARTMENTS—
 Secretary of state..4302-4319 875
 Comptroller of public accounts4320-4361 878
 State treasurer....4362-4391 886
 Commissioner of the general land office...4392-4410 891
 Attorney general...4411-4434 894
 Commissioner of agriculture4435-4484 897
 Commissioner of insurance and banking.4485-4508 909
 State superintendent of public instruction.4509-4520 916
 Suits for mandamus against, brought where 1830 410
 Certified copies from, evidence 3707 764
 Secretary of State to have reports of printed 3937 814
 Reports of, to be printed, etc. 6350 1360

HEADLIGHTS—
 Railroad shall provide electric 6565 1400

HEALTH—
 City council may do, etc., to promote..... 838 209
 Of cities and towns, duties of councils.... 979-998 236
 123—R. O. S.

Article Page

HEALTH—continued.
 Health insurance companies4724-4774 961
 General provisions..4943-4972 1034

HEALTH DISTRICTS—
 Commissioners' courts may designate certain 2248 480

HEALTH OFFICER—
 Of cities and towns, how appointed, etc..... 979 236

HEALTH, PUBLIC—
 4521-4605 919
 Embalming board...4596-4605 937
 Pure food regulations4575-4595 931
 Special quarantine regulations4554-4574 927
 Governor may issue proclamation 4554 927
 Proclamation as to yellow fever and other diseases 4555 927
 Local quarantine..... 4556 928
 Local authorities to be subordinate to state, when 4557 928
 Shelter to persons detained 4558 928
 Expenses 4559 928
 Stations to be provided, etc. 4560 928
 Governor to appoint local health officer..... 4561 929
 Incoming vessels..... 4562 929
 Vessels from infected ports 4563 929
 Payment of fine, etc... 4564 929
 Expenses to be itemized. 4565 929
 When corporate authorities may establish quarantine 4566 929
 Authorities may cooperate 4567 930
 Commissioners may direct, etc., to declare quarantine 4568 930
 Bond of health officer at Galveston 4569 930
 Rules to be prescribed.. 4570 930
 Sale of condemned property 4571 930
 Vessels to be disinfected; fees of quarantine officer, etc..... 4572 930
 Persons to disinfect at their own expense... 4573 931
 In case of irreconcilable conflict 4574 931
 Texas state board of health4521-4553 919
 Texas state board of health; how constituted 4521 919

	Article	Page
HEALTH PUBLIC—cont'd.		
Salaries and expenses of president and members	4522	919
Time and place of meeting of board	4523	919
Officers and assistants appointed; salaries and duties	4524	920
Members of board to qualify; commissions to issue	4525	920
Bond of the president	4526	920
President shall have charge of state quarantine	4527	921
General powers and duties of the state board of health	4528	921
Board to prepare sanitary code	4529	921
Duty of board in compiling, preparing and publishing sanitary code	4530	922
Courts shall enforce sanitary code	4531	922
Publication and distribution of sanitary code	4532	923
Other laws affecting public health not repealed	4533	923
May revise sanitary code	4534	923
Perform duties of state health officers	4535	923
Members of board may enter, examine and inspect, etc.	4536	923
Investigations by board; powers of and duties of court	4537	923
Office of county physician abolished; office of county health officer substituted	4538	924
Qualification, appointment and compensation of county health officer	4539	924
Office of city health officer substituted for city physician	4540	924
City health officer	4541	924
City health officers to be appointed by board, when	4542	924
Duties of county health officer	4543	924
County health officer under direction of the board; proceedings against for failure in duty	4544	925
Duties of health officers as to indigent consumptives	4545	925
County health officers under direction of the board; proceedings against for failure in duty	4546	925
No cost or appeal bond required of board	4547	926

	Article	Page
HEALTH PUBLIC—cont'd.		
Duties of health officer enumerated	4548	926
City health officer may be removed, when and how	4549	926
Board to file charges against city health officer; proceedings	4550	926
Compensation of city health officer	4551	927
Annual conference of county and city health officers	4552	927
Legal proceedings in name of board; duty of attorney general in regard to	4553	927
HEIRS—		
How adopted	1-8	3
Unknown, how cited	1875	418
Of escheated estates, rights of	3200	678
Of decedents, required to give bond, when	3369	707
HEIRSHIP—		
Adjudication of	3521-3526	732
County court may determine and declare heirship, etc., when; venue	3521	732
Who may maintain action, and how; requisites of petition; parties	3522	732
Notice, citation, etc., cause to be transferred when, and to what court	3523	723
Hearing and procedure on; judgment to declare and contain what; effect of	3524	733
Certified copy of judgment to be filed for record, etc., where, etc.; constructive notice	3525	734
Provisions of chapter cumulative	3526	734
Estates of decedents	3206-3639	680
HIDE INSPECTORS—		
Fees of	3877	802
General provisions	3880-3926	804
HIDES—		
Inspection of	7256-7311	1549
Imported from Mexico, inspection of	7282	1553
Imported from Mexico, seizure of	7284	1554
HIGHWAYS—		
Right of way of irrigation companies over	5006	1048
HISTORICAL ARCHIVES—		
	88	51

Article	Page	Article	Page
HISTORICAL COMMISSION—			
See "Library."			
HOBBY HORSES—			
Occupation tax on.....	7355	1572	
HOG LAWS—			
Mode of preventing hogs and certain other animals from running at large in counties and subdivisions.....	7208-7234	1540	
Commissioners' court to order election.....	7209	1540	
May be ordered in subdivisions, when.....	7210	1540	
Requisites of petition....	7211	1540	
Election, how ordered, etc.	7212	1540	
Notice, how given, etc....	7213	1540	
Requisites of order, etc....	7214	1541	
Voting places.....	7215	1541	
Managers to be appointed, when.....	7216	1541	
Freeholders only to vote, etc.	7217	1541	
Manner of voting, etc....	7218	1541	
Returns of election.....	7219	1541	
Returns, how opened....	7220	1541	
Proclamation of result, etc.	7221	1541	
Stock may be impounded, when.....	7222	1541	
Not to be impounded, when.....	7223	1541	
Fees and damages.....	7224	1542	
Stock may be sold, when.....	7225	1542	
Again may be sold, how....	7226	1542	
Lawful fence.....	7227	1543	
Subsequent election, when May be impounded when fence law in force, when.....	7228	1543	
Stock not to be injured, etc.	7230	1543	
Lawful fence may be determined by election etc.	7231	1544	
No election until lapse of two years.....	7232	1544	
Proclamations to be issued in cases where there are less than fifty freeholders.....	7233	1544	
	7234	1544	
HOGS—			
Marks of.....	7151-7160	1528	
Mode of preventing, from running at large.....	7209-7234	1540	
HOLIDAYS—			
Holidays, legal.....	4606-4607	940	
What are legal holidays..	4606	940	
Arbor day.....	4607	940	
HOMESTEAD—			
Conveyance of, how made	1115	265	
Setting apart to widow and children of decedents.....	3413-3429	714	
HOMESTEAD—cont'd.			
Exempt from forced sale.	3786	776	
Excess over, how subjected to execution.....	3794-3818	778	
Mechanics, etc., lien on, how fixed.....	5631	1190	
Liable only for their own taxes.....	7637	1657	
HOMESTEAD CLAIMS—			
Patents on to issue when.	5377	1120	
HORSERACING—			
City council may prevent	861	213	
HORSES—			
Mode of preventing, from running at large.....	7235-7255	1545	
Imported from Mexico, inspection of.....	7283	1553	
HORSES AND CATTLE—			
Mode of preventing horses and certain other animals running at large in particular counties named.....	7235-7255	1545	
Election to put law into operation.....	7235	1545	
Election to repeal law....	7236	1546	
Intervening territory, election in.....	7237	1546	
Petition shall state what.	7238	1546	
Order for election by commissioners' court.....	7239	1546	
County judge to issue order and notice.....	7240	1546	
Recitals in order.....	7241	1546	
Election places.....	7242	1546	
Officers of election.....	7243	1547	
Qualifications of electors.	7244	1547	
Election by ballot, form of	7245	1547	
Election returns.....	7246	1547	
Same, effect of.....	7247	1547	
Proclamation and time law goes into effect....	7248	1547	
Impounding stock.....	7249	1547	
Same.....	7250	1547	
Fees for impounding....	7251	1548	
Sale of impounded stock, fees.....	7252	1548	
Unknown owner.....	7253	1548	
Lawful fence, what constitutes.....	7254	1548	
Second election when proposition is defeated	7255	1549	
HOTCHPOTCH—			
In descent and distribution.....	2467	523	
HOSPITALS—			
City councils may establish.....	840	210	
HOTEL KEEPERS—			
Lien in favor of.....	5663	1199	

	Article	Page
HUNTING LICENSES—		
Required of non-residents	4023	832
HUSBAND—		
Suits against, for necessities	1840	413
For wife's debts	1841	413
Dying intestate, distribution of estate	2460-2474	522
Not disqualified as witness, except	3689	760
May authorize survivor to manage separate estate	7872	1712
HUSBAND AND WIFE—		
	4608-4642	941
Celebration of marriage	4608-4616	941
Who are authorized to celebrate rites	4608	941
Who are not permitted to marry	1609	941
License	4610	941
Consent of parent or guardian	4611	941
Record and return of license	4612	941
Certain intermarriages prohibited	4613	941
Marriage by bond, etc., validated	4614	941
Issues legitimated	4615	941
Cohabitation of certain persons considered as marriage	4616	942
Divorce	4630-4642	944
Marriage may be annulled, when	4630	944
Divorce may be granted in what cases	4631	944
Plaintiff must be resident in state and county	4632	944
Husband and wife may testify	4633	945
ICE DEALERS—		
Occupation tax on	7355	1574
IDIOTS—		
Not to be admitted to lunatic asylums	141	63
Guardians ad litem for in trials	1942	430
Property of, how rendered for taxation	7509	1626
ILLEGITIMATE CHILDREN—		
In distribution of estates of decedents	2472	524
ILLITERATE VOTERS—		
May be assisted, etc.	3003	642
IMMIGRANTS—		
Actions against, barred when	5709	1207

	Article	Page
HUSBAND AND WIFE—		
continued.		
Division of property	4634	945
Connivance and collusion	4635	945
Legitimacy of children, etc.	4636	945
Debts and alienations after suit	4637	945
Inventory and appraisal, etc.	4638	945
Temporary orders, etc.	4639	945
Alimony	5640	945
Custody of children	4641	946
Costs	4642	946
Marriage contracts	4617-4620	942
What stipulation may be made	4617	942
How authenticated	4618	942
Cannot be altered after-marriage	4619	942
Reservation by wife to be recorded	4620	942
Rights of married women	4621-4629	943
Separate property	4621	943
Community property	4622	943
Presumption as to community	4623	943
Wife may contract debts, when	4624	943
Judgments and execution in such cases	4625	943
Husband failing to support wife	4626	943
Community property liable for debts	4627	943
Female under twenty-one emancipated, when	4628	943
Rights of persons married elsewhere	4629	944
HYDROPHOBIA—		
See "Pasteur Hospital."		

IMPEACHMENT—		
State and district officers removable by	6017	1290
IMPORTERS—		
Of concentrated feeding stuffs, duties	5899	1260
IMPROVEMENT DISTRICTS—	5530-5584	1164
Commissioners' courts to establish improvement districts	5330	1164
Improvement districts may control levees, etc.	5531	1164
Petition to establish district and issue bonds	5532	1165
Objection to creation of district, how made	5533	1165
Duty of court on hearing	5534	1165

	Article	Page
IMPROVEMENT DISTRICTS—continued.		
Engineer appointed, compensation, assistants . . .	5535	1166
Engineer to give bond . . .	5536	1166
Duty of engineer	5537	1166
Report of engineer	5538	1166
Hearing on report	5539	1166
Proceedings on approval of report	5540	1167
Election, form of ballot . .	5541	1167
Notice of election; election, how conducted . . .	5542	1167
Oath of voters	5543	1168
Returns of election, result disclosed, form of certificate	5544	1168
Commissioners appointed, term of office, compensation	5545	1168
Oath of commissioners . . .	5546	1169
Bond of commissioners . . .	5547	1169
Commission to organize . .	5548	1169
Appointment of engineer, compensation, duties . .	5549	1169
Map and profile of levees .	5550	1169
Bonds to be issued, limitation upon	5551	1170
Form and terms of improvement bonds	5552	1170
Bonds to be submitted to attorney general	5553	1171
To be registered by controller, not to be impeached	5554	1171
Book of bonds to be kept; sinking fund provided .	5555	1171
Bonds, how sold; proceeds, how applied . . .	5556	1172
County judge to give bond before selling bonds . . .	5557	1172
Expenses after filing petition, how paid	5558	1272
Deposit to a c o m p a n y petition	5559	1172
Tax to be levied	5560	1172
County assessor to assess property, removal for failure	5561	1173
County collector to give special bond	5562	1173
Delinquent taxes to be collected as other taxes . .	5563	1173
County treasurer to keep account	5564	1174
Tax a lien on property assessed	5565	1174
Treasurer to give additional bond	5566	1174
Condemnation proceedings; acquisition of right of way	5567	1174
Commissioners and employes may enter lands, etc.	5568	1175
Commissioners to repair and improve levees . . .	5569	1175
Contracts let to lowest bidder	5570	1175

	Article	Page
IMPROVEMENT DISTRICTS—continued.		
Bids, how submitted	5571	1175
Contracts approved and filed	5572	1175
Contractors bond	5573	1176
Construction under supervision of engineer and commissioners	5574	1176
Right of way across railroads, etc.	5575	1176
Payment of warrants	5576	1176
Partial payments	5577	1176
Annual report of commissioners	5578	1177
May employ attorneys . . .	5579	1177
May acquire property, sue and be sued	5580	1177
Lease or rent land	5581	1177
May let use of levees, etc. .	5582	1177
May dispose of surplus material	5583	1177
Land to be sold, form of conveyance	5584	1177
IMPROVEMENTS—		
Claims for, in trespass to try title	7760-7768	1685
INCOMPETENCY—		
Defined	6032	1292
INCORPORATION—		
Of cities, towns and villages	762-1096	192
Of towns and villages	1033-1069	249
Of cities and towns, abolition of	1077-1096	256
INCUMBRANCES—		
Embraces what	1113	264
INDEBTEDNESS—		
Collection of debts from railroads corporations	6619-6632	1411
Property of company subject to execution	6619	1411
Notice required to reducing wages	6620	1411
Time of notice and how given	6621	1411
Penalty, etc.	6622	1411
When wages to be paid discharged employe . . .	6623	1411
Road liable to be sold for debt	6624	1411
New corporation in case of sale	6625	1412
Jurisdiction, etc.	6626	1413
Sale under deed of trust, where made	6627	1413
Judgment, execution, etc. .	6628	1413
Unpaid stock, etc.	6629	1413
After sale, old directors to be trustees	6630	1414
Suit not to abate, when . .	6631	1414
Not to apply to state loans	6632	1414

	Article	Page
INDEBTEDNESS—continued.		
Funding, refunding and compromise of county and municipal indebtedness	656-697	169
Debts may be funded, when and how	656	169
Old bonds of legal issue may be substituted by new	657	169
Debts may be compromised	658	169
Sinking fund to be provided and tax levied...	659	170
Storms, etc., bonds, power to fund, refund and compromise	660	170
Bonds issued for said purposes, regulations as to	661	170
Order of commissioners' court, prerequisite recitals, etc.....	662	170
Classification of bond issues	663	171
Apportionment of taxes, record	664	171
Levy for interest and sinking fund proportioned how	665	171
Constitutional limit not to be exceeded.....	666	171
Commissioners to prescribe form and class of bonds, and for issuance	667	171
Term of bonds, etc.	668	171
Redemption of bonds....	669	171
Interest rate.....	670	171
Bonds to conform to requirements of certain articles not in conflict with the provisions of this subdivision.....	671	171
Signature and attestation of bonds	672	171
Registry by comptroller, after examination, etc., by attorney general...	673	171
Registry without presentation and cancellation of old bonds.....	674	171
Bonds delivered to county or city treasurer and registered by him....	675	171
Bonds not to be sold, etc., for less than par value and accrued interest..	676	171
Date of sale, etc., indorsed and certified and attested how, before delivery of bonds.....	677	172
Railroad subsidy bonds, how adjusted and paid.	678	172
Bonds sold and exchanged, how	679	172
Authority for executing bonds and terms and conditions of same....	680	172
Bonds may be exchanged or sold.....	681	173

	Article	Page
INDEBTEDNESS—continued.		
Levy of tax for interest and sinking fund.....	682	173
Collector liable on bond for failure of duty; new collector appointed, when.....	683	173
Bonds to be registered in comptroller's office, how and effect of.....	684	173
Assessment of taxes and compensation of assessor	685	173
Surplus fund, how applied.	686	173
May compromise and fund indebtedness	687	173
Authority to compromise limited	688	174
Bonds exempt from taxation	689	174
Issued and registered how	690	174
May be exchanged or sold	691	174
Tax laws to be continued in force.....	692	175
Same subject.....	693	175
Collector liable for failing to collect tax, and when to be appointed by governor	694	175
Compromise by vote of the people; notice of election, how given.....	695	175
Counties and city authorities may adjust tax to conform to interest and sinking fund for bonded indebtedness	696	176
How amount of levy determined and fees of collector	697	176
Of segregated territory of cities and towns.....	783	196
Of cities, councils may control rate of interest on	876	214
City council may pass ordinances to fund....	890	217
Of counties, what part new counties shall pay	1331-1355	320
Of cities and towns, taxes for payment of.....	937	227
Of reincorporating city or town, assumption of...	1064	253
Of defunct city or town, proceedings to collect.	1082	257
Of private corporations, restrictions upon creation of.....	1165	281
Of private corporations, directors liable for....	1200	289
Of educational corporations	1229	295
Of counties, new county to pay pro rata.....	1339	321
Of estates of decedents....	2470	524

		Article	Page			Article	Page
INDEMNITORS—				INFECTED PORTS—			
In suits against sheriffs may be made parties..		1844	414	Inspection of vessels from		4562	929
INDEMNITY FUND—				INFRINGEMENTS—			
Of savings banks.....		407	111	On trademarks of carbo- nated goods.....		705	179
INDEPENDENT CANDI- DATES—				INHERITANCES—			
Nominations of, in pri- mary elections.....		3164	670	Suits concerning, brought where		1830	409
INDEPENDENT SCHOOL DISTRICTS—				Descent and distribution		2461-2474	522
Treasurers of.....		2850-2866	608	INHERITANCE TAX—			
Trustees for.....		2771	587	7487-7502		1619	
		2884-2895	616	Property subject to the tax		7487	1619
INDEX BOARDS—				Property passing in two or more estates.....		7488	1620
Shall be placed on public roads		6938	1483	Property bequeathed to executor or trustee in lieu of commission, taxed when.....		7489	1620
INDICTMENTS—				Inventory to be filed, when; penalty		7490	1620
Of state bank examiners.		520	135	County court to appoint administrator		7491	1620
By grand juries at special terms of court.....		1722	389	Appraisers appointed; no- tice to be given, etc...		7492	1620
INDIGENCY—				County judge to regulate tax		7493	1621
Of confederate soldier, what constitutes.....		6272	1338	Property withheld until tax paid.....		7494	1621
INDORSEMENTS—				Taxes charged on real estate, when.....		7495	1621
Of executions by officers.		3731	769	Tax paid, when.....		7496	1621
INDORSERS—				Collector to sue for tax, when		7497	1621
Suits against.....		1842	413	Collector pays tax to state treasurer		7498	1622
INDUSTRIAL INSTITUTE—				Tax deposited to credit of general revenue.....		7499	1622
Texas industrial institute and college for the edu- cation of white girls of the state of Texas in the arts and sciences .		2682-2690	568	Tax refunded, when....		7500	1622
Name of institute.....		2682	568	Final account of executor, etc., not allowed till tax paid		7501	1622
Board of regents, how appointed		2683	568	Appointment of admin- istrator dispensed with		7502	1622
Duties of the board to elect president; meet- ings, how called; duties of secretary, etc.....		2684	568	INJUNCTIONS			
What shall be taught in the institute.....		2685	568	4643-4693		947	
General duties of regents.		2686	569	Writs of injunction grant- ed, when.....		4643	847
Compensation of regents.		2687	569	Appeals allowed to court of civil appeals.....		4644	948
Number of students ap- portioned to counties..		2688	569	Proceedings on appeal..		4645	948
Board of regents to fix salaries		2689	569	Case to have procedure on appeal		4646	949
Elementary agriculture required to be taught; teachers diplomas con- ferred		2690	569	No injunction against a judgment, except, etc..		4647	949
INDUSTRIAL MANAGER—				Injunction to stay execu- tion within twelve months, unless, etc...		4648	949
Of orphan asylums, ap- pointed how, etc.....		198	72	Injunctions granted on sworn petition.....		4649	949
INFANTS—				Judge's fiat to be indorsed on petition.....		4650	949
Limitation does not run against		5684	1202	Notice to opposite party..		4651	949
Same		5708	1207	Petition to be filed and cause docketed.....		4652	949
See "Minors."				Writs, where returnable.		4653	949

	Article	Page		Article	Page
INJUNCTIONS—continued.			INJUNCTIONS—continued.		
The bond for injunction...	4654	950	Procedure	4693	955
Clerk to issue the writ...	4655	950	Suits to enjoin brought where	1830	410
The writ and its requi- sites	4656	950	Appeal from order of court granting tem- porary	2080	449
Writs may issue in differ- ent counties	4657	950	INJURIES—		
To whom delivered.....	4658	950	Injuries resulting in death		
Service and return of writ	4659	950	—actions for.....	4694-4704	956
Duty of defendant upon service of writ.....	4660	950	Actions for injuries re- sulting in death, brought when.....	4694	956
Injunctions restrain attor- neys, etc., as well as the party	1661	951	Character of wrongful act	4695	956
Citation to issue to de- fendants	3662	951	Exemplary damages.....	4696	956
The answer.....	4663	951	Action commenced with- out regard to criminal proceedings	4697	956
Dissolution in term time or vacation.....	4664	951	For whose benefit action to be brought.....	4698	956
Refunding bond on dis- solution	4665	951	Who may bring the action	4699	956
Judgment on such bond...	4666	951	Executor, etc., may bring the action, when.....	4700	956
Damages for delay.....	4667	951	Suit does not abate by death of either party..	4701	957
Disobedience a contempt.	4668	951	Abates, when	4702	957
Procedure in case of dis- obedience	4669	951	Executor, etc., of defend- ant made party, when.	4703	957
Persons guilty to be im- prisoned	4670	952	Damages to be appor- tioned by jury.....	4704	957
General principles of equity applicable, when	4671	952	Resulting in death, suits for	1838	413
Injunction by state.....	4672	952	To railroad employes, lia- bility for.....	6640-6652	1417
Shall be cumulative.....	4673	952	INNOCENT PURCHASER—		
Unlawful sale, etc., of liquors may be enjoined	4674	952	Of lands, without notice not to be affected.....	1104	263
Procedure as in other cases	4675	953	INSANE PERSONS—		
Persons compelled to tes- tify	4676	953	How admitted to lunatic asylums	107-165	58
Cumulative remedy.....	4677	953	Examination of by county court	4238-4255	866
Use or threatened for the unlawful sale of intox- icating liquors in local option territory en- joined	4678	953	Limitation does not run against	5684	1202
Who made party defend- ant	4679	953	Same	5708	1207
By whom prosecuted....	4680	953	INSOLVENCY—		
Same proceedings as in other cases, except....	4681	953	Of banking corporations.	554	146
General reputation, evi- dence	4682	953	Of partnerships, assign- ments in contemplation of	6145	1310
Injunction against solicit- ing orders in local option districts.....	4683	954	INSOLVENT CORPORA- TIONS	1201-1204	290
Injunction against the sale of non-intoxicating liquors without license.	4684	954	Unlawful for insolvent corporations to do busi- ness in state.....	1201	290
Use of premises for gam- ing enjoined.....	4685	954	Attorney general, etc., to bring quo warranto, etc., to forfeit charter or cancel permit; re- ceiver, etc.....	1202	290
Parties and proceedings..	4686	954	Suit may be dismissed or not brought on what conditions	1202	290
Suits, by whom instituted	4687	954			
Procedure as in other in- junction cases.....	4688	954			
Use of premises for bawdy houses enjoined.....	4689	954			
By whom brought, pro- ceedings	4690	955			
Bucket shops enjoined...	4691	955			
Who may enjoin.....	4692	955			

Article	Page	Article	Page
INSOLVENT CORPORATIONS—continued.		INSPECTORS—continued.	
Stockholders or creditors may sue to dissolve when; by leave of court, with notice, etc.	1203 290	Hides to be delivered to . . .	7289 1554
Rights and remedies cumulative	1204 291	Revised list of marks and brands	7290 1554
INSOLVENT TAXPAYERS—		Same brands not to be recorded twice, where.	7291 1555
List of to be furnished . . .	7621 1654	In the county where cattle range	7292 1555
INSPECTORS—		Only one mark to be used	7293 1555
Inspectors of food and drugs	4579 932	Counterbranding, etc.	7294 1555
Inspectors of hides and animals	7256-7311 1549	Authority to gather, etc.	7295 1556
Inspector may be elected, etc.	7256 1549	Inspections to be personal	7296 1556
Governor to appoint, when	7257 1549	Certificates of inspection.	7297 1556
Term of office, etc.	7258 1549	Inspection before exporting	7298 1556
Vacancies, how filled.	5259 1549	Certificate, where filed.	7299 1556
Bond and oth.	7260 1550	Seizure of cattle not inspected originally.	7300 1557
Appointees to give bond.	7261 1550	Sequestration if necessary	7301 1557
Seal of office.	7262 1550	Proceeds paid, where, and subect to claims.	7302 1557
Deputies may be appointed, when.	7263 1550	Description of cattle filed.	7303 1557
Appointment to be recorded	7264 1550	Change of destination.	7304 1557
Meaning of terms.	7265 1550	Exempted counties.	7305 1557
May authenticate instruments	7266 1551	Commissioners' court to order election, when.	7306 1558
Inspections and records thereof	7267 1551	Result to be declared, etc.	7307 1558
Monthly returns to county clerk	7268 1551	Ballots	7308 1558
Exemptions from inspection	7269 1551	In case election is carried	7309 1558
Unbranded animals not to be certified.	7270 1551	Fees of inspector.	7310 1558
May seize certain animals	7271 1551	Elections not to be held oftener than.	7311 1558
Also unbranded hides, etc.	7272 1551	Fees of.	3877 802
Procedure in case of seizure	7273 1551	General provisions.	3880-3926 804
Bill of sale to be taken.	7274 1552	Inspector of plumbing.	990 238
Also in sale of hides.	7275 1552	Inspector of sheep, appointment	7879 1714
Certificate of inspection to be given.	7276 1552	INSTRUMENTS OF WRITING—	
Same	7277 1553	Registration of	6786-6858 1457
Road brand.	7278 1553	INSURANCE—	
Expotation of cattle to Mexico	7279 1553	Assessment or natural premium companies.	4705-4972 958
Herds in transit may be inspected	7280 1553	Foreign assessment companies	4791-4793 982
Fees, how paid.	7281 1553	Fees	4791 982
Hides imported from Mexico	7282 1553	Shall not apply to mutual benefit associations.	4792 982
Horses and mules.	7283 1553	Co-operative life insurance companies	4809-4826 987
Suspicious hides to be seized	7284 1554	Articles of incorporation, commissioner shall examine	4809 987
Procedure upon seizure.	7285 1554	Officers, directors and policy holders, their powers and duties.	4810 988
Inspector to recover on proof	7286 1554	Investment and disposition of funds; not to hold real estate, except	4811 988
Hides to be sold if not proven away.	7287 1554	Shall not borrow money or create debts, except.	4812 989
Fees of inspector in such cases	7288 1554	Policies to be valued by commissioner	4813 989
		Net premium to be computed	4814 989
		May set aside reserve.	4815 989

	Article	Page
INSURANCE—continued.		
Shall make apportionment of surplus	4816	989
Transact business only in Texas and form of policy	4817	990
Medical examination	4818	990
Premiums, where to be paid and notice of	4819	990
Loan value; non-forfeitable after three years	4820	990
Annual certificates and statements	4821	991
Agents shall have certificates	4822	991
Annual examination and statement	4823	992
Additional examination; may suspend certificates, receiver	4824	992
Taxes, how calculated; authorized to deposit securities	4825	993
General laws regulating deposits applicable to	4826	993
Employer's liability insurance companies 4941-4942	1032	
Reserve, how reported and calculated	4941	1032
Commissioner may accept certificate, when	4942	1033
Fidelity, guaranty and surety companies	4928-4940	1027
May act as surety, trustee, executor, etc.	4928	1027
Surety company's bond is legal bond, when	4929	1028
Requirements to be complied with; minimum capital; securities to be deposited	4930	1028
Certificate to issue, when	4931	1029
Certificate may be surrendered, how	4932	1030
May withdraw from bond	4933	1030
May be sued on bond, where	4934	1030
Defaulting company, claims paid, how	4935	1030
Who are agents	4936	1030
Penalty for accepting corporation which has not complied with the law	4937	1031
Cancellation of bond; statement of cause	4938	1031
Authority revoked, when	4939	1031
Charged with public use	4940	1031
Fire and marine insurance companies	4862-4875	1004
Marine, fire and other life and health companies, may do what	4862	1004
Commissioner may permit capital stock of company to be reduced, when	4863	1004

	Article	Page
INSURANCE—continued.		
When company is called upon to make good its capital stock, shall do what	4864	1004
Stockholders failing to pay when called upon, what course shall be taken	4865	1004
Company may create and dispose of new stock, when	4866	1005
Unlawful dividends	4867	1005
Penalty for making unlawful dividends	4868	1005
Insurance companies shall not purchase or hold real estate, except	4869	1005
Shall file bond	4870	1005
May deposit securities in lieu of bonds	4871	1006
Annual statement of company	4872	1006
What the annual statement shall exhibit	4873	1006
Policy shall be considered a liquidated demand	4874	1007
Reinsurance	4875	1008
Fraternal beneficiary associations	4827-4861	993
Defined	4827	993
Lodge system defined	4828	993
Representative form of government defined	4829	993
Exemptions	4830	994
Benefits	4831	994
Benefits confined to whom	4832	994
Qualifications for membership	4833	994
Certificate	4834	994
Funds	4835	995
Investment of funds	4836	995
Annual sworn statement	4837	995
Distribution of funds	4838	995
Organization	4939	896
Powers retained, reincorporation amendments	4840	997
Transfer of membership	4841	998
Annual license	4842	998
Admission of foreign associations	4843	998
Powers of attorney and service of process	4844	999
Place of meeting, location of office	4845	999
No personal liability	4846	999
Cannot waive provisions of law	4847	999
Separate jurisdiction, provisions	4848	999
Constitution and by-laws, amendments	4849	999
Annual reports	4850	1000
Examination of domestic associations	4851	1000
Application for receiver, etc.	4852	1001
Examination of foreign associations	4853	1001

	Article	Page
INSURANCE—continued.		
Revocation of license....	4854	1001
Exemption of certain associations	4855	1002
Exempt from taxation...	4856	1002
Shall secure additional members or forfeit permit	4857	1002
Commissioner to issue certificates to agents....	4858	1002
Local companies exempt from chapter, shall file statement	4859	1003
Associations exempt from all insurance laws....	4860	1003
May issue term payment certificates	4861	1003
General provisions...	4943-4972	1034
Must publish certificate of commissioner	4943	1034
Companies organized in this state; unlawful dividend	4944	1034
Association of companies not permitted to do business until.....	4945	1034
Notice to be published, etc.	4946	1035
Misrepresentation must be material to avoid contract	4947	1035
No defense based upon misrepresentation valid, unless	4948	1035
Shall not constitute defense unless shown....	4949	1035
Policies governed by laws of Texas, notwithstanding stipulation to the contrary	4950	1035
Policies of insurance to be accompanied by copies of questions, etc.....	4951	1035
No level premium policies shall be issued.....	4952	1036
Policies shall contain entire contract.....	4953	1036
Companies shall not discriminate	4954	1036
Shall apply to all companies	4955	1036
Corporations may be incorporated to transact one or more kinds of insurance business.....	4956	1037
Chapter not to apply to fraternal beneficiary associations	4957	1037
Shall not misrepresent terms of policies.....	4958	1037
Policy shall not be defeated	4959	1037
Insurance shall be unlawful unless authorized by commissioner of insurance	4960	1037
Who are agents.....	4961	1037
Taxes to be assessed against, when; penalty, etc.	4962	1038

	Article	Page
INSURANCE—continued.		
Policies to be issued only through resident agents except	4963	1038
Affidavit to be filed before certificate will issue	4964	1038
Agents prohibited from paying commissions to non-residents	4965	1038
Penalty for violation....	4966	1039
Commissioner authorized to examine books, witness, etc.; to discover violations	4967	1039
Solicitor deemed agent of company	4968	1039
What persons debarred from acting as agent..	4969	1039
Company to notify commissioner of appointment of general agent	4970	1040
Revocation of agent's authority, grounds for...	4971	1040
Foreign corporations held to accept provisions of this title.....	4972	1040
Incorporation of insurance companies...	4705-4723	958
Formation of company..	4705	958
What the articles of incorporation shall contain	4706	958
Duty of commissioner of insurance on deposit of articles with him....	4707	958
Company shall certify, under oath, that the capital is bona fide its property	4708	959
Where examination is made by other than commissioner, etc.....	4709	959
Stock shall be divided into shares.....	4710	959
Capital stock shall consist of what.....	4711	959
Surplus money may be invested, how.....	4712	959
May be changed and re-invested	4713	959
Number and qualification of directors.....	4714	959
Election of directors....	4715	959
Annual meeting for election of directors.....	4716	960
Special meetings for election	4717	960
Quorum of stockholders.	4718	960
Directors shall choose president and other officers	4719	960
Directors may ordain by-laws, etc.....	4720	960
Shall keep a record of transactions	4721	960
Shall fill vacancies, and what shall constitute quorum of the board..	4722	960

	Article	Page		Article	Page
INSURANCE—continued.			INSURANCE—continued.		
General incorporation law shall apply to insurance companies, unless, etc.	4723	960	May hold real estate for what purposes, and how long.....	4735	965
Investment in Texas securities and taxation of gross receipts..	4775-4790	976	Directors not to do certain things.....	4736	965
Investment in Texas securities	4775	976	May reinsure.....	4737	965
Definition of "Texas securities"	4776	976	Dividends to be paid only from profits.....	4738	965
Investment, how made... Report showing amount of reserve	4777 4778	977 978	Salaries	4739	966
Report showing gross amount of receipts... Taxes to be paid before certificate is issued... Taxes imposed herein to be sole taxes imposed.	4779 4780 4781	978 979 979	Disbursements to be made only on voucher.....	4740	966
Companies deemed to have accepted the provisions of this chapter, when	4782	972	Policies shall contain what	4741	966
Companies desiring to do business after having ceased to do so.....	4783	980	Policies shall not contain what	4742	967
Failure to renew certificate may do what....	4784	980	Policies of foreign companies may contain....	4743	968
Commissioner to revoke certificate, when and how	4785	980	Venue of suits on policies	4744	968
Penalty for failure to report or investment....	4786	980	Service of process.....	4745	968
Deposit by domestic company	4787	981	Losses shall be paid promptly	4746	968
Not to apply to certain companies	4788	981	Certificate shall be null and void, when.....	4747	968
Not to apply to fraternal beneficiary associations	4789	981	Business of life insurance companies limited to certain kinds of business	4748	969
Companies desiring to loan money only....	4790	981	Deposit of securities....	4749	969
Life, health and accident insurance companies..	4724-4744	961	Same	4750	969
Terms defined.....	4724	961	Policies shall have endorsed on face, what.	4751	969
Who may incorporate... Charter to be approved by attorney general... Amendment of charter.. Examination of commission before commencing business.....	4725 4726 4727 4728	962 962 963 963	Fees for making deposits	4752	971
Shall file annual statement	4729	963	Securities may include capital stock; securities to be increased.....	4753	971
Renewal certificate....	4730	964	Sub-standard or extra-hazardous policies....	4754	971
Copy of certificate for agents	4731	964	No commission to be paid to officers.....	4755	972
To sue and be sued—commission only can enjoin	4732	964	Co-operative companies..	4756	972
Laws relating to corporations shall govern....	4733	964	Funds to be deposited in name of company....	4757	972
May invest in what securities	4734	964	Impairment of capital stock	4758	972
			Form of policy to be filed	4759	972
			Policy to be approved by commissioner	4760	972
			Must have certificate of authority	4761	973
			Companies with \$25,000 capital stock.....	4762	973
			Unlawful dividends....	4763	973
			Taxation of domestic insurance companies....	4764	973
			Statement of foreign companies	4765	973
			To file articles of incorporation	4766	974
			Paid up capital stock...	4767	974
			Deposits required.....	4768	974
			Alien companies to deposit	4769	975
			Deposit liable for judgment	4770	975
			When alien company need not deposit.....	4771	975
			Assets, how invested....	4772	975

	Article	Page
INSURANCE—continued.		
Shall file power of attorney	4773	975
Duty of commissioner in accepting service.....	4774	976
Mutual assessment accident insurance home companies	4794-4808	983
Incorporation of.....	4794	983
Charter, requirements of	4795	983
Application to accompany charter, and what it shall show.....	4796	983
Complete and ready for business, when.....	4797	983
What constitutes business of mutual assessment companies	4798	984
What such companies may or may not do...	4799	984
Notice of by-laws, how given	4800	984
Books and papers subject to inspection of members	4801	984
Commissioner to examine financial condition annually	4802	984
Statement to be filed, filing fees, etc.....	4803	984
Certificate of membership; reserve fund....	4804	985
Notices of assessment must show, what....	4805	986
May change name of beneficiary	4806	986
Policy shall specify what; liability on.....	4807	986
Charter forfeited for not complying with provisions of this chapter	4808	986
Mutual companies insuring against loss by burglary, etc.....	4922-4927	1025
What companies entitled to license.....	4922	1025
Certain conditions; premium contracts to constitute part of assets.	4923	1025
Must file copy of charter and statement; impaired reserve, etc.; line of business; must set aside reserve....	4924	1025
Policy holders.....	4925	1026
Commissioner agent for service of process....	4926	1026
Statement submitted and license issued annually	4927	1026
Mutual fire, storm and lightning insurance companies	4905-4918	1020
Incorporation of, and by what law regulated...	4905	1020
Application for permit, etc.	4906	1020
Conditions, etc., for obtaining charter, and fee	4907	1020

	Article	Page
INSURANCE—continued.		
Organization and qualification of officers and directors	4908	1021
Funds to be invested, how	4909	1021
Procedure in case of failure to pay loss.....	4910	1021
Funds, how used and disposed of.....	4911	1022
Who are members, their right to vote, etc....	4912	1022
Permit canceled and charter forfeited, when...	4913	1022
Tax on gross premiums..	4914	1022
Funds set apart for payment of losses, etc....	4915	1023
What mutual companies subject to this chapter	4916	1023
Local companies shall report annually and pay fee	4917	1024
Venue of suits against..	4918	1024
Printers' mutual fire and storm insurance companies	4919-4921	1024
How incorporated.....	4919	1024
Certificate to do business, how obtained.....	4920	1024
Shall report annually and pay fee.....	4921	1024
State insurance board....	..... 4876-4904	1009
Companies deemed to have accepted provisions of law.....	4876	1009
State insurance board, appointment, etc.....	4877	1009
Compensation, etc.....	4778	1010
Insurance board to fix rates, etc.....	4879	1010
Secretary and fire marshal	4880	1010
Duties of fire marshal...	4881	1011
Same	4882	1011
When state fire marshal is unable to act.....	4883	1011
Action of fire marshal not to affect policies, etc.	4884	1011
Statement to be made to insurance board.....	4885	1012
Board to prepare basis of schedules of rates....	4886	1012
Companies to file schedules of specific risks; rates to be approved by board.....	4887	1013
Policyholders to be furnished with analysis of rates	4888	1014
Present rates continued until rates have been determined and filed..	4889	1014
Authority to revise general basis schedules...	4890	1015
Duties of board to establish uniform policies..	4891	1015
Certain provisions in policies void	4892	1015
Co-insurance clauses....	4893	1015

	Article	Page		Article	Page
INSURANCE—continued.			INTANGIBLE TAX BOARD—		
Rights of persons to petition insurance board..	4894	1016	continued.		
Regulations of hearings, insurance board.....	4895	1016	Failure to obey subpoena; penalty	7413	1593
Insurance companies not to do certain things...	4896	1017	Tax on intangible assets; law applies to whom..	7414	1593
Unlawful to accept rebate	4897	1018	Same	7415	1593
Law not applicable to collection of premiums..	4898	1018	Statement of intangible assets; to contain what	7416	1594
Commissioner of insurance may revoke authority of company, when	4899	1018	Date of receipt to be endorsed; board may demand additional statements	7417	1594
Unlawful for agent or company to evade law.	4900	1018	Statements placed before board, when.....	7418	1595
Persons testifying in trials of violation of this law, not to be prosecuted	4901	1018	Duties and powers of board in passing upon statements	7419	1595
Law not to apply to certain companies.....	4902	1019	Same	7420	1596
Companies to bear expense of board.....	4903	1019	Unincorporated companies and individuals; capital, how ascertained	7421	1597
Unconstitutionality of part of law not to affect whole law.....	4904	1019	Board to certify amount of intangible assets to assessors	7422	1597
INSURANCE ADJUSTERS—			Failure of tax assessor to comply; penalty.....	7423	1598
Occupation tax on.....	7355	1573	Failure to make statement, etc.; penalty...	7424	1598
INSURANCE COMMISSIONER—			Receivers and trustees in bankruptcy to make reports, etc.....	7425	1598
Fees of.....	3844	790	Persons complying with this chapter relieved of other taxes.....	7426	1598
General provisions	3880-3926	804	INTEREST—	4973-4983	1041
Insurance commissioner, appointment, etc..	4485-4508	909	Definition of interest...	4973	1041
See "Commissioners."			Legal interest.....	4974	1041
INSURANCE COMPANIES—			Conventional interest....	4975	1041
Venue of suits against..	1830	412	Distinction between the two	4976	1041
Sued where in justice courts	2308	490	Six per cent interest in absence of agreement.	4977	1041
Duty of insurance commissioners relative to.	4493	910	Six per cent interest on open accounts where no rate is agreed upon...	4978	1041
Life, health and accident	4724-4774	961	Ten per cent may be stipulated for.....	4979	1041
Gross receipts tax on...	7376	1582	Contracts for a greater rate than ten per cent void	4980	1041
INSURRECTION—			Judgments to bear six per cent when not otherwise stipulated.....	4981	1041
May be declared when...	5892	1253	Double the amount of usurious interest recovered, when.....	4982	1041
INTANGIBLE ASSETS—			Usury, how pleaded.....	4983	1042
Tax on.....	7414	1593	None on savings banks deposits declared until when, etc.....	401	110
INTANGIBLE TAX BOARD—	7407-7426	1592	Of county and municipal bonds provided for..	605-625	159
State tax board, of whom composed; tax commissioner; appointment of	7407	1592	Rate in this state presumed, unless, etc.....	3709	765
Bond of tax commissioner	7408	1592			
Secretary	7409	1592			
Duties of board.....	7410	1592			
Same	7411	1593			
Powers of board.....	7412	1593			

	Article	Page
INTERLOCKING SWITCHES—		
Railroads to use.....	6702	1438
INTERLOCUTORY ORDER—		
Of district court appointing receiver, etc., appeal from.....	2079	449
INTERLOCUTORY PROCEEDINGS—		
In district court....	2118-2166	454
INTERNAL IMPROVEMENTS—		
Municipal tax to pay subsidies in aid of.....	7716	1678
INTERPRETERS—		
For witnesses.....	3648	754
In taking depositions of witnesses	3661	757
INTERURBAN RAILROADS—		
Right of eminent domain	6733	1446
Width of right of way, survey, etc.....	6734	1446
May construct across streams, streets, etc...	6735	1446
Same powers of eminent domain as steam railroads	6736	1446
May condemn easement over other electric railway tracks, etc.....	6737	1447
Proceedings to condemn easement	6738	1447
"Interurban railway company" defined.....	6739	1447
Chartered rights may include sale of electric lights and power.....	6740	1447
The provisions of this chapter cumulative...	6741	1448
General provisions relative to.....	6733-6741	1446
Gross receipts tax on...	7378	1583
INTERVENOR—		
Pleadings of, in district and county courts.....	1820	407
INTESTATES—		
Descent and distribution of estate of.....	2461-2474	522
See "Estates of Decedents."		
INTOXICATING LIQUORS—		
City council may restrain sale of.....	830	209
Sale on election day prohibited	3021	645
Sale prohibited on primary election day.....	3120	663

	Article	Page
INTOXICATING LIQUORS—		
continued.		
When unclaimed, how disposed of by carriers	730	186
Unlawful sale of, may be enjoined	4674	952
Local option elections to prohibit sale of...	5715-5730	1209
Sale of, on military encampment may be prohibited	5891	1258
Gross receipts tax on wholesale dealers in...	7379	1583
Tax on dealers in...	7427-7466	1599
Defined	7465	1611
Tax on sale of, in local option territory...	7467-7475	1612
Tax on persons soliciting orders, etc., in local option districts	7479-7482	1617
Occupation tax on handling C. O. D.....	7483-7486	1618
See "Local Option."		
INVENTORIES—		
Of superintendents of lunatic asylums.....	127	61
Of assignments.....	92	53
Of assets of state banks, requisites, etc.....	466	124
To be made, etc., by receiver	2148	459
Of estates of decedents...	3330-3349	701
Of community property, etc., of decedents.....	3597	746
Of estates of wards.	4113-4121	847
Of estates of divorced persons	4638	945
Prison commissioners shall make annually...	6191	1320
Of state's personal property	6373	1365
Of state property, superintendent of public buildings, etc., shall file	6385	1368
Of property subject to inheritance tax.....	7490	1620
INVESTIGATING COMMITTEES—		
May administer oaths, etc.	5517-5524	1159
Sergeant-at-arms may serve process.....	5518	1160
Special committee to take certain testimony.....	5519	1160
Notice of taking special testimony to be given.	5520	1160
Authority of special committee to issue process, etc.	5521	1160
Judges and other officers may take testimony, when	5522	1161
Process, by whom served	5523	1161
Testimony to be written, etc.	5524	1162

	Article	Page
INVOICES—		
Of supplies for state institutions	7331	1565
IRRIGATION—	4984-5107	1043
General provisions..	4991-5011	1045
Unappropriated waters public property.....	4991	1045
Purposes for which storm or rain waters diverted	4992	1045
Flow and overflow of running waters diverted..	4993	1045
Purposes of appropriation	4994	1045
Priority of appropriation.	4995	1045
Statement of route of canal, etc., to be filed.	4996	1045
Claimant's right dates from when.....	4997	1046
Who may appropriate; construction to begin.	4998	1046
Construction to begin...	4999	1046
"Completion" defined...	5000	1046
Appropriator only to divert	5001	1046
Corporations under this chapter	5002	1047
Power to enter lands, etc.	5003	1048
Right of way over public lands	5004	1048
Surplus water to be returned	5005	1048
Right of way across highways	5006	1048
No cause of action for damages, when.....	5007	1048
May construct over and along streams.....	5008	1048
Liens for water rent...	5009	1048
Corporations may acquire lands, how.....	5010	1049
Reclamation and irrigation act of United States Congress.....	5011	1049
Irrigation districts..	5012-5107	1050
Who may propose organization of district.....	5012	1050
The petition.....	5013	1051
Commissioners' court to hear petition and take testimony	5014	1051
Who may appeal.....	5015	1051
Districts to be divided into divisions.....	5016	1052
Notice of election to be given	5017	1052
Election of officers.....	5018	1052
Qualification of electors.	5019	1052
Commissioners' court to canvass votes, etc...	5020	1052
Copy of order to be filed.	5021	1052
Election may be contested, how.....	5022	1053
Officers shall qualify, etc.	5023	1053
Classification of directors	5024	1053
Meetings of directors...	5025	1053
Powers and duties of directors	5026	1054

	Article	Page
IRRIGATION—continued.		
Duty of board in condemnation proceedings	5027	1054
Vacancy in office, how filled	5028	1054
Director must be resident, etc., of district.	5029	1055
Offices may be consolidated	5030	1055
Petition as to number of directors to be elected.	5031	1055
Compensation of directors	5032	1055
Contracts — interest in forbidden	5033	1055
Election of district officers	5034	1055
Directors to meet and organize	5035	1056
Notice of election to be posted	5036	1056
Inspector to be chairman of the election board..	5037	1056
Voting same as in general election	5038	1057
Canvass of vote to be made in public.....	5039	1057
Statement to be recorded and to show what....	5040	1057
Bonds may be issued for what purposes.....	5041	1057
Bonds payable in gold, etc.	5042	1058
Sale of bonds, etc.....	5042	1059
Bonds to be paid by assessment	5044	1059
Payment of bonds.....	5045	1059
As to outstanding bonds.	5046	1059
Reduction of bonded indebtedness	5047	1060
Notice of election to reduce bonded indebtedness	5048	1060
Outstanding bonds.....	5049	1060
May hold election to destroy unsold bonds, when	5050	1060
How election to be held.	5051	1060
Bonds destroyed not to be reprinted or re-issued.	5052	1061
Assessments to be made, when	5053	1061
Assessments to be made on all property, etc..	5054	1061
Authority of board as to collection of taxes....	5055	1062
Board to regulate manner, etc., of making tax list	5056	1062
Board to fix compensation of deputies.....	5057	1062
Assessment book to be completed, etc.....	5058	1062
Equalization of assessments	5059	1062
Levy and collection of taxes	5060	1062

	Article	Page
IRRIGATION—continued.		
If board neglects or refuses to levy, etc.....	5061	1063
Collector to settle monthly	5062	1063
Directors may call special election, when...	5063	1063
Rate of assessment, how ascertained	5064	1063
Boundaries may be changed, etc.....	5065	1063
Land may be excluded, when, etc.....	5066	1064
Notice to be published..	5067	1064
Board to hear petition to exclude, etc.....	5068	1064
Duty of board upon hearing petition to exclude	5069	1065
In cases where land is excluded	5070	1065
Office of director to become vacant, when land is excluded.....	5071	1065
Director to be elected for each division.....	5072	1065
Guardian, executor, etc., may petition.....	5073	1065
Lands excluded not released from debts, etc.	5074	1066
Changes in boundaries not to impair organization	5075	1066
Changing boundaries.....	5076	1066
Notice	5077	1066
Board to hear petition, etc.	5078	1067
Petitioners shall pay, etc.	5079	1067
Board may order petition rejected	5080	1067
Resolution of board on petition	5081	1067
Board to fix time for election	5082	1068
Result of election.....	5083	1068
Change of boundaries to be recorded.....	5084	1068
Minutes of board admissible in evidence, when Guardian, etc., may swear to petition, etc.....	5085	1068
In case of inclusion of land	5087	1068
Water declared a public use	5088	1069
Water apportioned ratably	5089	1069

JAILS—	5108-5113	1073
Commissioners' court to provide	5108	1073
Sheriff keeper, etc.....	5109	1073
Shall be constructed to enable executions to be had in death penalty..	5110	1073

	Article	Page
IRRIGATION—continued.		
Water to be apportioned.	5090	1069
Navigation not to be impaired, etc.....	5091	1069
Right of condemnation..	5092	1069
Title to vest in district..	5093	1069
Bids for work to be advertised	5094	1069
All claims to be allowed by board before payment	5095	1070
Funds out of which payments are to be made.	5096	1070
Right of way.....	5097	1070
No debts to be incurred, except	5098	1071
Funds	5099	1071
Officers liable on bonds..	5100	1071
Board may lease water for mechanical purposes, when.....	5101	1071
Such lease to be let to highest bidder, etc....	5102	1071
Bids to be opened in public	5103	1071
Rental, etc.....	5104	1072
Board to have power to lease for five years...	5105	1072
Lessee to execute bond..	5106	1072
Other laws unrepealed..	5107	1072
Regulating the mode of irrigation	4984-4990	1043
Commissioners' court to regulate	4984	1043
General powers over the subject	4985	1043
May lease suerte of delinquent	4986	1043
May license irrigation..	4987	1043
Exercise right of eminent domain	4988	1044
And discontinue ditches, etc.	4989	1044
And establish fence laws.	4990	1044
Duty of commissioner of agriculture as to.....	4448	900
ISSUES—		
Of law, tried when.....	1947	431
ITINERANT MERCHANT—		
Occupation tax on.....	7355	1571
ITINERANT PHYSICIANS—		
Occupation tax on.....	7355	1571

JAILS—continued.		
Commissioners to see that jails are properly kept	5111	1073
United States marshal may use jails.....	5112	1073
Marshal liable for fees..	5113	1073
To be established at county seats.....	1397	332

	Article	Page
JAILS—continued.		
Bonds for erection of, authorized	610	160
JOHNSON GRASS—		
Railroads not to permit to go to seed on right of way.....	6601	1406
JOINT OWNERS—		
With estate of decedent, may have partition...	3560	739
JOINT STOCK COMPANIES—		
Unincorporated joint stock companies—permitting suit in company name.....	6149-6154	1311
May sue or be sued in its company name.....	6149	1311
Citation, upon whom served	6150	1311
Judgment against, conclusive against stockholders	6151	1311
Effect of judgment, where agent of company only is cited....	6152	1311
Effect of judgment where individual stockholders are also cited.....	6153	1311
This chapter cumulative; not to impair existing rights	6154	1311
Writ of garnishment served on, requisites, etc.	275	85
Service on citation.....	1860	416
Sued where in justice courts	2308	490
JOURNALS—		
Of legislature, number of copies to be printed...	6348	1360
Of legislature, how furnished to contractor for public printing.....	6360	1362
JUDGE ADVOCATE—		
Duty in military trials..	5864	1254
JUDGES—		
Of the court of civil appeals	1580-1584	363
Chief and associate justices	1580	363
Election and term of office	1581	363
Qualifications of judges..	1582	363
Vacancies, how filled....	1583	363
Disqualification of judges	1584	364
Of the court of criminal appeals	1652-1657	378
Judges, qualifications, compensation, and quorum	1652	378
Election and term of office	1653	378

	Article	Page
JUDGES—continued.		
Presiding judge chosen and writs, etc., how tested	1654	378
Proceedings on disqualification of.....	1655	378
Vacancies, how filled....	1656	378
Terms of office—long and short terms at first election	1657	378
Of the supreme court... ..	1512-1517	349
Chief and associate justices	1512	349
Election and tenure of office	1513	349
Qualification of judges..	1514	349
Vacancies, how filled....	1515	349
Disqualification of judges	1516	349
Equal division of judges.	1517	350
Of county courts....	1731-1742	392
Of county courts, jurisdiction and powers of.	1763-1775	397
Of Dallas county court at law, election, etc....	1790	402
Of Dallas criminal district court.....	2229-2235	476
Of county court of Tarrant county.....	1804	404
Of corporation courts may punish for contempt, etc.	916	223
Of corporation courts, election, etc.....	905	221
Of district courts, jurisdiction and powers....	1705-1717	387
Of district courts... ..	1671-1684	382
Of district and county courts to state conclusions of law, etc....	1989	435
Of Galveston and Harris criminal court....	2202-2207	472
Issuance of sequestration by	7094	1517
Of elections.....	2920	624
Of elections, duties, etc.	2991-3045	639
Of elections, appointed by voters, when.....	2994	640
Of primary elections, powers, etc.....	3090	657
JUDGMENT LIENS—		
5610-5620	1186	
Clerk of county court shall keep judgment record	5610	1186
Clerks of courts shall make and deliver abstracts of judgments..	5611	1186
Abstract shall show what.	5612	1186
Justice of peace shall deliver abstracts	5613	1186
Clerks of county courts shall record and index abstracts	5614	1186
Index shall show, what..	5615	1187
Lien of judgments, when.	5616	1187
Lien exists, how long....	5617	1187

	Article	Page
JUDGES—continued.		
Satisfaction of, shown how	5618	1187
Satisfaction of to be entered on judgment record	5619	1187
Abstracts from United States courts may be recorded, etc.	5620	1187
JUDGMENTS—		
Judgment of the court of civil appeals	1626-1635	372
If judgment reversed, when reformed and remanded	1626	372
Judgment on affirmance or rendition, etc.	1627	372
Damages adjudged, when.	1627	372
Finality	1627	372
No reversal for want of form	1628	372
Affirmance with damages in case of delay	1629	393
Remittitur	1630	373
Suggestion of remittitur	1631	373
Refusal to remit not subject to comment on subsequent trial	1632	373
Mandate issued, when	1633	373
No mandate to issue until costs paid	1634	373
Affidavit of inability to secure or pay costs	1635	373
Execution of judgment of the courts of civil appeals	1645-1650	376
Writ, how tested, directed, executed and returned, and alias issued, when	1645	376
Judgment enforced, how	1646	376
Execution to issue, when; mandate	1647	376
Appellant on reversal to recover costs of appeal	1648	376
Return of execution, when	1649	376
Officer failing to make return, remedy by motion	1650	376
Of district and county courts	1994-2011	436
Judgments, how framed	1994	436
For or against one or more plaintiffs, etc.	1995	436
Several counts, some good and others bad	1996	437
But one final judgment	1997	437
Judgment may pass title, etc.	1998	437
Court shall enforce its own decrees; in certain cases, how	1999	437
Judgments of foreclosure of liens	2000	437
Writ of possession awarded	2001	437
On appeals from county court	2002	437
On appeals from justice's court	2003	437

	Article	Page
JUDGMENTS—continued.		
Judgments against executors, etc.	2004	437
Against executors acting independently of probate court	2005	437
Against partners when all not served	2006	438
Confession of judgment	2007	438
Acceptance of service waiver of process	2008	438
Confession of by attorney	2009	438
Releases errors, but impeachable, etc.	2010	438
Other judgments when authorized by law	2011	438
Remitter and amendment of judgment	2012-2018	439
Remitter of excess in verdict	2012	439
Remitter of excess in judgment in open court	2013	439
Remitter in vacation	2014	439
Mistake in judgment corrected in open court	2015	439
Misrecitals, etc., corrected in vacation or term time in certain cases	2016	439
Correction made in vacation to be certified to clerk	2017	439
Correction or remitter operates to cure errors	2018	439
New trials and arrest of judgment	2019-2029	440
New trials may be granted	2019	440
Motion for, requisites of	2020	440
Misconduct of jury, etc., as ground of motion; evidence	2021	440
New trials granted where damages too small, etc.	2022	440
Time of making motion	2023	440
Not more than two new trials, except, etc.	2024	440
Determined when	2025	440
Bill of review in suits by publication	2026	440
Petition necessary in such cases	2027	440
Execution, etc., not suspended, unless	2028	440
Sale under such execution not avoided but, etc.	2029	441
Judgments of justice courts	2364-2373	498
Judgment upon verdict of jury	2364	498
Case tried without jury, decision in open court	2365	498
Judgment	2366	498
Costs	2367	498
Judgment for specific articles	2368	498
Court may, in certain cases, enforce judgment by attachment, fine, etc.	2369	499
No judgment without citation, unless	2370	499

	Article	Page
JUDGMENTS—continued.		
Confession of judgment..	2371	499
Warrant of attorney to be filed	2372	499
Same rules as govern district courts, etc.....	2373	499
Judgment of the supreme court	1550-1560	357
Judgments in open court; opinions in writing....	1550	357
Judgment on affirmance or rendition, etc.....	1551	357
If judgment reversed, may remand to court of civil appeals or district court	1552	357
No reversal or dismissal for want of form.....	1553	357
When judgment shall become final	1554	357
Mandate to issue, when..	1555	357
Same subject	1556	357
Affidavit of inability to pay or secure costs....	1557	357
Mandate to issue to what court	1558	358
No mandate to be taken out after twelve months, in case of reversal and remand; certificate and dismissal..	1559	358
Mandate recalled where judgment set aside....	1560	358
Execution of judgment of the supreme court.	1566-1571	359
Process, how tested, directed and executed....	1566	359
Judgment enforced, how..	1567	359
Execution issued, when..	1568	359
Execution returnable, when	1569	360
Officer failing to make return; remedy.....	1570	360
Money due clerk of court of civil appeals to be paid by clerk of supreme court; remedy..	1571	360
Of courts of civil appeals, conclusive, when.....	1590	365
Of district courts, a first lien on property.....	2138	457
Have preference lien over mortgage	2142	458
By default, in district and county courts.....	1935	429
Of district and county courts, appeals from, etc.	2078-2117	449
Of district courts in probate matters.....	3639	752
Of justice courts.....	2338	495
Of justice courts enforced by execution.....	2380	501
Against attorneys at law for contempt, etc.....	330	94
Against tenants	5484	1152
Against receivers, effect of	2146	453

	Article	Page
JUDGMENTS—continued.		
Against railroad companies, execution, levy, etc.	6628	1413
Against unincorporated joint stock companies..	6151	1311
Of escheats, proceedings after	21	7
In escheat trials.....	3193	677
In removal of city officials	6071	1296
In cases of forcible entry and detainer.....	3952	816
By default, cannot be rendered against non-resident	2175	463
By default, etc. may be set aside	2374	500
By default in garnishment proceedings	282	86
In cases of garnishment..	292	88
By default in trials of right of property....	7782	1689
By default, on failure of trust, etc., to produce books	7813	1696
By default in trespass to try title.....	7750	1683
On replevy bond.....	7106	1519
In suits on debts contracted by wife.....	4625	943
Of foreclosure of attachment liens.....	267	82
In lunacy cases.....	157	65
In adjudication of heirship	3524	733
Under quo warranto proceedings	6402	1373
In trespass to try title....	7767	1686
Execution on.....	3714-3784	767
Establishing claims against estates of decedents	3450	719
Shall be revived when...	5696	1205
Awards in cases of arbitration to be entered same as	63	46
Have preference over mortgage, when.....	2152	460
Involving counter claim, in defendant's favor...	1327	319
When substituted, shall have force of original..	6785	1456
Of dismissals of certiorari	756	190
Rate of interest on, fixed.	4981	1041
No injunction against, except	4647	949
None entered without citation	1885	419
County clerks to record, etc.	1757	396
To be recorded when....	6832	1465
Costs where arrested....	2045	443
Clerks and justices of the peace to report, etc....	1421	336
Belonging to counties, may be sold, when....	1426	337
How supplied, when lost.	6780	1455

	Article	Page
JUDICIAL DISTRICTS—		
Counties apportioned to	30	19
Counties apportioned to supreme judicial dis- tricts	29	18
Laws organizing, con- tinued in force	1720	
JUDICIAL OFFICERS—		
Salaries of judicial officers	7057-7065	1511
Salaries of justices of the supreme court and court of criminal ap- peals	7057	1511
Judges of courts of civil appeals	7058	1511
District judges	1059	1511
Assistant attorney general	7060	1511
Special judges, etc.	7061	1511
Special judges elected by, etc.	7062	1511
Of special judge, how ascertained	7063	1511
Pay of special judge com- missioned	7064	1511
Pay of special judge elected	7065	1511
JUDICIAL PROCEED- INGS—		
In cases of lunacy	150-165	64
JUDICIAL SALES—		
Of railroads, effect of	6720	1441
JUNCTIONS—		
Railroads to interchange cars at	6688	1434
JURIES—		
Juries in civil cases	5114-5220	1074
Challenges	5188-5201	1086
Challenge to the array of jurors	5188	1086
Not allowed, when	5189	1086
Challenge to array must be in writing	5190	1086
Court shall decide at once	5191	1086
Proceedings when chal- lenge to array is sus- tained	5192	1086
Challenge to a particular juror	5193	1087
Challenge for cause	5194	1087
On trial of challenge for cause, evidence to be heard	5195	1087
Certain questions not per- missible	5196	1087
Peremptory challenge	5197	1087
Number in district court	5198	1087
In the county court	5199	1087
Challenge to a particular juror made orally	5200	1087
Court to decide challenges promptly	5201	1087

	Article	Page
JURIES—continued.		
Compensation of jurors of the district and county courts in civil cases	5218-5220	1090
Pay of jurors	5218	1090
Certificate of jury service	5219	1090
Jury scrip receivable at par for all county taxes	5220	1090
Formation of the jury for the trial of a cause	5202-5211	1088
Clerks to provide a box	5202	1088
Shall place names of jurors in the box	5203	1088
Shall draw and record names of jurors	5204	1088
Where names of full jury not found in the box	5205	1088
Challenge for cause to be made, when	5206	1088
When number of jurors reduced, etc.	5207	1088
Peremptory challenge to be made	5208	1088
Lists to be returned to clerk, and jury to be called	5209	1088
Where the jury is left in- complete	5210	1089
Jurors to be sworn	5211	1089
Jurors, their qualifications and exemptions	5114-5121	1074
Who are competent jurors	5114	1074
Who are disqualified in general	5115	1074
Exceptions to certain cases	5116	1074
Jurors disqualified in cer- tain cases	5117	1075
Who are liable to jury service	5118	1075
Where several fire com- panies in one town	5119	1075
List of members selected to be delivered to the clerk	5120	1075
Filing of legal exemptions	5121	1075
Juries for the week, how made up	5165-5172	1084
Jurors for the week, how selected	5165	1084
If not selected on day ap- pointed may be subse- quently done	5166	1084
If practicable, to be of jurors selected by jury commissioners	5167	1084
May be filled up, how	5168	1084
May be adjourned	5169	1084
Oath to be administered to the sheriff when jurors not selected are to be summoned by him	5170	1084
Court may hear excuses of jurors	5171	1084
Defaulting jurors to be fined	5172	1084
Juries, how constituted, and their verdicts	5214-5217	1090

	Article	Page
JURIES—continued.		
Jury in district court....	5214	1090
Death or inability in district court pending trial	5215	1090
Jury in the county and justices' courts.....	5216	1090
The entire jury must concur in the verdict..	5217	1090
Jury commissioners for the district court, appointment, qualification, etc.	5122-5131	1076
Jury commissioners.....	5122	1076
Shall serve but once in each year	5123	1076
Commissioners to be notified	5124	1076
Failing to attend shall be fined	5125	1076
Oath of jury commissioners	5126	1076
Failure of commissioners, etc.	5127	1076
To be instructed in their duties	5128	1076
How they shall be kept..	5129	1077
Clerk to furnish stationery, etc.....	5130	1077
To have use of assessment rolls	5131	1077
Jury commissioners for the county court, appointment, qualifications, etc.....	5132-5134	1077
Jury commissioners, appointment and qualification, powers and duties	5132	1077
Oath	5133	1077
To select jurors for six months	5134	1077
Jury trials, authorized when and how....	5173-5187	1085
Right of trial by jury to remain inviolate, subject, etc.....	5173	1085
Must be demanded and jury fee paid.....	5174	1085
Time and demand.....	5175	1085
Same	5176	1085
Rules for justices' courts elsewhere prescribed..	5177	1085
Call of docket for demands for jury trials..	5178	1085
Same as to appearance docket	5179	1085
Jury fee	5180	1085
Oath of inability to make deposit	5181	1085
Cases heretofore entered on jury docket excepted	5182	1085
Order of court.....	5183	1086
Clerk to keep jury docket	5184	1086
Jury trial day to be fixed.	5185	1086
Application for jury not to be withdrawn, unless, etc.....	5186	1086

	Article	Page
JURIES—continued.		
When application withdrawn, court may permit jury fee withdrawn also	5187	1086
Oath of jurors in civil cases	5212-5213	1089
Jury shall be sworn.....	5212	1089
Form of oath.....	5213	1089
Proceedings of the jury commissioners in the selection of jurors.	5135-5150	1078
Selection of jurors, how made	5135	1078
Drawing of jurors, how conducted	5136	1078
Venire facias, special, how drawn	5137	1078
List to be certified, sealed, etc.	5138	1079
To be delivered to the judge	5139	1079
And by him to the clerk..	5139	1079
Clerk and deputies to be sworn	5140	1079
Same	5141	1079
District court commissioners to make out jury list for county court.....	5142	1079
Which shall be delivered to the county clerk....	5143	1079
And by him to the commissioners for his court	5144	1079
Persons included in such lists not to be selected as jurors in county court	5145	1079
County court commissioners to make out lists for district court.....	5146	1079
To be delivered to district clerk	5147	1080
And by him to commissioners for his court...	5148	1080
Persons included in such lists exempt.....	5149	1080
Lists of jurors to be destroyed	5150	1080
Selected jurors, how summoned, etc.	5159-5164	1083
Clerk to make out jury lists and deliver to sheriff.....	5159	1083
Sheriff to notify jurors..	5160	1083
Special venire, how summoned	5161	1083
Notice to jurors, how served	5162	1083
Time of service.....	5163	1083
Sheriff's return.....	5164	1083
Selection of jurors in counties with cities of certain population.	5151-5158	1081
Selection of jurors in cities of 20,000.....	5151	1081
Names to be written on cards	5152	1081
Cards placed in wheel; description of wheel.....	5153	1081

	Article	Page
JURIES—continued.		
Jurors drawn by whom, when, how, etc.....	5154	1081
List delivered to judge, etc.	5155	1082
Judge shall deliver list to clerk	5156	1082
Disposition of cards containing names of jurors drawn	5157	1082
Proceedings in case of loss of wheel, etc.....	5158	1082
Charges and instructions to juries.....	1970-1975	433
Court shall charge the jury, unless waived, etc.	1970	433
Requisites of the charge..	1971	433
Charge need not be excepted to.....	1972	433
Parties may ask instructions	1973	434
Instructions refused constitute part of bill of exceptions	1974	434
Jury may carry charge, etc., with them.....	1975	434
The verdict.....	1976-1993	434
Rendition of verdict.....	1976	434
Must be in writing and signed	1977	434
Verdict received and noted	1978	434
Jury may be polled.....	1979	435
Defective or mistaken verdict	1980	435
Not responsive to the issues	1981	435
Verdicts either general or special	1982	435
General verdict.....	1983	435
Special verdict defined..	1984	435
Special verdict, requisites of; failure to submit issue not reversible error unless request, etc.	1985	435
Special verdict conclusive	1986	435
Jury to render general or special verdict as directed	1987	435
Verdict to comprehend whole issue or all issues submitted	1988	435
Judge, on request, to state conclusions of fact and law separately, statement to be filed.....	1989	435
Court to render judgment on special verdict or conclusions, unless set aside, etc.....	1990	435
Exceptions to conclusions or judgment noted in judgment; appeal, etc.; transcript	1991	436
No submission of special issues unless requested	1992	436
Verdict not void for want of form.....	1993	436

	Article	Page
JURIES—continued.		
Trial of causes by in district and county courts	1934-1969	429
For special term of district courts, how summoned	1724	389
No trial by, in probate matters	3221	683
Trial by in justice court..	2333	495
Trials by in justice courts	2339-2363	496
For Tarrant county court for civil cases.....	1808	404
In Galveston and Harris county criminal district court	2224	475
In forcible entry and detainer cases, either party may demand....	3947	816
In lunacy cases.....	152	64
In trials of habitual drunkards, etc., to determine as to guardians	4241	866
For the week, how made up	5165-5172	1084
To assess damages, when.	1940	430
Fees of in corporation courts	915	223
JURISDICTION—		
Of county court over guardians	4043	836
Of district court over guardians	4044	836
Of district courts over oil, etc., wells.....	7853	1708
Jurisdiction and powers of county court...1763-1775	397	
Of county and district courts as juvenile courts	2192	469
Of district court.....	1705-1717	387
Of the courts of civil appeals	1589-1595	365
Of court of criminal appeals	1659-1661	379
Of the supreme court	1521-1529	351
Of supreme court in removal of officers.....	6024	1291
Of justices of the peace	2291-2297	487
Of Dallas county court at law	1787	401
Of Dallas criminal district court	2229-2235	476
Of Galveston and Harris county criminal district court	2216-2220	474
Of county court of Tarrant county for civil cases..	1800	403
Of United States over lands in Texas.....	5275	1102
Of corporation courts....	904	220
Of military courts and boards, presumed, etc..	5885	1257
Of estates of decedents	3206-3210	680

	Article	Page
JURISDICTION—cont'd.		
Of trials of right of property	7778	1688
JURORS—		
Challenges to the array of	5188-5201	1086
Compensation of	5218-5220	1090
Oath of, in civil cases	5212-5213	1089
Proceedings of jury commissioners in selection of	5135-5150	1078
Selection of, in cities of certain population	5151-5158	1081
When selected, how summoned	5159-5164	1083
JURY COMMISSIONERS—		
District judges may appoint, etc.	1720	389
For Dallas county court at law	1795	402
JURY DOCKET—		
Day set for	1945	430
JURY FEES—		
Clerks and justices of the peace to report, etc. ...	1421	336
District clerk shall report	1696	385
County clerks to report ..	1759	396
JURY SCRIP—		
Receivable at par for county taxes	5220	1090
JURY OF VIEW—		
Appointment of for county drainage	2513	534
For drainage districts ...	2544	539
For construction of drains ..	2479	527
For drainage of public roads	6997	1497
For public roads, appointment, etc.	6864	1473
JUSTICE—		
Defined	5504	1157
JUSTICES' COURTS—		
Certiorari to	742-761	189
Certiorari to justices' courts	742	189
On order of the county or district court or judge ..	743	189
Requisites of the writ ...	744	189
Affidavit of sufficient cause	745	189
What application for certiorari must show	746	189
Within what time granted ..	747	190
Bond with sureties required	748	190
Bond, affidavit and order to be filed	749	190
Writ to issue instanter ...	750	190
Justice shall stay proceedings and make return	751	190

	Article	Page
JUSTICES' COURTS—cont'd.		
Citation as in other cases ..	752	190
Cause to be docketed, and how	753	190
Motion to dismiss at first term	754	190
No amendment of bond or oath	755	190
Judgment of dismissal ..	756	190
Pleadings same as in justice's court, except, etc. ..	757	190
Issues made up under direction of the court ...	758	190
New matter may be pleaded, etc.	759	190
Trial de novo	760	190
Appeals and writs of error in certiorari cases ...	761	191
Certiorari to county court	733-738	188
Election and qualification of justices of the peace	2283-2400	486
Powers and jurisdiction	2291-2297	487
Terms of the court. ..	2298-2301	488
Dockets, books and papers	2302-2307	489
Venue	2308-2318	490
Security for costs.	2319	492
Parties	2320	492
Process and service. ..	2321-2335	492
Pleadings	2326-2328	493
Continuance	2329	493
Appearance and trial ..	2330-2338	494
Trial by jury.	2339-2363	496
New trials.	2364-2373	497
Judgments, etc.	2374-2379	500
Execution	2380-2388	501
Stay of execution	2389-2390	502
Appeals	2391-2397	503
General provisions ..	2398-2400	504
Verdicts of juries in. ..	5214-5217	1090
Jurisdiction in trial of cases as to disputed survey lines	5341	1113
Judgments in, recorded how	6834	1466
JUSTICES OF THE PEACE—		
To designate day of trial of cases of arbitration ..	59	45
Duties of, in blacklisting cases	600	157
Shall report fines, etc. ...	1421	336
Election and qualification of	2283-2290	486
Fees of	3867	799
General provisions ..	3880-3926	804
Complaint of insufficient fence before.	3928	812
Duty when case of forcible entry and detainer is appealed.	3958	817
To issue distress warrants ..	5481	1152

	Article	Page
JUSTICES OF THE PEACE—		
continued.		
Shall deliver abstracts of judgments	5613	1186
Issuance of sequestration by	7094	1517
JUVENILE COURTS ..2184-2190		466
JUVENILES—		
The state institution for the training of	5221-5234	1091
Board of trustees	5221	1091
Meeting of board	5222	1091
Board shall prescribe for government of institution; biennial report to governor	5223	1091

	Article	Page
JUVENILES—continued.		
Shall provide instructions, etc.	5424	1091
The superintendent.....	5225	1092
Powers and duties of the superintendent	5226	1092
Salaries, etc., how paid..	5227	1093
Who to be confirmed....	5228	1093
Same	5229	1093
Leave of probation.....	5230	1094
Duration of sentence....	5231	1094
Inmates to be divided into classes	5232	1094
Clothing, books, etc., to be furnished	5233	1094
Escapes	5234	1094

L

LABOR—	5235-5246	1095
Bureau of labor statistics	5235-5243	1095
Bureau to be under commissioner of labor....	5235	1095
Oath; bond; office at the capitol; governor may remove	5236	1095
Biennial report of commissioner; his general duties	5237	1095
Biennial report to contain what; to be printed and distributed	5238	1096
Commissioner may issue process, administer administer oaths, etc....	5239	1096
Reports and returns, how long preserved...	5240	1096
Commissioner may enter factories, mills, etc., in the performance of his duty	5241	1096
Commissioner to report to county and district attorneys certain violations of this chapter...	5242	1096
Salary and compensation of commissioner and other employes	5243	1096
Labor organizations ..5244-5246		1097
Right to organize.....	5244	1097
Other rights and privileges	5245	1097
Not to apply to what organizations	5246	1097
May submit disputes to arbitration, when.....	73	47

LAND—		
Acquisition, etc., of by private corporations restricted	1175-1181	283
Purchase of land, unless necessary to business or to secure debts, prohibited	1175	283

LAND—continued.		
Excess of land over necessary amount to be alienated, when.....	1176	283
Certain corporations forbidden to acquire lands	1177	283
Lands previously acquired to be alienated, when	1178	283
Purchase, subdivision and sale of city, etc., lands, not prohibited.....	1179	283
Forfeiture prescribed; duty of attorney general	1180	284
Proceeds of such forfeitures to be covered into the treasury.....	1181	284
Corporations, private, generally	1117-1321	266
See "Lands."		

LAND AGENTS—		
Appointment by land commissioner, etc.....	5460	1148

LAND COMMISSIONER—		
Fees of.....	3842	788
General provisions...	3880-3926	804
See "Commissioners."		

LAND DISTRICTS—		
To be surveyed, etc.....	1384	329

LANDLORD—		
May become defendant in trespass to try title....	7736	1682
Landlord's lien—overrides exempted property	3793	777

LANDLORD AND TENANT—	5475-5491	1151
Landlord to have preference lien.....	5475	1151
Tenant not to remove property	5476	1151
When lien expires.....	5477	1151

	Article	Page		Article	Page
LANDLORD AND TENANT—			LANDS—continued.		
continued.			Statement to be made in writing	5254	1100
Lien does not apply to, etc.	5478	1151	Commissioners to be appointed	5255	1100
Removal not a waiver, etc.	5478a	1151	Commissioners to be sworn	5256	1100
Distress warrant	5479	1151	Hearing, when and how	5257	1100
Oath and bond	5480	1152	Notice to be given	5258	1100
Distress warrant	5481	1152	Notice to be served	5259	1100
Duty of officer	5482	1152	Return of notice	5260	1100
Defendant may replevy	5483	1152	In case of minor, lunatic, etc.	5261	1100
Judgment against sureties	5484	1152	In case of non-resident	5262	1101
Perishable property sold	5485	1153	Hearing postponed for perfection of service	5263	1101
Citation for defendant	5486	1153	May compel attendance of witness	5264	1101
Petition	5487	1153	Compensation of commissioners	5265	1101
Rights of tenant	5488	1153	Decision to be in writing, etc.	5266	1101
Tenant shall not sub-let without consent, etc.	5489	1153	County judge to fill vacancies	5267	1101
Owner of residences, storehouses, etc., have preference lien, etc.	5490	1153	Commissioners may adjudge costs	5268	1101
Distress warrant, how obtained	5491	1154	May be tried in county court, when	5269	1101
LAND OFFICE—			County judge to enforce decree, etc.	5270	1101
Archives of	82-85	50	The United States to deposit money with commissioners	5271	1101
Transcripts of land records furnished by, when	5324	1111	United States liable for costs, when	5272	1102
Registration of copies of deeds, etc., from	6831	1465	Acquisition of public lands by the United States	5273	1102
General provisions	5280-5292	1104	Titles to the United States to be recorded	5274	1102
See "General Land Office"			Government may cede jurisdiction	5275	1102
LAND OWNERS—			State to retain concurrent jurisdiction	5276	1102
Notice of proposed drains to	2485	528	United States land to be exempt from taxation	5277	1102
Rights of	2486	528	Limitation of actions for lands	5672-5684	1201
Notice of proposed drains to	2516	535	Three years' possession, when a bar	5672	1201
Notice to of creation of drainage district	2547	540	"Title" and "color of title" defined	5673	1201
LAND RESERVATIONS—			Five years' possession, when a bar	5674	1201
.	5383-5387	1121	Ten years' possession, when a bar	5675	1201
LANDS—			Ten years' possession construed to embrace what	5676	1201
Acquisition for public use	5247-5277	1098	Lands surrounded by other lands, peaceable possession of defined	5677	1202
Authorizing governor to purchase lands for state use	5247-5251	1098	Same subject	5678	1202
Governor to purchase, when	5247	1098	Possession gives full title, when	5679	1202
Land may be condemned	5248	1098	"Peaceable possession" defined	5680	1202
Land, how condemned	5249	1098	"Adverse possession" defined	5681	1202
Costs	5250	1099			
Right of way for penitentiary railroad	5251	1099			
United States government authorized to obtain title to lands in Texas	5252-5277	1099			
May purchase lands for certain purposes	5252	1099			
May institute condemnation proceedings	5253	1099			

	Article	Page
LANDS—PUBLIC—cont'd.		
Possession by different persons	5682	1202
Right of state not barred.	5683	1202
Does not run against infants, ets.	5684	1202
Alien ownership of inhibited	15	21
Lying on boundaries, to be rendered in one county	7511	1626
Condemnation of, for improvement districts	5567	1174
Condemnation of, for navigation districts	5989	1284
Commissioners of improvement districts may lease, etc.	5581	1177
Conveyance of	1103-1116	263
Mode of trying titles to	7731	1681
Not rendered for taxes assessed how	7712	1676
Partition of	6069-6115	1303
Power of irrigation companies to enter, etc.	5003	1048
Public, cession of, for seawall purposes	5592	1180
Purchases of, by prison commission	6184	1318
Railroad company may purchase and dispose of	6537	1395
Registration of titles	6825	1464
Sale and lease of public school and asylum.	5405-5459	1126
Sale of, for taxes how made	7638	1657
Of non-residents in unorganized counties, taxes paid how	7657	1660
Sold for city taxes, redemption of	963	233
Suits concerning, brought where	1830	410
Suits for, against estates.	1837	413
May be taken for seawalls and breakwaters	5587	1178
Of university of Texas, control of	2633	561
LANDS—PUBLIC—	5278-5474	1103
County and district surveyors	5300-5334	1107
County surveyor, when elected	5300	1107
Oath and bond	5301	1107
Commissioners' court to fill vacancy, when	5302	1107
Duties	5303	1108
To report to commissioners, etc.	5304	1108
Shall record all field-notes	5305	1108
Shall plat surveys, etc.	5306	1108
Record books to be furnished	5307	1108
Deputies appointed—oath and bond	5308	1108
Chain carriers and markers, etc.	5309	1109

	Article	Page
LANDS—PUBLIC—cont'd.		
Deputies shall return field-notes	5310	1109
County surveyor may do work of deputy	5311	1109
Shall keep map in office	5312	1109
Duty on change of boundary	5313	1109
Contested elections, in what court tried, etc.	5314	1109
Their duties, how regulated	5315	1109
Deputy district surveyors.	5316	1109
Special county surveyor for unorganized counties	5317	1109
Deputy surveyor of new county to procure maps	5318	1110
Surveys of deputy to be placed on map	5319	1110
Surveys in unorganized counties	5320	1110
Special deputies	5321	1110
Surveyor not authorized to survey until, etc.	5322	1110
Shall return field-notes of	5323	1110
Transcript to be obtained	5324	1111
May rent office, when	5325	1111
Rent of office, how paid	5326	1111
To have deputy, when	5327	1111
Right to examine books	5328	1111
Transcript, how paid for.	5329	1111
True meridian to be established	5330	1111
Neglect or failure of duty.	5331	1112
Shall turn over books, etc.	5332	1112
County clerk to take charge of books, when.	5333	1112
Commissioners may have record transcribed when	5334	1112
General land office.	5280-5292	1104
General land office established	5280	1104
Commissioner to have custody of books, etc.	5281	1104
Night watchman	5282	1104
Papers to be kept in land office, how	5283	1104
Examination of papers permitted, when	5284	1104
Clerk to examine papers after, etc.	5285	1104
Lithographic copies of maps to be printed, etc.	5286	1104
To be copyrighted, etc.	5287	1104
To be sold at fifty cents, etc.	5288	1104
Proceeds to be placed, where	5289	1105
No transfers to be withdrawn	5290	1105
Receipts for papers, etc.	5291	1105
Commissioner and sureties responsible, when.	5292	1105
General provisions	5388-5404	1123
No officer to be interested in public lands, etc.	5388	1123

	Article	Page
LANDS—PUBLIC—cont'd.		
Abstract to be corrected if necessary	5389	1123
Supplemental abstracts furnished, when	5390	1123
Abstract to be printed etc.	5391	1123
Printing of, how paid for	5392	1123
Certain locations validated	5393	1123
Failure to alienate no forfeiture, when	5394	1124
Must alienate within what time	5395	1124
Surplus segregated from public domain, when..	5386	1124
Belong to public free school fund.	5397	1124
Excess to be added.	5398	1125
Shall not effect.	5399	1125
Conflict	5400	1125
Even number surveys in conflict, etc.	5401	1125
Lands—how sold and proceeds invested	5402	1125
Actual settlers to have preference	5403	1125
Land purchase money refunded, when	5404	1125
Land districts	5293-5299	1106
What counties are separate land districts.	5293	1106
When county becomes a land district	5294	1106
When county to have a surveyor	5295	1106
"Land districts" defined.	5296	1106
County or district failing to organize as separate district	5297	1106
Unorganized counties attached to organized counties	5298	1106
Counties attached	5299	1106
Land reservations	5383-5387	1121
Locations validated	5383	1121
Lands sold for taxes to state, etc.	5384	1121
All unappropriated lands declared part of permanent school fund.	5385	1122
One-half of public domain added to permanent fund	5386	1122
The asylum lands	5387	1122
Patents	5361-5382	1118
Requisites of patent.	5361	1118
When patent to be issued	5362	1118
When to be referred to the attorney general.	5363	1118
Map of county to be filed.	5364	1118
Patents on surveys in two counties	5365	1118
Patents on more than two surveys, when	5366	1119
In case of conflict, how patent may issue.	5367	1119

	Article	Page
LANDS—PUBLIC—cont'd.		
Shall issue patent to assignee	5368	1119
Before issuing to assignee, transfers, etc., must be filed.	5369	1119
Patent to assignee without transfers, etc., when	5370	1119
Patents to deceased persons shall inure to whom	5371	1119
In what order patents shall issue	5372	1119
Patents on unrecommended certificates prohibited	5373	1119
Patent may be canceled, in whole or in part, where issued by mistake	5374	1120
When partial conflict, may be canceled.	5375	1120
Commissioners required to deliver patents, when.	5376	1120
Patents on homestead claims to issue when.	5377	1120
Refunding fee where patent cannot issue	5378	1120
When patent may be delivered to an agent.	5379	1121
Commissioners required to issue patents on certificates not reported by clerk, when	5380	1121
Penalty for failure to pay fees on patents.	5381	1121
State shall have lien to secure fees, etc.	5382	1121
Public domain	5278-5279	1103
Vacant public lands belong to free school fund.	5278	1103
All public lands retained at annexation	5279	1103
Sale and lease of public free school and asylum lands	5405-5459	1126
Sale and lease of public lands provided for.	5405	1126
Duties of commissioner of general land office	5406	1126
Classification and valuation	5407	1127
Advertisement of land.	5408	1127
Sales by commissioner, how made	5409	1128
Actual settlers application	5410	1128
Cash payments, how remitted	5411	1129
Remittances, how accounts kept	5412	1129
Awards, how made; notice and accounts of.	5413	1129
Remittances, disposition of and accounts of.	5414	1130
Purchaser's name to be given; permanent records to be kept.	5415	1130
Award and settlement.	5416	1131

	Article	Page
LANDS—PUBLIC—cont'd.		
To whom awarded when application rejected...	5417	1132
Eight section counties—complement	5418	1132
Settlement and residence.	5419	1132
Limitations as to purchases	5420	1133
Right of lessees.....	5421	1133
Sales without settlement.	5422	1133
Forfeiture of purchase by non-payment of interest, etc.	5423	1134
Permanent improvements to be erected by purchaser; forfeiture ...	5424	1135
Forfeiture for failure to settle on land, etc.....	5425	1135
Forfeiture of home tract works forfeiture of other land, when.....	5426	1135
Terms of re-purchase of forfeited agricultural lands	5427	1135
Purchases prior to July 30, 1895, right of under forfeitures	5428	1135
Timber lands defined; resolution for sale of....	5429	1136
Same	5430	1136
Timber and lands sold prior to August 11, 1907	5431	1137
Unsurveyed or scrap land.	5432	1137
Minerals, gayule and lechuguilla reserved	5433	1139
Sale of gayule and lechuguilla	5434	1139
Transfers	5435	1139
Lands patented, when....	5436	1140
Same	5437	1140
Payments and patents for town sites	5438	1140
Application of railroad to buy, to contain what...	5439	1140
Land, how sold and patent issued	5440	1141
Limitations as to purchases	5441	1141
Application for less than 320 acres to particularly describe	5442	1142
No actual settlement required	5443	1142
Regulations as to occupancy	5444	1143
Certificates of occupancy to be recorded, etc.....	5445	1143
Coupling occupancy under second purchase to cure defects of first.....	5446	1143
Vendees of original purchasers protected	5447	1143
Cemetery, church and school house sites	5448	1143
Accounts etc., with purchasers to be kept.....	5449	1144

	Article	Page
LANDS—PUBLIC—cont'd.		
Commissioner may withhold agricultural lands from lease, when	5450	1144
Commissioner to advertise lands for lease, how...	5451	1144
Leases, how and when made	5452	1144
Regulations as to leases in absolute lease districts	5453	1145
Expired leases, regulations as to	5454	1146
Where lessee secures permanent water	5455	1146
Lease, how forfeited; lien on improvements for rent	5456	1147
Lessees may remove improvements, when	5457	1147
One year to assert right to leased or sold land...	5458	1147
Same	5459	1147
Suits to recover public lands, rents and damages.	5460-5474	1148
State land agents, appointment and salary.....	5460	1148
Duties of such agents....	5461	1148
Agents to make monthly reports	5462	1148
May administer oaths; traveling expenses paid	5463	1148
Suits to be brought.....	5464	1148
Damages recoverable ...	5465	1148
Sums recovered, how appropriated	5466	1148
Suits to recover lands illegally occupied	5467	1149
The attorney general to bring suits for lands..	5468	1150
Suits for mineral and timber depredations	5469	1150
Venue	5470	1150
To report offenders to attorney general	5471	1150
Attorney general may compromise	5472	1150
Money to be turned over to school fund.....	5473	1150
Attorney's fees in such cases	5474	1150
Surveys and field-notes	5335-5360	1112
What authorizes a survey	5335	1112
Field-notes shall describe, what	5336	1112
Copy obtained on loss of original field-notes...	5337	1113
Surveys on navigable streams	5338	1113
Surveys shall be in a square	5339	1113
Notice to settlers.....	5340	1113
Trial as to disputed line before justice of the peace	5341	1113

	Article	Page		Article	Page
LANDS—PUBLIC—cont'd.			LAWFUL FENCE—		
Surveys stricken from map, when.....	5342	1114	What is.....	7227	1543
Liability for failing to survey	5343	1114	For horses, etc., what constitutes	7254	1548
Field-notes to be sent back for correction, when	5344	1114	See "Fences."		
The same corrected and returned, how.....	5345	1114	LAW LICENSES—		
Correction by certificate, when made.....	5346	1114	How obtained, etc.....	309-337	91
Commissioners to have surveys made, when...	5347	1114	To issue on diplomas of university of Texas...	2648	563
Bond, etc.....	5348	1114	LAWS—		
May have lands surveyed, when	5349	1115	Common law.....	5492-5504	1155
Mineral lands to be surveyed, points marked; surveyor appointed; his salary	5350	1115	Common law of England adopted	5492	1155
Land commissioner to cooperate with U. S. geological survey; regulations as to co-operation	5351	1115	Executors, etc., governed by, when.....	5493	1155
Persons owning private lands may co-operate..	5352	1116	Construction of laws	5502-5504	1156
General authority of commissioner to have surveys made; compensation of official; state surveys, etc.....	5353	1116	General rules of construction	5502	1156
Official surveyors, how commissioned; qualified	5354	1116	What shall not vitiate... ..	5503	1156
Field-notes to be returned; force and effect of.....	5355	1116	Meaning of certain words	5504	1157
Conflicts in alternate surveys, how adjusted....	5356	1117	Special laws.....	5494-5501	1155
Surveyor's duties in adjusting conflict.....	5357	1117	Notice of intention to apply for special law, etc.....	5494	1155
In case of conflict to issue in what cases.....	5358	1117	Where no newspaper is published, notice, how	5495	1155
In case of conflict number of surveys changed; correction made to protect purchasers.....	5359	1117	Notice in more than one county, when.....	5496	1155
Third persons protected..	5360	1118	Affecting persons, where published	5497	1155
LAND TITLES—			Where applicant is a non-resident	5498	1156
Publications of citation in suits involving.....	1877	418	Details need not be embraced in notice.....	5499	1156
LATERAL DITCHES—			Proof of publication in newspaper	5500	1156
For public road drainage	7011	1501	Proof of posting.....	5501	1156
LAVACA BAY—			Digests of, how distributed	4314	877
Pilots for.....	6315	1350	Number of copies to be printed	6348	1360
LAW BOOKS—			How furnished to contractor for public printing	6361	1362
Gross receipts tax on publishers of.....	7381	1584	What not repealed.....		1720
			Of Thirty-second legislature not affected by this revision		1720
			LAWYERS—		
			See "Attorneys at Law."		
			LEASES—		
			Of places of public amusement	23	8
			Of water of irrigation districts	5101	1071
			Of public free school and asylum lands.....	5405-5459	1126
			Of public lands.....	5450-5459	1144
			Of public lands, taxation of	7529	1631
			LECHUGUILLA—		
			On public lands, reservation of.....	5433	1139
			Sale of.....	5434	1139

	Article	Page
LEGAL HOLIDAYS—	4606-4607	940
LEGAL INTEREST—	4974	1041
LEGALIZING STATUTES—		
Not repealed, etc.....	1719	
LEGAL PROCESS—		
Sheriffs shall execute....	7130	1524
Failure of constable to execute	7147	1526
LEGAL WEIGHTS—		
Standard of.....	7836	1705
LEGISLATIVE ACTS—		
Pleading of, in district and county courts....	1823	407
Secretary of state to receive and bind.....	4306	876
LEGISLATIVE JOURNALS—		
Distribution of, by secretary of state.....	4313	877
LEGISLATIVE OFFICERS—		
Salaries of.....	7055-7056	1510
Salary of lieutenant governor	7055	1510
Senators and representatives, mileage and per diem	7056	1510
LEGISLATIVE PROCESS—		
Sheriffs shall execute....	7131	1524
LEGISLATORS—		
To be furnished with reports of departments..	3938	814
Mileage and per diem of	7056	1510
LEGISLATURE—	5505-5524	1158
Investigating committees—		
procedure	5517-5524	1159
May administer oaths, etc.	5517	1159
Sergeant-at-arms may serve process.....	5518	1160
Special committee to take certain testimony.....	5519	1160
Notice of taking special testimony to be given..	5520	1160
Authority of special committee to issue process, etc.	5521	1160
Judges and other officers may take testimony, when	5522	1161
Process, by whom served	5523	1161
Testimony to be written, etc.	5524	1162
Time of meeting.....	5505	1158
Organization	5506-5516	1158
Who may organize the legislature	5506	1158
Secretary of state to preside for purpose of organization	5507	1158

	Article	Page
LEGISLATURE—continued.		
Secretary of state to attend meeting and appoint clerk.....	5508	1158
The clerk to call counties in alphabetical order..	5509	1158
Clerk to administer oath	5510	1158
All counties to be called whether election returns are made or not.	5511	1159
Parties sworn in on any proper evidence.....	5512	1159
When quorum not present day of meeting.....	5513	1159
Election of speaker.....	5514	1159
Election of other necessary officers.....	5515	1159
In absence of secretary of state, attorney general to preside.....	5516	1159
May provide for election of district attorneys...	338	96
May alter, reform or amend charters of private corporations.....	1139	276
May create counties.....	1331	320
Returns of elections for members of.....	3040	647
Proceedings in contested election cases.....	3073	652
Impeachment of certain officials by.....	6017-6027	1290
Current printing of, done at Austin.....	6347	1360
Accounts for current printing of, how paid..	6366	1363
May examine books, etc., of railroads companies	6432	1380
LEPERS—		
Lepers to be isolated and removed to home for lepers	233	78
Warrant for seizure of leper etc., expense of conveying, how paid..	234	78
Confinement and treatment of lepers; proviso as to non-residents....	235	78
Superintendent appointed, how and when; qualifications; term, salary.	236	78
Nurses, assistants and servants may be employed by; salaries....	237	78
Superintendent shall live at home, and manage, etc.	238	78
Payments, how made....	239	78
LESSEES—		
Of public lands, rights of.	5421	1133
Of public lands, rights when permanent water secured	5455	1146
LETTERS—		
Testamentary, application for	3247-3266	687

	Article	Page
LETTERS—cont'd.		
Testamentary, granting		
of	3177-3296	692
Testamentary, issuance of		
.....	3325-3329	700
LEVEES—		
Levees, improvement districts and seawalls	5525-5594	1163
Improvement districts...	5530-5584	1164
Commissioners' courts to establish improvement districts	5530	1164
Improvement district may control levees, etc.	5531	1164
Petition to establish district and issue bonds..	5532	1165
Petition to establish district, how made.....	5533	1165
Duty of court on hearing.	5534	1165
Engineer appointed, compensation, assistants ..	5535	1166
Engineer to give bond...	5536	1166
Duty of engineer.....	5537	1166
Report of engineer.....	5538	1166
Hearing on report.....	5539	1166
Proceedings on approval of report.....	5540	1167
Election, form of ballot..	5541	1167
Notice of election; election, how conducted...	5542	1167
Oath of voters.....	5543	1168
Returns of election, result disclosed, form of certificate	5544	1168
Commissioners appointed, term of office, compensation	5545	1168
Oath of commissioners...	5546	1169
Bond of commissioners...	5547	1169
Commission to organize..	5548	1169
Appointment of engineer, compensation, duties ..	5549	1169
Map and profile of levees.	5550	1170
Bonds to be issued, limitation upon.....	5551	1170
Form and terms of improvement bonds.....	5552	1170
Bonds to be submitted to attorney general.....	5553	1171
To be registered by comptroller, not to be impeached	5554	1171
Book of bonds to be kept; sinking fund provided.	5555	1171
Bonds, how sold; proceeds, how applied....	5556	1172
County judge to give bond before selling bonds	5557	1172
Expenses after filing petition, how paid.....	5558	1172
Deposit to accompany petition	5559	1172
Tax to be levied.....	5560	1172
County assessor to assess property, removal for failure	5561	1173

	Article	Page
LEVEES—continued.		
County collector to give special bond.....	5562	1173
Delinquent taxes to be collected as other taxes..	5563	1173
County treasurer to keep account	5564	1174
Tax a lien on property assessed	5565	1174
Treasurer to give additional bond.....	5566	1174
Condemnation proceedings; acquisition of right of way.....	5567	1174
Commissioners and employes may enter lands, etc.	5568	1175
Commissioners to repair and improve levees...	5569	1175
Contracts let to lowest bidder	5570	1175
Bids, how submitted....	5571	1175
Contracts approved and filed	5572	1175
Contractor's bond	5573	1176
Construction under supervision of engineer and commissioners	5574	1176
Right of way across railroads, etc.....	5575	1176
Payment of warrants...	5576	1176
Partial payments.....	5577	1176
Annual report of commissioners	5578	1177
May employ attorneys...	5579	1177
May acquire property, sue and be sued.....	5580	1177
Lease or rent land.....	5581	1177
May let use of levees, etc.	5582	1177
May dispose of surplus material	5583	1177
Land to be sold, form of conveyance	5584	1177
Seawalls	5585-5594	1178
State levee and drainage board	5525-5529	1163
Board, who constitutes..	5525	1163
Commissioner, appointment, qualification; expenses allowed....	5526	1163
Duties of commissioner..	5527	1163
May co-operate with United States geological survey	5528	1163
To confer with representatives of drainage districts	5529	1164
Improvement districts may control	5531	1164
Improvement district commissioners to repair...	5569	1175
LEVEL PREMIUM—		
Policies of insurance, none to be issued.....	4952	1036
LEVIES—		
Under writ of attachment, how made.....	255	81

	Article	Page
LEVIIES—continued.		
Of executions.....	3735	770
On property of railroads.	6628	1413
LEVY OF TAXES—		
Levy of taxes and pay- ment of occupation taxes	7349-7368	1569
Board to calculate ad valorem tax	7349	1569
Tax assessor to make cer- tificate to comptroller.	7350	1569
Method of ascertaining tax rate.....	7351	1569
Comptroller to certify rate to tax assessor.....	7352	1570
Commissioners' court to calculate county rate, when	7353	1570
Poll tax	7354	1571
Occupation tax.....	7355	1571
Tax on dealers in cannon crackers	7356	1575
County ad valorem.....	7357	1575
Taxes payable in money..	7358	1576
Collector to keep books..	7359	1576
Tax collector to be fur- nished books.....	7360	1577
Tax to be paid before oc- cupation begins.....	7361	1577
Occupation tax receipts to be furnished collector.	7362	1577
Account of occupation tax receipts by collector...	7363	1577
License	7364	1577
Purchaser of unexpired license may pursue oc- cupation, when.....	7365	1578
Powers and duties of state revenue agent.....	7366	1578
State revenue agent to have access to books, etc.	7367	1579
Compensation	7368	1579
LIBEL—	5595-5598	1181
Definition	5595	1181
Mitigation of damages...	5596	1181
What matters deemed privileged	5597	1181
To be construed, how....	5598	1181
LIBRARIAN—		
For supreme court.....	1537	354
Of courts of civil appeals	1603	367
LIBRARIES—		
Incorporated cities may establish	853	211
Public, exempt from forced sale.....	3791	777
Public libraries exempted from taxation	7507	1625
LIBRARY—		
Library and historical Commission	5599-5609	1182

	Article	Page
LIBRARY—continued.		
Object and purposes of commission	5599	1182
Commission, how consti- tuted	5600	1182
Meetings; salary and du- ties of state librarian..	5601	1182
Powers and duties of the commission	5602	1182
Commission may receive gifts of money, etc....	5603	1183
State library, all books, pictures, etc., belong to	5604	1183
Books, pictures, papers, etc., transferred from department of insur- ance and banking.....	5605	1183
Duties of state librarian.	5606	1183
Books, pictures, papers, etc., transferred from other departments....	5607	1184
Assistant librarian for legislature; duties, etc.	5608	1184
Biennial report of commis- sion shall contain what	5609	1185
LICENSE—		
Of mutual burglary insur- ance companies.....	4927	1026
To applicants for practice of dentistry.....	2412	507
Of embalmers.....	4600	938
To keep ferries, who en- titled to.....	7021	1504
To catch or take fish, etc.	3986	824
Of fraternal beneficiary associations	4842	998
Of inspectors of plumbing	991	238
Of liquor dealers.....	7430	1600
Of malt dealers.....	7431	1600
To sell intoxicating liquor in local option territory	7469	1612
Applications for, to prac- tice law	312	91
County clerks may issue marriage	1752	396
Marriage licenses.....	4610	941
For sale of non-intoxicat- ing malt liquors.....	7477	1616
Non-resident hunters must obtain	4023	832
To practice medicine, ex- amination of applicants	5739	1216
Revocation of.....	5744	1218
Of pharmacists.....	6293	1344
To make and vend stand- ard weights, etc....	7842	1706
City councils may grant certain	870	214
To pursue certain occu- pations, issuance by counties	1415	335
To pursue certain occu- pations, transfer of...	7364	1577
LICENSE TAXES—		
Collection of in cities and towns	932	226

	Article	Page
LICENSE TAXES—cont'd.		
Refunding of, where local option adopted.....	5729	1213
LIENS—	5610-3671	1186
Chattel mortgages ..	5654-5662	1196
Reservation of title in chattel mortgages ...	5654	1196
All instruments intended to operate as liens to be recorded	5655	1196
Duty of clerk receiving..	5656	1197
Copy to be received in evidence	5657	1197
County clerk to keep book, etc.,	5658	1197
Satisfaction to be entered	5659	1197
Property not to be removed	5660	1198
Not to be recorded at length	5661	1198
Provision for destruction of	5662	1198
Judgment liens	5610-5620	1186
Clerk of county court shall keep judgment record	5610	1186
Clerks of courts shall make and deliver abstracts of judgments..	5611	1186
Abstract shall show, what	5612	1186
Justice of peace shall deliver abstracts	5613	1186
Clerks of county courts shall record and index abstracts	5614	1186
Index shall show, what..	5615	1187
Lien of judgments, when	5616	1187
Lien exists, how long ..	5617	1187
Satisfaction of, shown how	5618	1187
Satisfaction of to be entered on judgment record	5619	1187
Abstracts from United States courts may be recorded, etc.	5620	1187
Liens of accountants, bookkeepers, artisans, craftsmen, factory operatives, mill operatives, servants, mechanics, quarrymen, common laborers and farm hands	3644-3649	1194
Who entitled to liens... ..	5644	1194
Liens, how fixed	5645	1194
Wages, when paid	5646	1195
Right of assignment....	5647	1195
Lien ceases when	5648	1195
Laws not repealed	5649	1195
Liens of railroad laborers	5640-5643	1193
Railroad laborers to have lien	5640	1193
Lien, how foreclosed ...	5641	1193
Venue	5642	1193

	Article	Page
LIENS—continued.		
Lien ceases, when	5643	1193
Liens on domestic vessels	5650-5651	1195
Lien on vessels, when..	5650	1195
Law not affected	5651	1195
Lien on live stock ..	5652-5653	1196
Lien of keeper of stallion	5652	1196
Period of such lien	5653	1196
Mechanics, contractors, builders and material men	5621-5639	1188
In favor of whom	5621	1188
When to be filed	5622	1188
Written notice to owner	5623	1188
Form of fixing lien on unwritten contracts ..	5624	1189
Form when material is furnished to contractor or builder.....	5625	1189
Description of property..	5626	1190
What is sufficient diligence	5627	1190
Priority of lien	5628	1190
When sold separately purchaser may remove	5629	1190
Sale must be under judgment	5630	1190
On homesteads, how fixed	5631	1191
Notice to owner of property	5632	1191
Diligence, what is sufficient	5633	1191
Contractor to be furnished by owner with account	5634	1191
Original contractor to defend suit by sub-contractors, etc.	5635	1191
When indebtedness accrues	5636	1192
Liens upon equal footing	5637	1192
Speedy enforcement of..	5638	1192
Releases to be filed by mechanics, etc., when	5639	1193
Other liens	5663-5671	1199
In favor of hotels, etc....	5663	1199
Livery stable keepers... ..	5664	1199
Possessions may be retained, when	5665	1199
Where no price agreed upon	5666	1199
Sales may be made for charges	5667	1199
Non-resident owner....	5668	1199
Balance, how disposed of	5669	1199
Final disposition of balance	5670	1200
Other liens, etc., not affected	5671	1200
Attachment on property creates	267	82
Owners of buildings to have preference	5490	1153
On property of corporations for fines and penalties	1193-1197	287
For delinquent taxes ..	7684	1665
Of drainage corporations	1262	305

	Article	Page
LIENS—continued.		
For assessments for drainage purposes	2498	531
For assessments for drainage purposes	2434	513
Assessments against property for drainage of public roads, shall be..	7009	1501
Of estates of decedents, in hands of distributees..	3388	710
For taxes in improvement districts	5565	1174
Irrigation companies to have, for water rents	5009	1048
Judgments for foreclosure of	2000	437
Landlords to have preference	5475	1151
Suits against non-residents to extinguish...	2176	464
On improvements for rents on public lands..	5456	1147
Purchasers of lines of railways shall take subject to	6416	1376
Of state to secure fee for land patent	5382	1121
All taxes upon real property shall be	7528	1631
May not be acquired on school houses	2845	607
On assets of state banks, state to have first ...	487	127
On property for street improvement tax	1010	242
For taxes, superiority of	7627	1655
LIUTENANT GOVERNOR.		
Returns of election for..	3038	647
Contests of election for..	3076	653
Salary of	7055	1510
LIFE INSURANCE—		
Life, health and accident insurance companies ..		
.....	4724-4774	961
Terms defined	4724	961
Who may incorporate ..	4725	962
Charter to be approved by attorney general	4726	962
Amendment of charter..	4727	963
Examination of commission before commencing business	4728	963
Shall file annual statement	4729	963
Renewal certificate	4730	964
Copy of certificate for agents	4731	964
To sue and be sued—commission only can enjoin	4732	964
Laws relating to corporations shall govern ...	4733	964
May invest in what securities	4734	964
May hold real estate for what purposes and how long	4735	965

	Article	Page
LIFE INSURANCE—cont'd.		
Directors not to do certain things	4736	965
May reinsure	4737	965
Dividends to be paid only from profits	4738	965
Salaries	4739	966
Disbursements to be made only on voucher	4740	966
Policies shall contain what	4741	966
Policies shall not contain what	4742	967
Policies of foreign companies may contain ..	4743	968
Venue of suits on policies	4744	968
Service of process	4745	968
Losses shall be paid promptly	4746	968
Certificate shall be null and void, when	4747	968
Business of life insurance companies limited to certain kinds of business	4748	969
Deposit of securities...	4749	969
Same	4750	969
Policies shall have indorsed on face, what..	4751	969
Fees for making deposits	4752	971
Securities may include capital stock; securities to be increased	4753	971
Sub-standard, or extra-hazardous policies ...	4754	471
No commission to be paid to officers	4755	972
Co-operative companies..	4756	972
Funds to be deposited in name of company	4757	972
Impairment of capital stock	4758	972
Form of policy to be filed	4759	972
Policy to be approved by commissioner	4760	972
Must have certificate of authority	4761	973
Companies with \$25,000,000 capital stock	4762	973
Unlawful dividends	4763	973
Taxation of domestic insurance companies ...	4764	973
Statement of foreign companies	4765	973
To file articles of incorporation	4766	973
Paid in capital stock....	4767	974
Deposits required	4768	974
Alien companies to deposit	4769	974
Deposit liable for judgment	4770	975
When alien company need not deposit	4771	975
Assets, how invested ...	4772	975
Shall file power of attorney	4773	975

	Article	Page
LIFE INSURANCE—cont'd.		
Duty of commissioner in accepting service	4774	976
Assessment or natural premium companies	4791-4793	982
Foreign assessment companies	4791	982
Fees	4792	982
Shall not apply to mutual benefit associations	4793	982
Co-operative life insurance companies	4809-4826	987
Articles of incorporation, commissioner shall examine	4809	987
Officers, directors and policy holders, their powers and duties	4810	988
Investment and disposition of funds; not to hold real estate, except	4811	988
Shall not borrow money or create debts, except	4812	988
Policies to be valued by commissioner	4813	988
Net premium to be computed	4814	989
May set aside reserve	4815	989
Shall make apportionment of surplus	4816	989
Transact business only in Texas and form of policy	4817	990
Medical examination	4818	990
Premiums, where to be paid and notice of	4819	990
Loan value; non-forfeitable after three years	4820	990
Annual certificates and statements	4821	991
Agents shall have certificates	4822	991
Annual examination and statement	4823	992
Additional examination; may suspend certificates, receiver	4824	992
Taxes, how calculated; authorized to deposit securities	4825	993
General laws regulating deposits applicable to	4826	993
Fraternal beneficiary associations	4827-4861	993
Employers' liability insurance companies	4941-4942	1032
General provisions relating to	4943-4972	1034
To invest in Texas securities	4775-4790	976
LIGHTNING—		
Lightning insurance companies	4905-4921	1020
General provisions	4943-4972	1034

	Article	Page
LIGHTNING ROD AGENTS—		
Occupation tax on	7355	1573
LIGHT PLANTS—		
City council may provide, etc.	867	214
LIMITATIONS—	5672-5714	1201
General provisions	5701-5714	1206
Suspension of, during late war	5701	1206
Time of temporary absence not counted	5702	1206
Death of owner stops limitation, until	5703	1206
Death of person, etc., against whom, etc. . . .	5704	1206
Acknowledgement must be in writing	5705	1206
Limitation must be pleaded, etc.	5706	1206
Presumption of death, etc., when, etc.	5707	1206
No limitation against infants	5708	1207
Action against immigrant barred, when, etc. . . .	5709	1207
Debts incurred prior to removal of person to this state	5710	1207
One disability not tacked to another	5711	1207
Claims barred under pre-existing laws, etc. . . .	5712	1207
No agreement to shorten period of limitation valid	5713	1207
Limitation of notice of claim for damages	5714	1207
Limitation of actions for lands	5672-5684	1201
Three years' possession, when a bar	5672	1201
"Title" and "color of title" defined	5673	1201
Five years' possession when a bar	5674	1201
Ten years' possession, when a bar	5675	1201
Ten years' possession, construed to embrace, what	5676	1201
Lands surrounded by other lands, peaceable possession of defined	5677	1202
Same subject	5678	1202
Possession gives full title, when	5679	1202
"Peaceable possession" defined	5680	1202
"Adverse possession" defined	5681	1202
Possession by different persons	5682	1202
Right of state not barred	5683	1202
Does not run against infants, etc.	5684	1202

	Article	Page
LIMITATIONS—continued.		
Limitation of personal actions	5685-5700	1203
Actions to be commenced in one year	5685	1203
Survival of causes of action	5686	1203
Actions to be commenced in two years	5687	1203
What actions barred in four years	5688	1204
On bond of executor, etc.	5689	1204
All other actions barred, when	5690	1204
All foreign judgments barred	5691	1204
Actions for specific performance	5692	1204
Time in which power of sale may be exercised	5693	1204
Rights under vendor's lien barred, when ...	5694	1205
Contracts of extension, how made and construed	5695	1205
Judgments shall be revived, when	5696	1205
On motion for not returning execution	5697	1205
On action of forcible entry, etc.	5698	1205
On action to contest a will in case of forgery, etc., action accrues, when	5700	1205
City indebtedness barred by	892	217
Not to run against claims against defunct city or town	1083	258
As to claims against estates of wards, interrupted how	4228	864
As to purchase of public lands	5420	1133
As to purchase of public lands by railroad companies	5441	1141
Upon issuance of bonds by improvement districts	5551	1170
Not available to delinquent taxpayers	7662	1661
LIMITED PARTNERSHIPS—		
See "Partnerships."		
LIQUIDATION—		
Of affairs of state banks	445-517	120
Of compromised bonds by city council	896	217
LIQUOR DEALERS—		
Tax on liquor dealers	7427-7466	1599
Tax to be collected	7427	1599
"Retail liquor dealer" defined	7428	1599

	Article	Page
LIQUOR DEALERS—cont'd.		
"Retail malt dealer" defined	7429	1600
Liquor dealer's license..	7430	1600
Malt dealer's license ...	7431	1600
Right of wine growers to sell wine	7432	1600
Transfer of license, etc...	7433	1600
Forfeiture of license ...	7434	1600
Application of license ..	7435	1601
Comptroller may revoke license	7436	1603
Same	7437	1603
Same	7438	1603
Same	7439	1604
Same	7440	1604
Same	7441	1604
Same	7442	1604
Same	7443	1605
Same	7444	1605
Number of licenses limited, etc.	7445	1605
Petition for license ...	7446	1606
License not to be granted for business within 300 feet of a church ...	7447	1607
Judge shall head petition, etc.	7448	1607
Clerk to furnish certified copy of judgment ...	7449	1607
Clerk to issue license, when	7450	1607
Regulating hours of closing, etc.....	7451	1607
Bond	7452	1608
Unearned portion returned in case of death	7453	1610
Clerk to make statement	7454	1610
Duty of clerk to certify forfeitures, etc.....	7455	1610
Act of servant deemed to be the act of master...	7456	1610
No license issued to person whose license has been revoked until five years	7457	1611
Licenses not to be issued, when	7458	1611
Law not to conflict with local option law	7459	1611
License to be posted ...	7460	1611
List of licenses to be delivered to grand jury..	7461	1611
District judge to charge law to grand jury ...	7462	1611
Fees of officers	7463	1611
In case of forfeiture may dispose of stock in bulk	7464	1611
"Intoxicating liquor" defined	7465	1612
Law to be valid, though part is held to be invalid	7466	1612
Gross receipts tax on certain	7379	1583
See "Taxation."		

	Article	Page		Article	Page
LIS PENDENS RECORD—	6838	1466	LIVE STOCK—continued.		
LIVERY STABLES—			Inspector to keep a record, etc.	7183	1535
Liens in favor of	5664	1199	Exempted counties	7184	1535
LIVE STOCK—			Carriers shall feed and water, unless, etc. ...	714	182
Live stock sanitary commission	7312-7324	1559	Carriers may sell, when..	728	186
Commission created; oath, bond, term	7312	1559	City council may regulate driving of through city	859	212
Qualifications of commissioners	7313	1559	Estray of	7185-7208	1536
Duties and powers of commission	7314	1559	May be impounded for trespass, when	3929	812
When governor shall proclaim quarantine	7315	1560	Inspection of	7256-7311	1549
Commission to purchase supplies	7316	1560	Killed by railroads, liability of company ...	6603	1406
Railways to keep clean stock cars	7317	1560	Levy on, under execution	3741	770
Infection to be reported	7318	1560	Lien on progeny of	5652-5653	1196
Compensation of commissioners	7319	1560	Marks and brands of	7151-7160	1528
Sheriffs and constables subject to commission	7320	1561	Mode of preventing, hogs, etc., from running at large, etc.....	7209-7234	1540
Appropriation for purposes of this chapter..	7321	1561	Mode of preventing horses, etc., from running at large	7235-7255	1545
Quarantine line	7322	1561	Protection of	7161-7169	1531
Concurrence of two commissioners necessary ..	7323	1561	How rendered for taxation	7512	1626
Law cumulative	7324	1561	See "Stock Laws."		
Protection of	7161-7169	1531	LIVE STOCK INSPECTORS—		
Inspection for glanders, etc.	7161	1531	Fees of	3877	802
Report to county judge, duty of inspector	7162	1531	General provisions ..	3880-3926	804
Condemned animals to be killed	7163	1532	LOANS—		
Payment for animals killed, fee, etc.	7164	1532	Applications to savings banks for, how made, etc.	405	111
Law cumulative	7165	1532	By state banks limited ..	539	142
Compensation for killing wolves, etc.	7166	1532	Of chattels, fraudulent, when	3969	819
Proof, how made, etc....	7167	1532	LOCAL LAWS—		
Same	7168	1532	Certain, not repealed ...	1720	
Exemptions	7169	1533	LOCAL OPTION—	5715-5730	1209
Of the sale, slaughter and shipment of animals..			Order for election	5715	1209
.....	7170-7177	1533	What not prohibited ...	5716	1209
Bill of sale to be taken...	7170	1533	Where voting to take place	5717	1210
Possession, prima facie illegal, without	7171	1533	Notice	5718	1210
Stock animals sold by marks, etc.	7172	1533	Form of ballot, etc.	5719	1210
Butchers to report, etc....	7173	1534	How election to be held.	5720	1211
Butchers to register with county clerk	7174	1534	Session for counting votes, when	5721	1211
Bill of sale, etc., to be recorded, etc.	7175	1534	Result to be declared ..	5722	1211
Owners to file sworn lists	7176	1534	Order when against prohibition	5723	1211
Register of cattle	7177	1534	Second election, when...	5724	1211
County clerks to make a copy	7178	1534	Order of second election	5725	1212
Butchers' bond, etc.	7179	1535	Second election in subdivisions	5726	1212
To keep a record, etc. ...	7180	1535	Penalty, etc.	5727	1212
Shall be open for inspection	7181	1535	Election, how contested..	5728	1212
May be sued upon bond, when	7182	1535	Refunding license tax ...	5729	1213
			District judge to give in charge to grand jury, what	5730	1213

	Article	Page
LOCAL OPTION LAW—		
Not affected by retail liquor dealers	7459	1611
LOCAL OPTION TERRITORY—		
Tax on sale of intoxicating liquors in local option territory	7467-7475	1612
Tax for selling intoxicating liquors on prescription in local option territory	7467	1612
Counties may levy	7468	1612
Prerequisites to issue of license to sell	7469	1612
License to issue, when ..	7470	1613
License to issue for one year and shall designate place of sale, etc.	7471	1613
Licenses to be posted ..	7472	1614
County clerk to report application for license to state revenue agent ..	7473	1614
Producers of domestic wines to be exempt ..	7474	1614
Dealer must give bond before license will issue	7475	1614
Sale of intoxicating liquors in, may be enjoined	4678	953
Tax on persons soliciting orders or operating cold storage for intoxicating or non-intoxicating liquors in	7479-7482	1617
Tax on handling intoxicating liquors c. o. d. in ..	7483-7486	1618
LODGE SYSTEM—		
Of fraternal beneficiary associations ..	4828	993
LOG BRAND—	7727	1680
LOST RECORDS—	6778-6785	1455
Lost records may be supplied by proof, etc.	6778	1455
Proceedings to establish lost records, etc.	6779	1455
Judgment, etc.	6780	1455
Proceedings in the county court	6781	1455
Effect of judgment, etc.	6782	1455
Certified copies may be recorded	6783	1456
Original deeds, etc., recorded again when ...	6784	1456
Judgment shall have force of originals	6785	1456
Substitution of lost records and papers in district courts	2157-2166	460
Lost records and papers supplied, on motion ...	2157	460
Motion, requisites of.	2158	461
If substitutes agreed to. .	2159	461

	Article	Page
LOST RECORDS—cont'd.		
If not agreed to, court may hear proof, etc.	2160	461
Adverse party may supply Parties may agree on brief, statement, etc.	2161	461
Substituted copies constitute record	2162	461
Deposit of money, etc., in court	2164-2166	461
Custody of money and other articles deposited	2164	461
Officer shall deliver funds, etc., to his successor	2165	461
Not to exempt officer and his sureties from liabilities, etc.	2166	461
LUNACY CASES—		
Judicial proceedings in 150-165	64	
LUNATIC ASYLUMS—	107-165	58
Lunatic asylum recognized and continued ..	107	58
Board of managers provided for	108	58
Board of managers, how constituted and appointed	109	58
Compensation of members of board	110	59
Organization of the boards	111	59
Meetings and records of the board	112	59
Powers of the board ...	113	59
Same subject	114	59
Monthly inspections ...	115	59
Biennial reports of the board	116	60
Board to dispose of water	117	60
Same	118	60
Their appointment, term, etc., qualifications ...	119	60
Oath and bond	120	60
Bond, where filed, etc.	121	60
Removal of superintendent	122	60
Powers and duties of superintendent	123	60
Same subject	124	61
Accounts and reports of superintendent	125	61
Same subject	126	61
Annual inventory	127	61
Officer not to deal with asylum	128	61
Asylum money to remain in the treasury	129	61
Board may regulate expenditures	130	61
Funds from outside sources, how disposed of	131	61
Requisites of the order ..	132	62
Duties of the treasurer. . .	133	62

	Article	Page
LUNATIC ASYLUMS—cont'd.		
Who may be admitted ..	134	62
Procedure for admission of private patients....	135	62
County judge must certify, etc.	136	62
Indigent patients at state expense	137	62
Public patients, also, but state may be reimbursed	138	62
Private patients at their own expense	139	62
Preference in admission..	140	63
Idiots, etc., not to be admitted	141	63
Discharge of patients ...	142	63
Same subject	143	63
Insane discharged convict, proceedings as to	144	63
County to pay expenses of conveying public patients to asylum.....	145	63
County to be reimbursed, when	146	63
Transportation home by the state	147	63
Escapes from the asylum	148	64
Fees for conveying patient back	149	64
Apprehension of lunatics	150	64
The writ and its requisites and execution	151	64
Jury to be summoned....	152	64
Cause to be docketed, etc.	153	64
Jury impaneled and sworn	154	64
Special issue to be submitted	155	64
Verdict	156	65
Judgment	157	65
Reimbursement to the state from lunatics not indigent	158	65
Limitation as to amount in procedure	159	65
County attorney to represent state	160	65

	Article	Page
LUNATIC ASYLUMS—cont'd.		
Warrant to convey lunatic to asylum	161	65
Relatives or friend may give bond, etc.	162	66
Record to be made up and forwarded	163	66
Suitable clothes to be provided	164	66
Fees of officer in lunacy cases	165	66
Pasteur hospital.....	166-170	67
Deaf, dumb and blind and other asylums....	171-239	68
Blind asylum	188-189	71
Deaf and dumb asylum..	190-195	71
Orphan asylum	196-204	71
Confederate home	205-208	72
Asylum for colored youths	209-210	74
Epileptic colony	211-232	74
Home for lepers	233-239	78
Admission of patients; requirements as to	166	67
Indigent and non-indigent patients, expenses, how met	167	67
Laws, etc., same as those of institution with which connected	168	67
Fees of non-indigent patients, used how	169	67
Additional compensation to assistant physician..	170	67
Other asylums	107-239	58
Transfer of epileptics from	214	75
LUNATICS—		
Guardian ad litem for in trials	1942	430
Guardians for	4043-4301	836
Condemnation of property of for United States Government	5261	1100
Limitations do not run against	5684	1202

M

MACADAM ROADS—		
Macadam and plank road corporations	1268-1278	306
May enter upon land, make survey, etc.	1268	306
May condemn land, etc..	1269	306
If road is out of repair, charter may be forfeited	1270	306
Shall not collect tolls when road is out of repair	1271	306

MACADAM ROADS—cont'd.		
Width of road and how to be constructed	1272	306
No toll gates permitted in towns, etc.	1273	306
Tolls to be regulated by 'commissioners' court..	1274	306
Persons exempt from tolls	1275	307
Mile posts and rates of toll	1276	307
Any person may complain of non-repairs;		

Article Page		Article Page	
MACADAM ROADS—cont'd.		MANUAL TRAINING—cont'd.	
proceedings in such case	1277 307	Taught in north Texas normal	2705 572
Travelers practicing fraud may be sued, etc.	1278 307	Taught in southwest Texas normal	2710 573
Corporations, private 1117-1321	266	Taught in west Texas normal	2717 574
MACHINERY—		MANUFACTURERS—	
For working roads, obtained how	6963 1488	Of concentrated feeding stuffs, duties	5899 1260
MAIDEN NAME—		Property of, how rendered for taxation	7509 1626
Restored when	5954 1274	MAPS—	
MAILS—		Of counties, to be printed	5286 1104
Railroads shall carry, etc.	6588 1404	Of counties, surveys to be plotted upon, etc.	5306 1108
MALPRACTICE—		Of new counties, how secured	5318 1110
Of medicine, cause for revoking license	5747 1218	Of levees in improvement districts	5550 1169
MALT DEALERS—		Of railways shall be recorded	6607 1407
License on	7431 1600	MARINE INSURANCE COMPANIES—	
MALT LIQUOR—		See "Fire and Marine Insurance Companies."	
Tax on dealers in non-intoxicating	7476-7478 1616	MARK—	
MANDAMUS—	5731-5732 1214	Proof of when used as signature	6811 1461
No mandamus on ex parte hearing	5731 1214	MARKET HOUSES—	
Mandamus, etc., not to issue against officer of executive department, except by supreme court	6732 1214	Exempt from taxation ...	7507 1625
Supreme court may issue writ of, when	1528 352	MARKET PLACES—	
Courts of civil appeals may issue writs of, when	1592 366	City council may establish	866 214
Courts of civil appeals may mandamus district courts	1595 366	Towns and villages may regulate	1049 251
Suits for against heads of departments brought where	1830 410	MARKS AND BRANDS—	
Of officers of primary elections	3143 666	..... 7151-7160 1528	
Railroad companies subject to writ of, when..	6617 1410	Owners of stock to have mark and brand.....	7151 1528
MANDATE—		Each county to have brand	7152 1528
Of supreme court, to issue, when	1555 357	Owner may place brand on his stock.....	7153 1528
Of courts of civil appeals, issued when	1633 373	May counterbrand, when.	7154 1530
Of courts of civil appeals, issued when	1647 376	Duty of secretary of state	7155 1530
Proceedings on return of	2117 453	Brands of minors.....	7156 1530
When to issue in removal of officers	6057 1294	When stock to be branded	7157 1530
MANUAL TRAINING—		Disputes, how settled...	7158 1530
In educational corporations	1225-1230 295	Marks and brands to be recorded	7159 1530
To be taught in Sam Houston normal	2695 570	Unrecorded brands no evidence	7160 1530
		Revised list of.....	7290 1554
		To be recorded in county where cattle range....	7292 1555
		Only one mark and brand to be used.....	7293 1555
		MARRIAGE—	
		Celebration of marriage	4608-4616 941

	Article	Page
MARRIAGE—continued.		
Who are authorized to celebrate rites	4608	941
Who are not permitted to marry	4609	941
License	4610	941
Consent of parent or guardian	4611	941
Record and return of license	4612	941
Certain intermarriages prohibited	4613	941
Marriage by bond, etc., validated	4614	941
Issues legitimated	4615	941
Cohabitation of certain persons considered as marriage	4616	942
Marriage contracts. 4617-4620	942	
What stipulation may be made	4617	942
How authenticated	4618	942
Can not be altered after marriage	4619	942
Reservation by wife to be recorded	4620	942
May be annulled, when	4630	944
MARRIAGE CONTRACTS—		
Covenants and agreements in	6829	1465
To be recorded	6843	1468
MARRIAGE LICENSES—		
County clerks to issue	1752	396
MARRIED WOMEN—		
Registration of separate property of	6843-6848	1468
Marriage contract to be recorded	6843	1468
Registration of property of	6844	1468
May present and prove schedule for record	6845	1468
Property acquired after marriage	6846	1468
In what county registration must be made	6847	1468
Conclusive as to subsequent creditors, etc.	6848	1468
Rights of married women	4621-4629	943
Separate property	4621	943
Community property	4622	942
Presumption as to community	4623	943
Wife may contract debts, when	4624	943
Judgments and execution in such case	4625	943
Husband failing to support wife	4626	943
Community property liable for debts	4627	943
Female under twenty-one emancipated, when	4628	943
Rights of persons married elsewhere	4629	944

	Article	Page
MARRIED WOMEN—cont'd.		
Conveyances of separate lands of	1114	264
May be directors and officers of cemetery corporations	1288	310
May be sued where	1830	409
Bond of, as administratrix	3314	698
May execute bond, when guardian	4105	846
Limitation begins to run when	5684	1202
Limitation shall not run against, except	5708	1207
Acknowledgment of, how taken	6802	1459
Form of acknowledgment	6805	1460
Registration of separate property of	6843-6848	1468
MARSHAL—		
Duties and powers	809	203
MASTERS IN CHANCERY—		
Master in chancery, qualifications, duties and appointment	2156	460
MATAGORDA BAY—		
Improving oyster beds	4019	831
Pilots for	6315	1350
MATERIAL MEN—		
Lien of	5621-5639	1188
MATRONS—		
Of orphan asylums, salaries, etc.	203	72
MAYORS—		
Election and term of office of	786	198
Duties of	804	202
Shall preside over city council	813	206
Ex officio recorder of corporation courts	905	221
Writs of, may be executed how	918	223
Not to accept franks, etc.	1019	245
Election of in towns and villages	1043	251
In elections, to perform same duties as county judges	2990	639
MEASURES—		
Weights and measures	7336-7846	1705
Legal standard weights and measures	7836	1705
Weights of grain, etc.	7837	1705
Governor to procure standards	7838	1705
And furnish to counties	7839	1705
Commissioner of agriculture, etc., may sell, etc.	7840	1705
Counties to pay for same	7841	1705
License to make and vend	7842	1706
Testing and stamping	7843	1706

	Article	Page		Article	Page
MEASURES—continued.			MEDICINE, PRACTICE OF—		
False weights and measures	7844	1706	continued.		
Private informer may recover, when.....	7845	1706	Regulations for moving bodies; records to be kept	5759	1222
Forfeitures merely cumulative	7846	1706	Schools, colleges, etc., may dissect bodies.....	5760	1223
MECHANICS LIEN—			Parties receiving bodies to give bond.....	5761	1223
Mechanics, contractors, builders and material men	5621-5639	1188	Expenses, by whom paid.	5762	1223
In favor of whom.....	5621	1188	Compensation of board..	5763	1223
When to be filed.....	5622	1188	Nurses	5748-5755	1219
Written notice to owner..	5623	1188	Board of nurse examiners	5748	1219
Form of fixing lien on unwritten contracts.....	5624	1189	By whom appointed.....	5749	1219
Form when material is furnished to contractor or builder.....	5625	1189	Regulations governing board	5750	1219
Description of property..	5626	1190	Board to meet, examine applicants, etc.....	5751	1219
What is sufficient diligence	5627	1190	Persons entitled to registration without examination	5752	1220
Priority of lien.....	5628	1190	Board to have power to revoke certificates, etc.	5753	1220
When sold separately purchaser may remove...	5629	1190	Disposition of fees, etc...	5754	1220
Sale must be under judgment	5630	1190	Law does not apply, when	5755	1221
On homesteads, how fixed	5631	1191	Physicians and surgeons		
Notice to owner of property	5632	1191	.....	5733-5747	1215
Diligence, what is sufficient	5633	1191	Medical board established	5733	1215
Contractor to be furnished by owner with account.	5634	1191	Qualifications of members	5734	1215
Original contractor to defend suit by sub-contractors, etc.....	5635	1191	Board shall keep register	5735	1215
When indebtedness accrues	5636	1192	Physicians required to keep register.....	5736	1215
Liens upon equal footing.	5637	1192	District clerks to keep register	5737	1216
Speedy enforcement of...	5638	1192	Reciprocity allowed.....	5738	1216
Release to be filed by mechanics, etc., when.	5639	1193	Applicants for license to pass examination, etc..	5739	1216
Other lien in favor of...	5665	1199	Disposition of fees.....	5740	1217
MEDICAL ATTENTION—			Examination, how conducted, and to include what	5741	1217
For state prisoners.....	6225	1328	Does not apply to whom..	5742	1217
MEDICAL COLLEGES—			Board may refuse to admit certain persons.....	5743	1217
May dissect dead bodies..	5760	1223	Revocation of license....	5744	1218
MEDICAL EXAMINATIONS—			Who regarded as practicing medicine.....	5745	1218
By insurance companies, see "Life Insurance Companies."			Definitions	5746	1218
MEDICINE, PRACTICE OF—			Malpractice, cause for revoking license.....	5747	1218
Anatomical board... 5756-5763	5756-5763	1221	MEDICINE SHOW—		
Board, how constituted; duties of.....	5756	1221	Occupation tax on.....	7355	1575
Regulations for delivering dead bodies.....	5757	1221	MENAGERIES—		
Distribution of bodies to various institutions...	5758	1222	Occupation tax on.....	7355	1572
			MERCHANDISE—		
			Sales of, void when.....	3971	820
			MERGER—		
			Of less estate into greater estate	1105	263
			MERIDIAN—		
			Surveyors to establish true meridian	5330	1111

	Article	Page
MESSAGES—		
Of telegraph and telephone companies..	1231-1241	296
MEXICAN WAR—		
Veterans of, how pensioned	6257-6266	1334
MILEAGE—		
Members of legislature..	7056	1510
MILE POSTS—		
Shall be set up on public roads	6937	1483
MILITIA—		
	5764-5893	1224
General provisions...	5764-5767	1224
Active and reserve militia	5764	1224
Who are subject to military duty.....	5765	1224
Exemptions	5766	1224
Governor to be commander-in-chief	5767	1225
National guard	5778-5893	1228
National guard to consist of existing military organization	5778	1229
Governor to prescribe regulations for government of national guard.....	5779	1229
Governor to make and publish regulations....	5780	1229
Governor's staff	5781	1229
Military organizations deemed to be bodies corporate, etc.....	5782	1230
Discipline to conform to that of the United State army	5783	1230
Prohibiting organization of militia companies, except, etc.....	5784	1230
Adjutant general's department	5785	1230
Rank of adjutant general	5786	1230
Term of office and salary of adjutant general...	5787	1230
Oath and bond of adjutant general	5788	1230
Adjutant general to have seal	5789	1230
Adjutant general to control the military department of the state.....	5790	1231
Duties of adjutant general	5791	1231
Same	5792	1231
Same	5793	1231
Annual report to be printed	5794	1232
Adjutant general to hire clerks and laborers....	5795	1232
Assistant adjutant general	5796	1232
Assistant adjutant general to be appointed by the governor	5797	1232
Assistant adjutant general authorized to administer oaths to officers of militia, etc.....	5798	1232

	Article	Page
MILITIA—continued.		
Adjutant general to issue certificate of organization, etc.....	5799	1232
Adjutant general to purchase certain military stores, etc.....	5800	1233
Assistant quartermaster general	5801	1233
Commissioned Officers.		
Officers to be commissioned by the governor....	5802	1234
Commissions	5803	1234
Qualifications of commissioned officers.....	5804	1234
Officers to pass examinations	5805	1235
Board of examiners to be appointed by the governor	5806	1235
Officers to take oath within ten days after appointment	5807	1235
Governor may confer brevet commissions...	5808	1236
Supernumerary list....	5809	1236
Retirement	5810	1236
Governor may order board to examine character, capacity, etc., of officers	5811	1237
Governor may require bond from officers....	5812	1237
Bond admissible as evidence	5813	1238
Commanding officers may make certain deductions	5814	1238
Company commanders custodians of company funds	5815	1238
In case of absence or disability, duty assigned to officer shall descend to next ranking officer..	5816	1238
Officer can excuse from duty, when	5817	1238
Commissioned officers to furnish arms, equipment, etc.....	5818	1238
Certain applicants for commissions exempt from examination....	5819	1238
Who may voluntarily enlist in militia.....	5820	1238
Enlistment for term of three years	5821	1239
Person enlisting shall take oath	5822	1239
Disqualifications for enlistment, how removed.	5823	1239
Non-commissioned officers, how appointed	5824	1239
Discharged and re-enlisted men entitled to credit..	5825	1239
Governor may appoint second lieutenants by brevet	5826	1239
Physical examination....	5827	1240
Assignment of pay invalid	5828	1240

	Article	Page
MILITIA—continued.		
Veterans of Spanish-American war entitled to credit for time served in the service of the United States	5829	1240
No fee allowed for administering oaths to soldiers	5830	1240
Governor may call out militia, when	5831	1240
Same	5832	1240
Duty of officer on receipt of order	5833	1240
Commanding officer's duty in case of riot	5834	1240
Governor may order active militia to assist civil authorities, etc.	5835	1241
Commanding officer may order closing of saloons, etc., when	5836	1241
Organizations shall drill, etc.	5837	1241
Shall participate in practice, marches, etc.	5838	1241
Pay, etc., of militia when in active service	5839	1241
Same	5840	1241
Members of militia exempt from certain taxes	5841	1242
Same	5842	1242
Same	5843	1242
Same	5844	1242
Same	5845	1243
State to provide for wounded or disabled, etc., when	5846	1243
State to pay for transportation, etc.	5847	1243
Members of militia exempt from arrest, when	5848	1243
Enlisted men to return property	5849	1243
Officers and soldiers liable for damage to equipment, etc.	5850	1243
Government property not to be put to private use	5851	1243
Arms, equipment, etc., to be provided by state	5852	1244
Sheriff may seize arms, etc., when	5853	1244
Sheriff in executing such warrant may call on militia	5854	1244
Sheriff shall collect arms, etc., when	5855	1244
Arms, equipment, etc., exempt from forced sale	5856	1244
Governor to draw arms, equipment, etc., from United States government	5857	1244
Arms, etc., to be stored, where	5858	1244
Uniform same as that prescribed for United States army	5859	1244

	Article	Page
MILITIA—continued.		
Rules and articles for the government of the military forces	5860	1245
Evidence in courts martial	5861	1252
Privileges of accused	5862	1253
Counsel for defendant to be detailed, when	5863	1253
Judge advocate to appoint reporter	5864	1254
Judge advocate may issue process, etc.	5865	1254
Process generally	5866	1254
Penalty for disobeying, etc.	5867	1254
Witnesses entitled to transportation	5868	1254
Compensation of	5869	1254
Same	5870	1255
Attachment may issue for witnesses	5871	1255
No fees allowed, except, etc.	5872	1255
Governor may order arrest, etc.	5873	1255
Suit on bonds, etc.	5874	1255
Code of Criminal Procedure to govern in giving bail, etc.	5875	1255
Warrant of arrest to extend to every part of the state, etc.	5876	1255
Defendant liable for costs	5877	1256
Same	5878	1256
Procedure in cases of conviction of felony	5879	1256
Procedure in cases of misdemeanor with jail sentence	5880	1256
Conviction in cases of fine and cost	5881	1257
Fines to be paid to whom in cases of general court martial	5882	1257
Fines to be paid in cases of summary courts	5883	1257
Sheriff to execute lawful process from courts martial	5884	1257
Jurisdiction presumed	5885	1257
Act by or under military authority exempt from punishment	5886	1257
Change in venue in certain cases	5887	1257
Commissioners' court and city council may make appropriations for militia	5888	1258
Militia entitled to right of way on streets	5889	1258
Unlawful disposition of property, illegal wearing of uniform, etc.	5890	1258
Arrest of trespassers; may prohibit sale of liquors, etc.	5891	1258
Insurrection may be declared, when	5892	1258

	Article	Page		Article	Page
MILITIA—continued.					
Troops to enter state only by permission.....	5893	1258			
Reserve Militia.....	5768-5777	1225			
Reserve militia not subject to military duty, except, etc.....	5768	1225			
Governor may order enrollment.....	5769	1225			
Officer making enrollment to serve notice, etc.....	5770	1226			
Persons making enrollment to have access to assessment rolls.....	5771	1226			
Governor may draft for military duty, when...	5772	1226			
Persons drafted shall report, etc.....	5773	1227			
Persons drafted may furnish substitute.....	5774	1227			
Officer neglecting or refusing to perform duty in drafting liable to penalty.....	5775	1227			
Power of governor to call out militia.....	5776	1227			
Reserve militia to be mustered in, when.....	5777	1227			
MILK—					
Sale of impure, prohibited	4593	936			
MILL OPERATIVES—					
Lien of.....	5644-5649	1194			
MILL PRODUCTS—	5894-5903	1259			
Packages, how marked; standard weights.....	5894	1259			
Unground or unbroken seed or grain not included in definition.....	5895	1259			
Concentrated feed stuff, definition.....	5896	1259			
Sample to be deposited with director of agricultural station.....	5897	1259			
Tax tags; disposition of funds collected.....	5898	1260			
Manufacturers and importers to furnish list of, and marks.....	5899	1200			
How samples secured; analysis and publication..	5900	1260			
Term "importer" defined	5901	1261			
What feedstuffs deemed adulterated.....	5902	1261			
Duties and powers of director of experiment station.....	5903	1261			
Disposition of funds for concentrated commercial feed stuffs.....	5903a	1261			
Same.....	5903b	1261			
MILLS—					
Commissioner of labor may enter, etc., when.	5241	1096			
MINERAL LANDS—					
Of university of Texas, control of.....	2634	562			
MINERAL LANDS—cont'd.					
To be surveyed, etc.....	5350	1115			
Suits for depositions on Reservation, etc., of, for mining purposes.....	5469	1150			
	5904	1263			
MINERALS—					
On public lands, reservation of.....	5433	1139			
MINERS—					
Rules to be observed by..	5942	1272			
MINES AND MINING—					
.....	5904-5946	1263			
Mining districts, claims and locations.....	5904-5922	1263			
Reserved lands open to exploration, etc.....	5904	1263			
Mining districts created..	5905	1263			
Mining claims limited..	5906	1263			
Locator to post claim....	5907	1263			
Application for survey of claim; requisites.....	5908	1264			
Claimant must do what pending patent.....	5909	1264			
Rights accruing to claimant.....	5910	1264			
Conditions precedent to issue of patent.....	5911	1265			
Right of purchase.....	5912	1265			
Contest of patent.....	5913	1266			
Location of land disposed since April 14, 1883..	5914	1266			
Forfeiture of claims....	5915	1266			
Applicant to make oath..	5916	1267			
Placer claims subject to location.....	5917	1267			
Application may embrace non-adjacent non-mineral lands.....	5918	1267			
Purposes for which timber may be felled....	5919	1267			
Vested right not affected	5920	1268			
Proceeds appropriated..	5921	1268			
Surveyors to administer oaths.....	5922	1268			
State mining board and coal mining regulations.....	5923-5946	1268			
State mining board, duties of.....	5923	1268			
Appointment, qualifications, and terms of office of members of board.....	5924	1268			
Duty of board to select mining inspector; place of meeting.....	5925	1269			
Qualifications of mining inspector; term of office.....	5926	1269			
State mining inspector under supervision of mining board; how removed from office.....	5927	1269			
Semi-annual meeting of board to receive reports inspector.....	5928	1269			

	Article	Page
MINES AND MINING—cont'd.		
Compensation of members of board	5929	1269
Inspector to enforce laws; salary and expenses ..	5930	1269
Discrimination prohibited	5931	1269
Bond of inspector; liability for discrimination..	5932	1269
Mine shafts, how constructed and equipped..	5933	1270
Mine must be supplied with suitable props ...	5934	1270
Abandoned workings to be cut off	5935	1270
Ventilation	5936	1271
Same	5937	1271
D a n g e r o u s gases and fires; inspector must be notified	5938	1271
Cages, how operated	5939	1271
Powder	5940	1272
Inspector may require use of safety lamp	5941	1272
Rules to be observed by miners	5942	1272
Rules to be posted	5943	1272
Coal scales	5944	1272
Employes may employ check weighman	5945	1272
Kind of oil to be used...	5946	1272
MINORS—		
Removal of disabilities of	5947-4950	1273
When may have disabilities removed	5947	1273
Proceedings for removal.	5948	1273
Shall be deemed of full age, when.....	5949	1273
Notice of proceeding, on whom served.....	5950	1273
When minor may be apprenticed, etc	32-55	41
Deposits of, in savings banks in name of.....	399	110
Property, etc., of, sold for city taxes may be redeemed, when.....	962	233
Guardian ad litem for in trials, etc.....	1942	430
May sue by next friend, when	2167-2171	462
Reaching majority, may vote when.....	2954	632
Bond of as administrator.	3315	699
Of decedents, allowances to	3404-3412	713
Of decedents, setting apart homestead for	3413-3429	714
Guardians for.....	4043-4301	836
Who are minors.....	4045	836
May select his own guardian when.....	4079	841
May not marry until, etc.	4609	941
Condemnation of property of, for United States government	5261	1100

	Article	Page
MINORS—continued.		
Limitation does not run against	5684	1202
Limitation shall not run against	5708	1207
May change name, how..	5952	1274
Condemnation of property of, for railroads.....	6514	1392
Brands of.....	7156	1530
Sale of liquor to, forbidden	7452	1608
Property of, how rendered for taxation.....	7509	1626
See "Courts, Juvenile."		
MISBRANDED FOODS—		
Manufacture and sale of, prohibited	4586	934
MISDEMEANORS—		
Procedure in cases of military conviction of.....	5880	1256
MISREPRESENTATIONS—		
In insurance contracts must be material, etc..	4947	1035
MONEY—		
Deposit of in court, etc..	2164	461
MONEY LENDERS—		
Occupation tax on.....	7355	1574
MONOPOLY—		
Defined	7797	1692
MONTH—		
Defined	5504	1157
MORTGAGED PROPERTY—		
Levy on, under execution.	3744	771
Of estates of wards, sale of	4170	855
MORTGAGES—		
Suits to foreclose, brought where	1830	409
Of chattels, void when...	3970	820
On chattels.....	5654-5662	1196
Of railroads, commission to authorize	6685	1432
Separate books for record of	6796	1458
MOTIONS—		
In district and county courts	2118-2123	454
Motion docket.....	2118	454
Service of motion, how made	2119	454
Notice of motion in pending suits	2120	454
Motions disposed of, when	2121	454
Notice of motion not in pending suit	2122	455
Disposed of, when.....	2123	455
For dismissal of certiorari	754	190
For rehearings in supreme court	1561-1565	358

	Article	Page
MOTIONS—continued.		
For rehearings in courts of civil appeals...1641-1644	375	
For new trials in district and county courts.....	2020	440
Proceedings on in district court	2118-2123	454
For substitution of lost records, etc.....	2157-2163	460
For new trials in justice courts	2376	500
MOVING PICTURE SHOWS—		
Occupation tax on.....	7355	1574
MUNICIPAL BONDS—		
General provisions and regulations as to the issuance of.....	605-702	159

	Article	Page
MUNICIPAL CORPORATIONS—	762-1096	192
MUNICIPAL GOVERNMENT—		
Of cities and towns...762-1096	762-1096	192
MUNICIPAL TAXES—		
Municipal taxes to pay subsidies in aid of railroads and other internal improvements	7716-7721	1678
Such taxes, how applied..	7716	1678
To be collected by city officers	7717	1678
Bond of the officers.....	7718	1678
Taxes paid in what.....	7719	1678
To be paid over every month.....	7720	1678
If insufficient, additional levy to be made.....	7721	1678

N

NAME—		
Name, change of....	5951-5954	1274
Application for change of name to district court.	5951	1274
Minors apply by guardian	5952	1274
Not to injure third parties	5953	1274
In divorce suits, name may be changed.....	5954	1274
NATIONAL BANKS—		
May guarantee depositors	445-517	120
May avail depositors of bond security system..	509	132
Rendition of property by, for taxation.....	7521	1629
NATIONAL CONVENTION—		
State convention to select delegates to.....	3175	673
NAVIGABLE STREAMS—		
Surveys of.....	5338	1113
Shall not be obstructed by railroads	6496	1389
NAVIGATION DISTRICT—	5955-6001	1275
Districts may include what	5955	1275
Application to commissioners' court to contain what; notice given....	5956	1275
Navigation board in cities and towns with special charters	5957	1276
Notice of hearing before navigation board	5958	1276
Proceedings to be recorded by county clerk....	5959	1276
Duties imposed without compensation	5960	1276
Objections and contest on hearing of application.	5961	1276

NAVIGATION DISTRICT—cont'd.		
Finding of board at hearing	5962	1277
Finding; form of ballot..	5963	1277
Election notice to contain, what	5964	1278
Election to conform to general election law...	5965	1278
Electors and form of oath before voting	5966	1278
Commissioners' court to canvass returns and declare result of election; form of order.....	5967	1278
Navigation commissioners, how appointed; qualification, compensation, terms of office.....	5968	1279
Oath of commissioners...	5969	1279
Bond of commissioners..	5970	1279
Organization of commission; quorum	5971	1279
Engineers appointed; duties, compensation; United States government aid and co-operation; proceedings in case of.....	5972	1279
Commissioners' court to issue bonds, when and how	5973	1280
Bonds, when to issue; limitations as to assessments on valuation....	5974	1281
Form, denomination and term of bonds.....	5975	1281
Attorney general to certify to validity of bonds.	5976	1281
Effect of certificate of attorney general on bonds	5977	1281

	Article	Page
NAVIGATION DISTRICT—cont'd.		
Record books for bonds to be kept; duties and fees of clerk.....	5978	1282
Bonds to be sold, how; limitations on sale....	5979	1282
Chairman of navigation board to give bond....	5980	1282
Expense and costs of proceedings to establish district, how provided.	5981	1282
Taxes for interest and sinking fund.....	5982	1283
Available sinking fund, how invested.....	5983	1283
Tax proceedings; tax assessors compensation under this chapter....	5984	1283
Compensation of tax collector; additional bond to be given.....	5985	1283
Delinquent tax sales....	5986	1284
County treasurer; duties under this chapter....	5987	1284
Treasurer to give bond; compensation of.....	5988	1284
Condemnation proceedings	5989	1284
May acquire property for navigation purposes...	5990	1284
Commissioners may enter land to make surveys, etc.	5991	1285
Work, how done; contracts, how let when U. S. government fails to act.....	5992	1285
Bids for work, how awarded	5993	1285
Contracts for work to be in writing and filed...	5994	1285
Contractor's bond.....	5995	1285
Work to be done under supervision of engineer; his report.....	5996	1285
Commissioners to inspect work; payment, how made	5997	1286
Commissioners' report of work to contain, what.	5998	1286
Commissioners to employ assistant engineers and legal counsel; compensation of.....	5999	1286
Unlawful for officers to be interested in contracts	6000	1286
Commission may sue and be sued.....	6001	1286

NEGOTIABLE INSTRUMENTS—

Assignee of, may sue in his own name.....	582	153
-------------------------------------------	-----	-----

NEGROES—

May not adopt white child	8	4
---------------------------------	---	---

	Article	Page
NEGROES—continued.		
Deaf, dumb and blind asylum for.....	209-210	74
May not marry white person	4613	941
In state prisons to be kept separate.....	6211	1325
Separate coaches for....	6746	1449
NEIGHBORHOOD ROADS—		
May be discontinued how	6898	1478
NEPOTISM—		
Removal of officers guilty of nepotism.....	6074-6077	1297
Officers guilty of nepotism to be removed from office	6074	1297
Removal; proceedings...	6075	1297
Suits by attorney general; venue.....	6076	1297
Attorney general to be assisted by district or county attorney.....	6077	1297
NEW COUNTIES—		
When new counties are created	7722-7726	1679
Transcripts of unpaid assessments	7722	1679
To be verified.....	7723	1679
Compensation of collector	7724	1679
Compensation for transcribing rolls.....	7725	1679
Regulations as to boundary lines.....	7726	1679
Creation of.....	1335	320
Subject to old county until organized.....	1331-1355	320
Laws creating, not repealed	1359	324
Venue of suits in, etc....	1720	424
Deputy surveyors to procure maps of.....	1915	424
Old registration operative, after creating....	5318	1110
	6857	1470
NEW TRIALS—		
In justice courts....	2374-2379	500
Judgments by default, etc., may be set aside.	2374	500
New trials may be granted	2375	500
Motion to be sworn to, except, etc.....	2376	500
Notice ..|.....	2377	500
Where motion granted, cause continued unless, etc.	2378	500
But one new trial to either party.....	2379	500
Justice courts.....	2283-2400	486
And arrest of judgment district and county courts	2019-2029	440
Costs of	2044	443
NEXT FRIEND—		
Suits by in district court	2167-2171	462

	Article	Page
NOMINATIONS—		
By primary elections and otherwise	3084-3174	655
In primaries by parties of 10,000 and less than 100,000 voters	3159-3163	669
NOMINEES—		
Of primary elections, list of, to be made and certified to	3125	663
For state offices to be published, etc.	3127	663
NON-ACCEPTANCE		
Liability of drawer of bill in case of	581	153
NON-COMMISSIONED OFFICERS—		
Of Texas national guard	5820	1238
NON-INTOXICATING MALT LIQUORS—		
Tax on dealers in	7476-7478	1616
Amount of tax	7476	1616
Application for license to state what must be paid in advance	7477	1616
County clerk to report license	7478	1617
Sale of, without license, enjoined	4684	954
Tax on persons soliciting, orders, etc., in local option territory	7479-7482	1617
NON-JURY DOCKET—		
Call of	1946	431
NON-NEGOTIABLE INSTRUMENTS—		
May be assigned	583	153
NON-PARTISAN CANDIDATES—		
Nomination of in primary elections	3164	670
NON-RESIDENTS—		
Suits against in district courts	2172-2177	463
Actions against non residents	2172	463
Actual possession not necessary	2173	463
Requisites of pleadings	2174	463
Judgment by default can not be rendered	2175	463
Procedure if suit be to extinguish lien	2176	464
Judgment receivable in evidence	2177	464
To pay tax to comptroller	1342	321
May be sued, where	1830	409
Suits against	2172-2177	463
Sued where in justice courts	2308	490

	Article	Page
NON-RESIDENTS—cont'd.		
Hunters must procure license	4023	832
Guardians and wards	4256-4260	868
No commission on insurance policies allowed to	4965	1038
Condemnation of property of for United States government	5262	1100
Condemnation of property of for railroads	6515	1392
Lands of, in unorganized county assessed how	7587	1647
To pay taxes to comptroller	7623	1654
NON-SUIT—		
May be taken, when	1955	432
NORMAL INSTITUTES—		
Sam Houston normal institute	2691-2698	570
Sam Houston normal institute at Huntsville	2691	570
Free tuition to how many students	2692	570
Obligations of students	2693	570
Pay students	2694	570
Manual training, domestic sciences and agriculture to be taught	2695	570
Diplomas; teachers' certificates	2696	570
Local board of directors	2697	570
Appropriations therefor	2698	571
North Texas state normal college	2699-2706	571
Name of college; under control of state board of education	2699	571
Powers and duties of board of education	2700	571
Funds set apart for college	2701	571
Qualifications of students; shall be obligated to teach	2702	572
Semi-annual visits of state superintendent	2703	572
State board may appoint local board of directors	2704	572
Manual training, domestic science and agriculture to be taught	2705	572
Diplomas; teachers' certificates	2706	572
Southwest Texas state normal school	2707-2711	572
Name of school, under control of state board of education	2707	572
Admission of pupils; same rules as in Sam Houston normal institute	2708	572
Local board of trustees; their powers and duties	2709	573

	Article	Page
NORMAL INSTITUTES—cont'd.		
Manual training, etc., to be taught	2710	573
Diplomas; teachers' certificates	2711	573
West Texas state normal college	2712-2717	573
Name and location of college	2712	573
Shall appoint local board Powers and duties of state board as to	2713	573
Same	2714	573
Same	2715	573
Same rights as to appointment of students, etc., as other normal schools	2716	574
Manual training, etc., to be taught	2717	574
Prairie View state normal and industrial college	2718-2724	574
Under what management	2718	574
How many admitted	2719	574
Duties of the board	2720	574
Admission and obligation of students, etc.	2721	575
Four years' course of study to be maintained	2722	575
Appropriations for	2723	575
Rules for teachers' certificates without further examination . .	2724	757
NORMAL SCHOOLS—		
Authority of board of education over	2730	577
Certificates from	2805	595
NOTARIES PUBLIC—		
Governor shall appoint . .	6002	1287
Bond and oath	6003	1287
To be removed, when . . .	6004	1287
Office to become vacant, when	6005	1287
Seal, and what it shall contain	6006	1287
Duty of county clerk when office becomes vacant . . .	6007	1287
Their powers	5008	1288
Duty on vacating office . .	6009	1288
Powers, etc.	6010	1288
Shall keep books, etc. . . .	6011	1288
May take depositions, etc. .	6012	1288
Copies of records, etc. . .	6013	1288
Printed lists to be sent to county clerks by secretary of state	6014	1288
To qualify, when	6015	1288
Clerk shall notify secretary of state, when, etc. .	6016	1289
Acts and copies thereof, evidence	3697	761
Fees of	3878	802
General provisions	3880-3926	804
May take acknowledgments to deeds, etc., for record	6797	1459

	Article	Page
NOTES—		
Bills and other written instruments		
Liability of drawer, etc., how fixed by suit in district or county court	579-593	153
How fixed by suit in justice's court	579	153
Drawer of bill liable on non-acceptance	580	153
Assignee of negotiable instrument may sue in his own name	581	153
Non-negotiable instrument may be assigned	582	153
Assignee of non-negotiable instrument may sue in his own name	583	153
Waiver of diligence not to be shown by parol evidence	584	153
Assignor liable to assignee	585	154
Assignor, indorser, etc., may be sued alone, when	586	154
Assignments, execution of, put in issue, how . .	587	154
Consideration, want or failure of, a defense, when	588	154
Liability of drawer and indorser of bills and notes, may be fixed by protest	589	154
Protest, how made and evidence of	590	154
Damages on protested bills, recoverable, when	591	154
Days of grace allowed on bills and notes	592	155
Suits on by counties, valid, etc.	593	155
1372	327	
NUISANCES—		
City council may define, and prescribe penalty . .	844	210
City council may abate . . .	845	210
Towns and villages may remove, etc.	1049	251
NUNCUPATIVE WILLS—		
Application for probate of	3254	688
To be proved when	3269-3270	690
See also	7860	1710
NURSERIES—		
Commissioner of agriculture to examine	4460	903
Property of, how rendered for taxation	7509	1626
NURSES—		
Board of nurse examiners	5748-5755	1219
By whom appointed	5748	1219
Regulations governing board	5749	1219
Board to meet, examine applications, etc.	5750	1219
5751	1219	

	Article	Page
NURSES—continued.		
Persons entitled to registration without examination	5752	1220
Board to have power to		

	Article	Page
NURSES—continued.		
revoke certificates, etc.	5753	1220
Disposition of fees, etc...	5754	1220
Law does not apply, when	5755	1221



	Article	Page
OATHS—		
Form of oath, etc.....	9	5
Oaths, etc., generally, who to administer	10	5
Affidavit may be by agent or attorney.....	11	5
All affidavits must be in writing and signed....	12	5
Officers authorized to take affidavits	13	5
Other oaths, etc.....	14	5
Defined	5504	1157
Of arbitrators.....	60	45
Same	75	48
Or attorneys at law....	322	93
Of adjutant general....	5788	1230
Of branch pilots.....	6306	1349
Of city officials.....	803	202
Of clerks and deputies as to jury list.....	5140	1079
Of clerk for Galveston and Harris county criminal district court	2210	473
County clerks may take..	1752	396
Of commissioner of agriculture	4436	897
Of commissioner of deeds	1098	261
Of commissioner of insurance and banking....	4488	909
Commissioner of insurance and banking and examiners may administer, when.....	522	135
Of commissioners of improvement districts ...	5546	1169
Of commissioner of labor.	5236	1095
Of general land commissioner	4394	891
County superintendents authorized to administer	2757	585
Of county superintendents and other school officers	2766	586
County auditors may administer, when.....	1483	345
Of county attorneys.....	351	98
Of county surveyors....	1379	328
Of county judges.....	1732	392
Of county treasurer....	1500	347
Of appointee in case of vacancy	1504	347
Of county clerks	1747	395
Of deputy county clerks	1749	395
Of county auditors 1460-	1463	342
Of dairy and food commissioner	4575	931
Of county commissioners	2239	478
Of deputy game, fish and oyster commissioner..	4007	829

	Article	Page
OATHS—continued.		
Of game, fish and oyster commissioner	3977	821
Of members of board of dental examiners	2407	506
Of district clerks	1689	385
Of deputy district clerks	1691	385
Of drainage commissioners	2586	549
Of viewers for drainage for public roads	6998	1498
Of district attorneys	340	96
Of executors and administrators	3305-3324	697
Of members of boards of equalization of cities and towns	955	231
Of members of embalming board	4598	937
Of person estraying live stock	7186	1536
Of managers of election for officers in cities and towns	789	199
Of guardians	4097-4112	845
Answer of garnishee must be under	280	86
Of inspector of hides and animals	7260	1550
Of voters in elections for improvement districts.	5543	1168
Legislative investigating committees may administer	5517	1159
Of live stock sanitary commissioners	7312	1559
Administered to members of house	5510	1158
Judges of election may administer	2995	641
Of judges of district courts	1673	382
Of judge of Dallas county court at law	1791	402
Of judge of Tarrant county court for civil cases	1805	404
Of juries of view	2480	527
Of jury commissioners of district courts	5126	1076
Of jury commissioners of county courts	5133	1077
Of inability to make jury fee deposit	5181	1085
Of jurors in civil cases..	5212-5213	1089
Of juries of view and engineer for drainage districts	2545	540

	Article	Page
OATHS—continued.		
Of juries of view for public roads	6878	1475
Of jurors in justice court	2360	498
Of landlord applying for distress warrant..	5480	1152
Of officers of elections..	2991	639
Of commissioners of navigation districts	5969	1279
Of parties enlisting in Texas national guard..	5822	1239
Officers for military service to take	5807	1235
Of applicants for certain mineral lands	5916	1267
Of notaries public.....	6003	1287
Power of notaries public to administer	6010	1288
Of members of board of pharmacy	6288	1343
Prison commissioners take	6194	1321
Of superintendent of public buildings, etc.	6381	1368
Of superintendents of public roads	6955	1487
Of railroad commissioners	6653	1421
Railroad commissioners may administer	6655	1423
Of sheriff	7121	1522
Of constable	7141	1525
Of sheriff summoning jury	2343	496
Of sheriff when summoning jurors	5170	1084
Of state board of health	4525	920
Of school trustees in cities	2890	617
Of state superintendent of public instruction..	4509	916
Of county and district surveyors	5301	1107
Of secretary of state....	4303	876
Of state purchasing agent	7326	1562
Of state treasurer	4364	886
Of comptroller	4322	878
County and district surveyor may administer, when	5922	1268
Of superintendents of lunatic asylums	120	60
Of state bank examiners	520	135
Of superintendent of deaf and dumb, etc. asylums	182	70
Insurance company under oath shall certify to capital	4708	959
Of receivers appointed in district court	2132	456
Of reporters to district and county courts	1922	426
Reports of certain private corporations to secretary of state, to be under	1184	285
When tax collectors may administer	2958	633
Of tax collector	7608	1650
Of tax assessor	7535	1633

	Article	Page
OATHS—continued.		
Of persons rendering property for taxation	7517	1627
Additional, of tax assessors, form of	7572	1643
Of boards of equalization	7573	1644
Tax assessors may administer	7541	1634
Of persons rendering property for taxation, form of	7542	1634
Of public weigher	7829	1703
Of wreck-master	7888	1716
OBJECTIONS—		
To testimony to be recorded, etc.	3672	758
To depositions	3676	758
OBLIGATIONS—		
Of persons apprenticing minors	32-55	41
OCCULISTS—		
Appointment of, for blind asylum	188	71
OCCUPANCY—		
On public lands, regulations as to	5444	1143
OCCUPATION TAX—		
For cities and towns	928	226
City council may levy in certain cases	869	214
County tax collector shall collect	1414	335
On handling intoxicating liquors, c. o. d	7483-7486	1618
Payment of	7355-7368	1571
Receipts to be furnished collectors	7362	1577
OFFICE—		
Persons not eligible to hold	3082	654
OFFICERS—		
Of cities and towns and their election	784-802	197
Municipal government to consist of certain officers to be elected, etc..	784	197
Manner of electing officers, etc.	785	197
Election and term of office of mayor and aldermen	786	198
Time of holding election, and returns thereof ..	787	198
Who are qualified voters for city officers	788	199
Managers of election shall be sworn; their powers and duties	789	199
Proceedings when vote challenged in cities and towns of 10,000 inhabitants and over ...	790	199

	Article	Page
OFFICERS—continued.		
Proceedings in case of a tie vote	791	199
Who are eligible to the offices of mayor and alderman	792	199
Members of city council ineligible to other office, and shall not be contractor, surety, etc.	793	200
None but resident voters eligible to office	794	200
Resignation of officers..	795	200
Powers of city council to remove officers	796	200
Vacancy, how filled	797	200
Election to fill vacancy ordered by commissioners' court, when	798	200
Election, etc., in such case, how conducted..	799	201
Outgoing officer shall deliver books, etc., to his successor	800	201
City council composed of mayor and aldermen, etc.	801	201
Wards of city to remain unchanged until, etc...	802	201
Duties and powers of 803-812	202	
Officer shall take official oath	803	202
Duties of mayor.....	804	202
Mayor may summon citizens to act as a special police force, etc.	805	202
Powers of the mayor ...	806	203
Ordinances and resolutions adopted shall not take effect, until, etc.	807	203
May appoint police officers; salary, fees, tenure, etc.; bond; powers	808	203
Duties and powers of the marshal	809	203
Certain cities may dispense with office of marshal, etc.	809	203
Duties of the secretary..	810	204
Treasurer shall give bond; his duties, etc...	811	204
Powers of city council over officers	812	205
City councils .....813-902	206	
Corporation courts 903-922	220	
See "Cities and towns."		
Of asylums not to deal with asylums	128	61
Of elections	2920-2928	624
Of primary elections, appointment, etc.	3089	657
County and precinct, certificate of elections to.	3032	646
Returns of elections for certain state and district	3035	647
Of counties, to reside at county seats.....	1399	332

	Article	Page
OFFICERS—cont'd.		
Of irrigation districts, election, etc.	5018	1052
Also	5024-5033	1053
Of irrigation districts, liability of	5100	1071
Of cities and towns adopting commission form of government	1070-1076	255
Of cities and towns, duties and powers of	803-812	202
Of towns and villages, aldermen may appoint	1053	252
Of towns and villages, who are eligible	1044	251
Of cemetery corporations, chosen how	1288	310
Of district courts, liability of for failure of duty	2183	465
Of courts receiving deposits of money, duties	2165	461
Of insurance companies, how chosen	4719	960
Of life, health, etc., insurance companies to receive no commission	4755	972
Of mutual fire, storm and lightning insurance companies	4908	1021
Of house of representatives, election of	5515	1159
Of state militia, duties, etc.	5778-5893	1228
Of military companies, duties as to arms, etc.	5849-5859	1243
Of military companies, articles of war governing	5860	1245
Of navigation districts, not to be interested in contracts	6000	1286
Of savings banks	390	108
Of savings banks, security from, for fidelity ..	424	114
Of penitentiaries, appointment	6180	1317
Of prison system, salaries	6196	1321
Of railroad corporations	6438-6449	1382
Board of directors	6438	1382
Qualifications	6439	1382
Shall be elected by majority of, etc.	6440	1382
Same, etc.	6441	1382
By-laws in regard to, not to be changed	6442	1382
Manner of voting for ...	6443	1382
Failure to hold election, etc.	6444	1382
Corporate powers vested, etc.	6445	1382
President and other officers	6446	1382
Majority of directors required to elect officers	6447	1383
Directors liable, when ..	6448	1383
All officers liable, when ..	6449	1383

	Article	Page
OFFICERS—continued.		
Of railroad companies, what to keep offices in state	6424	1378
Of state board of health	4524	920
Of university of Texas, regents may remove	2640	562
Fees of, in lunacy cases	165	66
Fees of county officers	3849-3879	793
General provisions	3880-3926	804
Who authorized to take affidavits	13	5
Serving writ of attachment may demand indemnity, etc.	253	81
Not allowed to appear as attorneys	334	94
District and county attorneys shall institute proceedings against	366	101
Collecting money for county shall report same	1427	337
Receiving claims against counties, duties, etc.	1445	339
County, examination of accounts of by auditor.	1470	343
Jurisdiction of district court in certain motions against	1707	387
Jurisdiction of county courts to determine motions against	1769	398
When defaulting, may be sued, where	1830	409
Duties of, receiving citations	1855	416
May demand payment of cost, etc.	2032	441
Contests of elections for certain	3046-3078	649
Certified copies of records of, evidence	3696	761
Duties of, in executing judgments	3714-3784	767
Authorized to execute commissions to take depositions	3657	756
Taking depositions, powers of	3668	758
Shall indorse executions	3731	769
Fees of certain state officers	3833-3845	786
General provisions as to fees	3880-3926	804
Who entitled to copies of general laws	4310	876
Who furnished digest of laws	4314	877
None to be interested in public lands, etc.	5388	1123
Issuance of mandamus against executive.	5732	1214
Making enrollment for military service, duties	5770	1226
Guilty of nepotism, removal of	6074	1297
Official bonds of	6078-6085	1298

	Article	Page
OFFICERS—continued.		
None to be interested in contracts for public printing	6354	1361
Must make inventory of state's personal property	6373	1365
Duty in executing writ of sequestration	7100	1518
Of certain stock law elections	7243	1547
None to be interested in fuel contracts of state	7346	1568
OFFICERS, REMOVAL OF.		
.	6017-6077	1290
Removal of county and certain district officers.		
.	6028-6057	1291
Certain convictions work a removal from office.	6028	1291
Appeal supersedes order of removal	6029	1291
Officers removable by the district judge, etc.	6030	1292
Causes to be set forth in writing	6031	1292
"Incomptency," what is.	6032	1292
"Official misconduct," what is	6033	1292
Two preceding articles apply to mayors and aldermen	6034	1292
"Habitual drunkenness," what is	6035	1292
Further defined	6036	1292
"Drunkenness not habitual" defined	6037	1292
Must be three times convicted	6038	1293
Three convictions sufficient ground for removal, etc.	6039	1293
Failure to give bond ground for removal	6040	1293
Proceedings, how commenced and by whom	6041	1293
Requisites of petition	6042	1293
General issues alone submitted—verdict	6043	1293
Citation, how and when to issue	6044	1293
Application made in vacation	6045	1293
Citation shall issue	6046	1294
Time to answer	6047	1294
How trial shall be conducted	6048	1294
May be suspended from office, how	6049	1294
Appeal or writ of error.	6050	1294
Bond for costs, when.	6051	1294
Relator to give security for costs	6052	1294
Against district attorney, where commenced.	6053	1294
Criminal district attorney included in district attorney	6054	1294

	Article	Page
OFFICERS, REMOVAL OF		
—continued.		
Not to be removed for acts done prior to his election	6055	1294
Appeal and writ of error	6056	1294
Mandate, when to issue..	6057	1294
Mayors and aldermen 6065-6073		1296
Causes of removal	6065	1296
Complaint against an alderman and proceedings thereon	6066	1296
Who shall try an alderman	6067	1296
Proceedings against a mayor	6068	1296
Who shall try a mayor..	6069	1296
Rules which govern proceedings and trial	6070	1296
Judgment	6071	1296
Officer removed ineligible for two years	6072	1296
This chapter does not apply, when	6073	1296
Removal of certain other officers	6058-6064	1295
Notary public, how removed	6058	1295
Order of removal to be embodied in judgment.	6059	1295
Public weigher, how removed	6060	1295
Removal of clerk of supreme court	6061	1295
Removal of clerk of court of appeals.....	6062	1295
Removal of clerk of district court	6063	1295
Order of removal to be embodied in judgment	6064	1295
Removal of officers guilty of nepotism 6074-6077		1297
Officers guilty of nepotism to be removed from office	6074	1297
Removals, proceedings...	6075	1297
Suits by attorney general; venue	6076	1097
Attorney general to be assisted by district or county attorney	6077	1297
Removal of state and certain district officers	6017-6027	1290
State and district officers removable by impeachment	6017	1290
Judges of supreme, appellate and district courts, and commissioner of insurance removed by address	6018	1290
Cause for removal to be set out	6019	1290
Notice to be given	6020	1290
Vote, how taken	6021	1290
District judges removed by supreme court	6022	1290

	Article	Page
OFFICERS, REMOVAL OF—		
—continued.		
Preceding article shall apply to the criminal district judge.....	6023	1291
Jurisdiction of supreme court in such cases...	6024	1291
Presentment shall be founded upon what ..	6025	1291
Supreme court may issue process, etc.	6026	1291
State officers appointed by the governor, removed, how	6027	1291
Removal of superintendent of public buildings, etc.....	6382	1368
Removal of prison commissioners	6195	1321
Neglect of duty in assessment of taxes, cause for removal	7574	1644
OFFICIAL BALLOT— 2964-2975		634
Ballot, vote shall be by; safeguards, etc.; no registration; cities included	2964	634
Ballot, official, required; to contain, what	2965	635
No candidate on ballot except, etc.	2966	635
Candidates of certain parties not on ballot unless, etc.	2967	635
Vacancy, substitution on ballot	2968	635
Ballots, how printed; form, etc.; manner of voting	2969	635
Ballot, further regulations as to	2970	636
Constitutional amendment and other questions, how submitted	2971	636
Ballot, at any school election, city, etc.....	2972	636
Ballots, how many furnished	2973	636
Ballots (counted), etc., delivered to judges ...	2974	636
Ballot, voters may provide when	2975	636
Elections	2910-3175	622
Elections, primary ..	3084-3174	655
Regulations as to voting	2991-3045	639
At primary elections ..	3095-3101	658
OFFICIAL BONDS— 6078-6085		1298
The record of official bonds and the relief of sureties thereon ..	6078-6082	1298
Official bonds to be recorded	6078	1298
Sureties on may be relieved	6079	1298
Officer shall cease to act, etc.	6080	1298

	Article	Page
OFFICIAL BONDS—cont'd.		
Must give new bond . . .	6081	1298
Discharge of sureties . .	6082	1298
Obtaining new sureties on official bonds . . .	6083-6085	1299
Commissioners' court may require new bond, etc.	6083	1299
Officer to be cited	6084	1299
No appeal allowed	6085	1299
See "Bonds."		
OFFICIAL MISCONDUCT—		
Defined	6033	1292
OFFICIALS		
May be joined in suits, when	1846	414
OIL COMPANIES—		
Gross receipts tax on . . .	7377	1582
1303-1308		312
How corporation may be formed	1303	312
Same subject	1304	312
Powers of corporation . .	1305	312
Right of condemnation . .	1306	312
Right to borrow money, issue stock mortgage franchises, etc.	1307	313
Discrimination unlawful	1308	313
OIL WELL COMPANIES—		
Gross receipts tax on . . .	7383	1585
OIL WELLS—		
Wells, oil, gas and water	7847-7854	1707
Wells, how cased.	7847	1707
Abandoned wells to be filled, consequences of failure	7848	1707
Gas to be confined until utilized	7849	1707
Limitations as to use of gas for illuminating purposes	7850	1707
Penalties and disposition of fines.	7851	1708
Duty of persons where salt water appears in wells	7852	1708
District court, jurisdiction and supervision; may appoint superintendents, make regulations, etc.	7853	1708
Suits and penalties, how brought	7854	1709
OPEN ACCOUNT—		
When sworn to, evidence when	3712	765
OPINIONS—		
Of courts of civil appeals as to matters of fact and law.	1636-1640	374

	Article	Page
ORAL WILLS—	7860	1710
ORDINANCES—		
Of city councils to take effect when.	807	203
Power of city council to pass, etc.	817	207
ORGANIZATION—		
Of labor.	5244-5246	1097
Of the legislature.	5506-5516	1158
ORPHAN ASYLUM—	196-204	71
General provisions.	171-187	68
Designation of institution	196	71
Superintendent appointed, how; duties.	197	71
Industrial manager, appointed how; duties and salary.	198	72
Children admitted, when	199	72
List of children to be made, etc.	200	72
Child removed from, how	201	72
Salary of superintendent	202	72
Matron's salary, etc. . . .	203	72
Board to dispose of artesian water.	204	72
Other asylums.	107-239	53
ORPHANS—		
Who entitled to guardianship of.	4068-4079	840
OVERSEERS—		
For public roads, appointment of.	6905-6918	1479
County to be laid off into road precincts, etc. . . .	6905	1479
Overseers to be appointed, when	6906	1479
May be made at any time	6907	1479
Vacancy, how filled, etc. .	6908	1479
Clerk to make copies of appointment	6909	1479
Order shall show what. . .	6910	1480
Service of order, etc. . . .	6911	1480
Term of service of, etc. . .	6912	1480
Persons not compelled to serve, etc.	6913	1480
Overseer shall notify clerk	6914	1480
County shall appoint another	6915	1480
Non-refusal considered as accepting	6916	1480
Clerk shall insert what on copies of appointment, etc.	6917	1480
Clerk shall post list. . . .	6918	1480
Powers and duties of	6927-6945	1482
Roads shall be worked twice each year.	6927	1482
Power to call out hands. .	6928	1482
Hands not designated shall be summoned. . . .	6929	1482
Mode of summoning hands	6930	1482

	Article	Page
OVERSEERS—cont'd.		
Summons in writing, service of.....	6931	1482
Overseer may appoint some one to summon hands	6932	1482
Overseer shall report defaulting road hands..	6933	1482
Timber for causeways and bridges.....	6934	1483
Construction of causeways	6935	1483
Overseer may exchange labor for wagons, etc.	6936	1483
Measuring roads and mile posts	6937	1483
Index boards shall be placed where.....	6938	1483
Mile posts and index boards shall be replaced when removed, etc.	6939	1483
Overseer may exchange labor for index boards and mile posts.....	6940	1483

	Article	Page
OVERSEERS—cont'd.		
Overseer shall apply money, how.....	6941	1483
Overseer shall report to commissioners' court, when	6942	1483
Compensation, etc., of overseers	6943	1484
Money shall be expended how	6944	1484
May dismiss hands, when	6945	1484
For county convicts....	6237	1330
Of public roads, how controlled in certain counties	6980	1493
Of public roads, employment of special, when.	7005	1501
Shall have bridges built, when, etc.....	7013	1502
OYSTERS—		
See "Fish and Oysters."		

P

PALACE CAR COMPANIES—		
Gross receipts tax on...	7375	1581
PANORAMA SHOW—		
Occupation tax on.....	7355	1575
PARAMOUNT TITLE—		
Barred when.....	5694	1205
PARDON ADVISORS—		
.....	6086-6095	1300
Powers and duties of board	6086-6088	1300
Governor to appoint....	6086	1300
Shall keep record.....	6087	1300
Shall examine applications for pardon, etc...	6088	1300
Paroles, etc.....	6089-6095	1301
Convicts paroled, when..	6089	1301
Under control of prison commissioners	6090	1301
Must be recommended by whom	6091	1301
Law does not apply to whom	6092	1302
Same	6093	1302
Convicts declared delinquent, when.....	6094	1302
Entitled to discharge....	6095	1302
PARENTS—		
May transfer authority over heir, etc.....	1-8	3
Entitled to be guardians	4068-4079	840
Must consent to marriage of minors	4611	941

PARKS—		
City council may improve, etc.	864	213
San Jacinto state park..	6395	1371
PAROL EVIDENCE—		
Waiver of diligence not to be shown by.....	585	154
PAROLES—	6089-6095	1301
Convicts paroled, when..	6089	1301
Under control of prison commissioners	6090	1301
Must be recommended by whom	6091	1301
Law does not apply to whom	6092	1302
Same	6093	1302
Convicts declared delinquent, when.....	6094	1302
Entitled to discharge....	6095	1302
Of state prisoners.....	6217	1326
PARTIES—		
To suits, in district and county courts....	1835-1849	413
PARTITION—	6096-6125	1303
Miscellaneous provisions		
.....	6122-6125	1307
Provisions of this title shall not affect what..	6122	1307
Rules of pleading, practice and evidence....	6123	1307
Pay of commissioners...	6124	1307
Costs to be adjudged, how	6125	1307
Partition of personal property	6116-6121	1306

	Article	Page
PARTITION—cont'd.		
Part owner may compel partition	6116	1306
Suit shall be commenced in what court.....	6117	1306
Court shall ascertain, what	6118	1306
Decree of court, executed how	6119	1306
Property shall be sold, when	6120	1306
How sold, and partition of proceeds.....	6121	1306
Partition of real estate.	6096-6115	1303
Joint owner may compel partition	6096	1303
Petition for, and what it shall contain.....	6097	1303
Citation and service....	6098	1303
Citation and service when defendant is unknown.	6099	1303
Court shall determine, what	6100	1304
Decree of the court, and appointment of commissioners	6101	1304
Writ of partition.....	6102	1304
Service of writ of partition	6103	1304
Court may also appoint surveyor	6104	1304
Writ returnable when, and return thereof....	6105	1304
Commissioner shall proceed to partition, etc..	6106	1304
May cause land to be surveyed	6107	1304
Shall divide real estate, how	6108	1305
Shall allot shares.....	6109	1305
Report of commissioners, and what it shall contain	6110	1305
When property is incapable of division, same shall be sold.....	6111	1305
Objections may be filed to report, etc.....	6112	1305
Partition not prejudicial to reversioner, etc....	6113	1305
Each party shall hold in severalty, subject, etc..	6114	1305
Decree of court shall vest title	6115	1305
Partition of estate of decedents	3527-3562	734
Application for partition and distribution.....	3527	734
Citation in such cases....	3528	734
Service of citation.....	3529	735
Executor, etc., shall also be cited	3530	735
Application may be made, when	3531	735
Upon return of citation served, court shall proceed, etc.	3532	735

	Article	Page
PARTITION—cont'd.		
Court shall ascertain what facts.....	3533	735
Shall appoint guardians for minors, etc.....	3534	735
Decree of partition.....	3535	736
Where estate consists of money or debts only..	3536	736
Court shall appoint commissioners, when.....	3537	736
Writ of partition shall issue	3538	736
Service of writ.....	3539	736
Manner of making partition by commissioners.	3540	736
Report of commissioners when division is made.	3541	737
Action of court upon report of commissioners.	3542	737
Court to make special finding as to property incapable of division, and value of same....	3543	737
Distributee may pay appraised value and take property incapable of division	3544	737
May take it on credit, when	3545	737
Decree of court in such cases vesting title....	3546	737
New appraisement of property, when.....	3547	737
If no distributee take property it shall be sold, etc.....	3548	738
Distributee purchasing at sale shall pay only the excess of his share....	3549	738
Court may order sale, when	3550	738
If property is not sold, commissioners in county where it is situated shall be appointed, etc.	3551	738
Majority of commissioners may act.....	3552	738
Court shall order executor or administrator to deliver property, when.	3553	738
To whom property shall be delivered.....	3554	738
Damages for neglect to deliver property, etc....	3555	739
Surviving husband or wife may have partition of common property	3556	739
Action of court, and bond in such case....	3557	739
Lien upon property delivered, etc.....	3558	739
Common property shall be held by executor, etc., until, etc.....	3559	739
Joint owners with estate may have partition...	3560	739
Expenses of partition to be paid by whom.....	3561	740

	Article	Page		Article	Page
PARTITION—cont'd.			PARTNERSHIP—continued.		
Court may appoint another guardian, etc., when, etc.....	3562	740	Citation, upon whom served	6150	1311
Estates of decedents	3206-3639	680	Judgment against, conclusive against stockholders	6151	1311
Suits for, brought where	1830	410	Effect of judgment, where agent of company only is cited.....	6152	1311
Of estates of decedents	3368	707	Effect of judgment, where individual stockholders are also cited.....	6153	1311
Of estates of decedents when withdrawn from administration	3387	710	This chapter cumulative; not to impair existing rights	6154	1311
Of community property of decedents	3612	748	Levy of interest in, under execution	3743	771
To be recorded.....	6835	1466	Property of, how rendered for taxation....	7509	1626
PARTNERS—			PASS BOOKS—		
Service of citations on... ..	1863	417	Of savings banks, requirements as to, etc..	398	110
Judgments against when all not served.....	2006	438	PASSENGER DEPOTS—		
PARTNERSHIPS—	6126-6154	1308	Open, lighted, warmed, etc.	6591	1404
Partnerships—limited	6126-6148	1308	PASSENGER FARE—		
.....	6126-6148	1308	Rate fixed.....	6618	1410
Limited partnership authorized	6126	1308	PASSENGERS—		
General and special partners	6127	1308	Refusal of railroad company to transport.....	6554	1398
General partners only to act	6128	1308	Railroads to receive from connecting lines.....	6608	1407
Such partnerships, how formed	6129	1308	PASSENGER TARIFFS—		
Certificate to be acknowledged	6130	1308	Railroad commission may make temporary.....	6663	1424
And filed and recorded..	6131	1309	PASSENGER TRAINS—		
General partner to file affidavit	6132	1309	How formed.....	6570	1401
Prerequisites indispensable	6133	1309	PASTEUR HOSPITAL—		
Terms to be published....	6134	1309	Admission of patients; requirements as to....	166	67
Publisher's affidavit....	6135	1309	Indigent and non-indigent patients, expenses, how met	167	67
Renewals to be with like formalities	6136	1309	Laws, etc., same as those of institution with which connected.....	168	67
Certain alterations a dissolution	6137	1309	Fees of non-indigent patients, used how.....	169	67
Firm name.....	6138	1309	Additional compensation to assistant physician.	170	67
Suits by and against....	6139	1309	PASTURERS—		
Capital of special partner not to be withdrawn..	6140	1309	Liens in favor of.....	5664	1199
If reduced, to be made good	6141	1310	PATENT MEDICINES—		
Powers of special partner	6142	1310	Occupation tax on traveling vendors of.....	7355	1571
Partners to account and liability for fraud....	6143	1310	PATENTS—	5361-5382	1118
Assignments by partnership, when void.....	6144	1310	Requisites of patent.....	5361	1118
Assignments in contemplation of insolvency..	6145	1310	When patent to be issued	5362	1118
Effect of concurrence by special partner.....	6146	1310			
Partnership creditors preferred	6147	1310			
Dissolution before time agreed upon.....	6148	1310			
Unincorporated joint stock companies—					
permitting suit in company name...	6149-6154	1311			
May sue or be sued in its company name.....	6149	1311			

	Article	Page
PATENTS—continued.		
When to be referred to the attorney general....	5363	1118
Map of county to be filed.	5364	1118
Patents on surveys in two counties	5365	1118
Patents on more than two surveys, when.....	5366	1119
In case of conflict, how patent may issue.....	5367	1119
Shall issue patent to assignee	5368	1119
Before issuing to assignee transfers, etc., must be filed	5369	1119
Patent to assignee without transfers, etc., when	5370	1119
Patents to deceased persons shall inure to whom	5371	1119
In what order patents shall issue.....	5372	1119
Patents on unrecommended certificate prohibited	5373	1119
Patent may be canceled, in whole or in part, where issued by mistake	5374	1120
When partial conflict, may be canceled.....	5375	1120
Commissioners required to deliver patents, when	5376	1120
Patents on homestead claims to issue when..	5377	1120
Refunding fee where patent can not issue.....	5378	1120
When patent may be delivered to an agent...	5379	1121
Commissioners required to issue patents on certificates not reported by clerk, when.....	5380	1121
Penalty for failure to pay fees on patents.....	5381	1121
State shall have lien to secure fees, etc.....	5382	1121
To public lands, when issued	5436	1140
For town sites.....	5438	1140
For mining claims, duty of claimant.....	5909	1264
PATIENTS—		
Of lunatic asylums, admission and discharge of	134-149	62
Admission of, to Pasteur hospital	166	67
How admitted to epileptic colony	211-232	74
PAUPERS—		
District judges may appoint attorneys for....	1716	388
County judge may appoint attorney for....	1773	398
Appeal, etc., by.....	2098	451

	Article	Page
PAWNBROKERS—	6155-6172	1311
Definition of "pawnbroker"	6155	1312
Pawnbroker shall give bond, and its requisites	6156	1312
Bonds shall be recorded, and new bond shall be given every twelve months	6157	1312
Shall keep a register, and what the same shall show	6158	1312
Book shall be open for inspection, etc.....	6159	1312
Property pawned shall be sold after notice, when	6160	1312
How notice shall be given	6161	1313
Advertisements shall state what, and copy shall be filed in office of county clerk.....	6162	1313
Within what hours sales shall be made.....	6163	1313
Report of sale to be made, and what the same shall show.....	6164	1313
What expenses shall be allowed and deducted.	6165	1313
Owner or depositor entitled to surplus for thirty days after sale..	6166	1313
Surplus shall be paid to county treasurer, when	6167	1313
Suit upon bond for surplus and damages.....	6168	1313
Party injured may sue upon bond.....	6169	1313
Injured party may sue officer	6170	1314
Common law shall govern, except, etc.....	6171	1314
City council may license.	871	214
Occupation tax on.....	7355	1573
PEACEABLE POSSESSION—		
Defined	5677	1202
PEACE BONDS—		
Proceedings when given before mayor, etc., and forfeited	919	223
PEACE OFFICERS—		
Shall execute process of insurance commissioner	4496	912
Ranger force clothed with power of	6764	1452
See "Officers."		
PEDDLERS—		
City council may license	871	214
Occupation tax on.....	7355	1572
PENALTIES—		
Against corporations, lien of state for.....	1193-1197	267

	Article	Page		Article	Page
PENITENTIARIES—	6172-6256	1315	PENITENTIARIES—cont'd.		
Hiring county convicts			Visitors admitted, when.	6228	1329
.....	6249-6256	1332	Reward for escaped convict	6229	1329
Convicts may be hired out	6249	1332	Gambling forbidden; penalty	6230	1329
Either publicly, privately or generally, etc.....	6250	1332	Convicts employed on public or private works, when.....	6231	1329
Hirer shall give bond, and its requisites.....	6251	1332	System of prison government	6172-6200	1315
Liability when convict escapes	6252	1333	Policy of prison system..	6172	1315
Suit on bond.....	6253	1333	Prison system includes what	6173	1315
Convict to receive full credit for labor.....	6254	1333	Prison labor not to be leased to private parties	6174	1315
Record in relation to county convicts.....	6255	1333	Board of prison commissioners; appointment; term	6175	1315
Officers' costs, how paid.	6256	1333	Commissioners to give bond	6176	1316
Prison regulations and discipline	6201-6231	1322	Salary	6177	1316
After conviction prisoners must first be sent to Huntsville	6201	1322	Commissioners to devote whole time to office...	6178	1316
Prison uniforms.....	6202	1323	Shall have exclusive management	6179	1317
Instruction and recreation of prisoners.....	6203	1323	Appointment of under-officer	6180	1317
Religious services.....	6204	1323	Quorum; chairman; assignment of duties...	6181	1317
Food	6205	1323	May discharge under-officers and employes...	6182	1317
Monthly reports to board shall contain what...	6206	1323	May purchase instrumentalities for employment of convicts.....	6183	1317
Prison register to show what	6207	1323	Purchase of land, how made	6184	1318
Classification of prisoners; uniforms, punishments	6208	1324	Lands to be bought sufficient for employment of prisoners.....	6185	1318
Female prisoners shall be kept separate.....	6209	1325	Modern buildings to be erected and equipped..	6186	1318
Labor for female prisoners; physical condition	6210	1325	Farm and factory products, movable and real property, how sold...	6187	1318
Whites and negroes kept separate	6211	1325	Prison funds.....	6188	1319
Only married men employed as guards.....	6212	1325	Commission may make regulations	6189	1319
Children of female prisoners	6213	1325	Commissioners to visit camps and farms.....	6190	1319
C o m p e n s a t i o n paid prisoners, when.....	6214	1325	Inventories	6191	1320
Sunday labor.....	6215	1326	Prison accounts, how kept	6192	1320
Intent of prison law...	6216	1326	Auditor, appointment and duties	6193	1320
Rewards for good conduct; relaxation of discipline; parole; commutation	6217	1326	Commissioners may administer oaths and examine witnesses...	6194	1321
Commutation of life or long term sentence...	6218	1326	Commissioners, removal of	6195	1321
Clothing	6219	1327	Salaries and qualifications of under-officers and employes.....	6196	1321
Restrictions of the amount of labor required	6220	1327	Fraudulent conversion of prison property; penalty	6197	1321
Physical condition.....	6221	1327	Dishonesty of officers or employes; penalty...	6198	1321
Prisoners searched; disposition of money in their possession.....	6222	1327			
Death of prisoner; disposition of remains.....	6223	1327			
Proceedings in case of death of prisoner.....	6224	1328			
Medical attention.....	6225	1328			
Dentists	6226	1329			
Discharge of prisoner...	6227	1329			

	Article	Page
PENITENTIARIES—cont'd.		
Unauthorized punishments; penalty.....	6199	1322
Seal of commission.....	6200	1322
Workhouses and county convicts	6223-6248	1330
Commissioners' courts to establish workhouses..	6232	1330
"County convict" defined	6233	1330
Certain convicts only to do manual labor.....	6234	1330
Commissioners' court to control workhouse....	6235	1330
All officers to obey their orders	6236	1330
Overseers and guards...	6237	1330
To labor upon public works, etc.....	6238	1330
Where confined when off duty	6239	1330
Refractory convicts to be punished	6240	1331
Female convicts.....	6241	1331
Aged or disabled convicts not to work.....	6242	1331
Their inability, how determined	6243	1331
Convicts to receive credit for labor	6244	1331
Mechanics, etc., to have extra credit.....	6245	1331
Convicts to be guarded..	6246	1331
Costs to be paid officers.	6247	1331
Convict may commute his labor	6248	1331
PENITENTIARY RAILROAD—		
Right of way for.....	5251	1099
PENSIONS—		
Confederate soldiers and sailors	6257-6285	1334
To whom granted.....	6267	1337
Application, how made..	6268	1337
Widow not to be granted pension, unless, etc....	6269	1338
Widow may make proof of certain facts by affidavit, etc.....	6270	1338
Soldiers applying for pension shall have served honorably; evidence, how taken.....	6271	1338
What constitutes indigency	6272	1338
Payments, to be made when	6273	1338
Pensions denied to whom	6274	1339
District judges shall charge the grand jury.	6275	1339
Fees limited.....	6276	1339
County judge to be allowed fee for hearing application	6277	1339
Inmates of Confederate Home, asylums, etc., not entitled to pension	6278	1339

	Article	Page
PENSIONS—continued.		
Appropriation shall be prorated	6279	1339
Veteran may cause certain persons to make statement under oath.	6280	1340
Statement to be filed with secretary of state....	6281	1340
Widow of veteran may establish identity in same way.....	6282	1340
Salary and general duties of	6283	1340
Shall strike certain persons from roll.....	6284	1340
Copies of certain instruments accepted as evidence before grand jury	6285	1341
Veterans of Mexican war	6257-6266	1334
Who entitled to pensions	6257	1334
Application	6258	1334
Proceedings to obtain...	6259	1335
Proceedings to be filed with comptroller.....	6260	1335
Must be indigent.....	6261	1336
Pension shall begin, when	6262	1336
Proof to be made each quarter	6263	1336
Grand jury to investigate	6264	1336
Attorneys' fees.....	6265	1336
List of, to be printed, etc.	6266	1336
Exempted from taxation.	7507	1625
PER DIEM—		
Of members of legislature	7056	1510
PEREMPTORY CHALLENGES—		
To jurors.....	5197	1087
To be made when.....	5208	1088
PERISHABLE PROPERTY—		
Disposition of by carriers	725-730	185
Unclaimed freight may be sold, when and how	725	185
Notice of such sale.....	726	185
Carrier shall keep an account of sales, etc....	727	186
Carrier may sell live stock, when.....	728	186
Carriers shall sell perishable property when...	729	186
Disposition of unclaimed intoxicating liquor....	730	186
Sale of, etc., when attached	259	82
Of ward's estate to be sold	4153	853
When levied on, sold when	5485	1153
PERMANENT IMPROVEMENTS—		
To be erected by purchasers of public lands	5424	1135

	Article	Page
PERMANENT SCHOOL FUND—		
See "School Fund."		
PERMITS—		
Of foreign corporations, how obtained.....	1314-1321	315
Not granted to corporations until gross receipts tax paid.....	7389	1586
PERSON—		
Defined	5504	1157
PERSONAL ACTIONS—		
Limitations on.....	5685-5700	1203
PERSONAL PROPERTY—		
Partition of personal property	6116-6121	1306
Part owner may compel partition	6116	1306
Suits shall be commenced in what court.	6117	1306
Court shall ascertain, what	6118	1306
Decree of court, executed how	6119	1306
Property shall be sold, when	6120	1306
How sold, and partition of proceeds.....	6121	1306
Attachment, etc., of..	240-308	79
For purposes of taxation includes what.....	935	227
Sold for taxes, regulations as to.....	956-964	231
Suits for recovery, where brought	4830	409
Exempt from forced sale	3785-3793	776
Replevy bond in case of.	7104	1519
For purpose of taxation includes what.....	7505	1623
Rendition of, by bankers, etc.	7521	1628
Assessment of back taxes on	7566	1642
Suits for recovery of in justice courts, where..	2308	490
Levy on, under execution	3740	770
PETITIONS—		
For elections to abolish corporate existence of cities and towns.....	1078	256
For writs of error to supreme court	1540	354
In suits in district and county courts.....	1812	406
Of plaintiff, requisites...	1827	408
In suing for writs of error, requisites.....	2088	450
For drainage systems in counties	2512	534
For creation of drainage districts	2543	539
For drainage districts for part of county.....	2568	544

	Article	Page
PETITIONS—continued.		
For school tax elections.	2828	603
For escheat proceedings.	3187	676
Injunction granted on sworn	4649	949
For organization of irrigation districts.....	5013	1057
To change boundaries of irrigation districts....	5065-5087	1063
Of plaintiff in distress proceedings filed when	5487	1153
To establish improvement districts, etc.....	5532	1165
For removal of disabilities of minor.....	5948	1273
For formation of navigation district.....	5956	1275
For removal of officers, requisites	6042	1293
For partition.....	6097	1303
Railways may file, when dissatisfied with orders of commission	6657	1423
For drainage of public roads	6992	1496
For writ of sequestration	7096	1518
For stock law election...	7211	1540
For election to prevent horses, etc., from running at large.....	7235	1545
For retail liquor dealers license	7446	1606
To try title to lands....	7733	1681
PETIT JURIES—		
How selected.....	1720	389
PHARMACY—	6286-6298	1342
Governor to appoint board	6286	1342
Organization of board; secretary's salary and bond; compensation of board	6287	1342
Oath	6288	1343
Duty of; shall make report of money, etc....	6289	1343
Shall hold meetings for examination, when....	6290	1343
May issue temporary certificates	6291	1343
Fees of board.....	6292	1343
Pharmacists to be licensed	6293	1344
Certain persons entitled to be registered without examination.....	6294	1344
Qualifications of applicant	6295	1345
Board to issue license, when	6296	1345
Applicants legally registered in foreign countries to be granted license, when.....	6297	1345
License to be posted; renewals, etc.....	6298	1346
PHONOGRAPHS—		
Occupation tax on.....	7355	1574

	Article	Page
PHYSICIANS AND SUR- GEONS—	5723-5747	1215
Medical board estab- lished	5733	1215
Qualifications of mem- bers	5734	1215
Board shall keep register	5735	1215
Physicians required to keep register.....	5736	1216
District clerks to keep register	5737	1216
Reciprocity allowed....	5738	1216
Applicants for license to pass examination, etc..	5739	1216
Disposition of fees.....	5740	1217
Examination, how con- ducted, and to include what	5741	1217
Does not apply to whom	5742	1217
Board may refuse to ad- mit certain persons...	5743	1217
Revocation of license....	5744	1218
Who regarded as practic- ing medicine.....	5745	1218
Definitions	5746	1218
Malpractice, cause for re- voking license.....	5747	1218
PILOT COMMISSIONERS—		
To control wreck-mas- ters	7890	1716
PILOTS—	6299-6319	1347
Branch pilots and pilots for mouth of Brazos river and Matagorda and Lavaca bays	6305-6319	1349
Appointment, term and vacancies	6305	1349
Bond and oath.....	6306	1349
May appoint deputies...	6307	1349
Malfeasance and punish- ment	6308	1349
Pilotage	6309	1349
Exemptions from extra pilotage	6310	1350
Consignee responsible for pilotage	6311	1350
Unauthorized pilot to for- feit fifty dollars.....	6312	1350
Pilots for mouth of Brazos	6313	1350
Their bond, by whom ap- proved	6314	1350
Pilots for Matagorda and Lavaca bays.....	6315	1350
To keep channels staked out	6316	1351
Pilotage for said bays...	6317	1351
Rules for branch pilots applicable	6318	1351
Penalty for unlicensed pilot	6319	1351
Commissioners of pilots	6299-6304	1347
Governor to appoint....	6299	1347
Duties of commissioners	6300	1347

	Article	Page
PILOTS—continued.		
Terms of residence and of probation for pilots	6301	1347
Further powers and du- ties	6302	1347
Same subject.....	6303	1348
County judge to appoint committee, etc., to act in place of board....	6304	1348
PIPE LINE COMPANIES—		
Gross receipts tax on....	7374	1581
PISTOLS—		
Gross receipts tax on wholesale dealers in..	7380	1584
PLACER CLAIMS—		
Subject to location.....	5917	1267
PLANK ROAD CORPORA- TIONS—	1268-1278	306
PLATFORM DEMANDS—		
Voted for in primary....	3110	661
PLEADINGS—		
In district and county courts	1817-1826	407
System of pleading.....	1817	407
To be in writing, signed and filed.....	1818	407
“Pleadings” defined.....	1819	407
Pleadings of an inter- venor	1820	407
Pleadings in particular cases	1821	407
Pleading charters and acts of incorporation...	1822	407
Pleading special acts of the legislature.....	1823	407
Pleadings may be amended	1824	407
Time of filing amend- ment	1825	408
Amendment after arrest of judgment, etc.....	1826	408
Of the plaintiff....	1827-1829	408
Requisites of the petition	1827	408
Defensive matters by plaintiff	1828	408
Denial of special de- fenses presumed.....	1829	408
Of the defendant in dis- trict and county courts	1902-1910	422
Answer may include sev- eral matters.....	1902	422
Plea of privilege, what sufficient	1903	422
To be filed, when.....	1904	422
In cases of citation by publication	1905	422
Certain pleas to be by affidavit	1906	423
Plea of payment, counter claim, etc.....	1907	423
General denial need not be repeated.....	1908	423

	Article	Page
PLEADINGS—continued.		
Pleas to be filed in due order	1909	423
Certain pleas to be determined during the term at which filed	1910	423
Rules of, in corporation courts	909	222
In certiorari cases in district court	757	190
When counter claim may be pleaded	1325	319
Requisites of, in suits against non-residents	2172-2177	463
In justice courts	2326-2328	493
Of usury	4983	1042
Limitation must be specially pleaded	5707	1206
Rule in partition suits ..	6123	1307
In trespass to try title	7731-7759	1681
 PLEA OF PRIVILEGE—		
Sustained, venue where ..	1833	412
Dilatory, tried when	1947	431
 PLUMBERS—		
Board of for cities and towns	987	238
 POISONS—		
Duty of professor of chemistry in agricultural and mechanical college in regard to	2670	566
 POLICE FORCE—		
Mayor may summon citizens to act as	805	202
Councils may create and regulate	825	208
 POLICE OFFICERS—		
City council may appoint	808	203
 POLICIES—		
Of life, health and accident insurance companies	4741	966
Of assessment or natural premium companies	4791-4793	982
Of mutual assessment accident home companies	4794-4808	983
Of co-operative life insurance companies	4809-4826	987
Of fraternal beneficiary associations	4827-4861	993
Of fire and marine companies	4862-4875	1004
Of mutual fire, storm and lightning companies	4905-4918	1020
Of printers mutual fire and storm companies	4919-4921	1024

	Article	Page
POLICIES—cont'd.		
Of mutual burglary insurance companies	4922-4927	1025
Of fidelity, guaranty and surety companies	4928-4940	1027
Of employers liability insurance companies	4941-4942	1032
General provisions relating to, of insurance companies	4950	1035
 POLICY HOLDERS—		
To be furnished analysis of rates of insurance ..	4888	1014
Of mutual burglary insurance companies	4925	1026
 POLITICAL PARTIES—		
Contributions to by private corporations forbidden	1166	281
Nominations by in primary elections, etc.	3084-3174	655
Having no state organization	3169	671
 POLLS—		
Of elections, opening and closing	2912	622
Of primary elections, opening and closing ..	3088	657
 POLL TAXES—		
For cities and towns	927	226
Levy and collection of ..	7354	1571
Collected from whom, etc.	2938-2963	628
 POLL TAXPAYERS—		
When delinquent, subject to road duty	6973	1490
 POLL TAX RECEIPTS—		
Stamping, etc	3001	642
 POOL HALLS—		
City council may license.	872	214
 POOL TABLES—		
Occupation tax on	7355	1571
 POOR HOUSES—		
Exempted from taxation	7507	1625
 POSSE COMITATUS—		
Sheriffs may summon ..	7135	1524
Constable may summon ..	7146	1526
 POSTHUMOUS CHILDREN—		
Will to admit	7865	1711
 POUNDS—		
City council may establish	860	212
 POWDER—		
None to be taken in mines	5940	1272

	Article	Page
POWER OF SALE—		
When barred by limitation	5693	1204
PRACTICE—		
In trespass to try title	7731-7759	1681
See "Courts, District and County."		
PRAIRIE DOGS—		
Providing for the extermination of.....	6320-6328	1352
Organized counties to hold elections.....	6320	1352
Thirty days' notice of election	6321	1352
Order for election.....	6322	1352
Election, where held; managers and their pay	6323	1352
Qualifications of electors	6324	1352
Form of ballot, and returns	6325	1352
Twelve months allowed to exterminate dogs after publication.....	6326	1352
Who liable, and measure of damages for failure to comply.....	6327	1352
Venue of suits.....	6328	1353
PRECEDING—		
defined	5504	1157
PREFERRED CLAIMS—		
Void in assignments.....	91	53
PRESCRIPTIONS—		
Tax on sale of intoxicating liquors onn.....	7467	1612
PRESIDENT—		
Of private corporations to be chosen.....	1154	280
Electors for.....	3176-3185	674
Of railroads shall report, etc.	6430	1380
PRINCIPAL AND SURETY—	6329-6337	1354
Surety may require suit to be brought.....	6329	1354
Discharged by failure to sue	6330	1354
May have question of suretyship tried, when	6331	1354
Execution levied first on property of principal..	6332	1354
Rights of surety who makes payment on judgment	6333	1354
One surety may have execution against co-surety, when.....	6334	1355
Sheriff, etc., has same right as surety, when..	6335	1355
Surety not to be sued alone, unless, etc.....	6336	1355
Who is surety within this title	6337	1355

	Article	Page
PRINTING BOARD—		
Duties of in printing reports of supreme court	1576	361
Other duties	6338-6370	1356
PRINTING, PUBLIC—	6338-6370	1356
Board of public printing	6338	1356
Record of proceedings...	6339	1356
Board shall contract for public printing.....	6340	1356
Expert may be employed..	6341	1356
Printing classified, etc..	6342	1356
Proclamations, etc., how published	6343	1359
When published in more than one paper, etc...	6344	1359
Stationery, maximum prices of.....	6345	1359
Other printing and stationery	6346	1360
Current printing of legislature to be done at Austin	6347	1360
Number, of copies of laws	6348	1360
Governor's message....	6349	1360
Of other public documents	6350	1360
Advertisements for proposals	6351	1360
To include what.....	6352	1361
Bid to be accompanied by, etc.	6353	1361
No officer to be interested	6354	1361
Proposals, to whom addressed	6355	1361
Awarding of contracts...	6356	1361
Successful bidder to be notified	6357	1361
Requisites of contract...	6358	1361
Suits on contractors' bonds	6359	1362
Secretary of senate and clerk to furnish journals of.....	6360	1362
Secretary of state to furnish laws.....	6361	1362
To compare copies and to certify, etc.....	6362	1362
Work to be delivered to whom	6363	1362
When to be delivered...	6364	1362
Account, how audited and paid	6365	1362
Accounts for current printing of legislature..	6366	1363
Rates may be altered...	6367	1363
Contracts may be abrogated	6368	1363
May be relet, etc.....	6369	1363
Supplies to reporters....	6370	1363
PRISON AUDITOR—		
Salary of.....	7073	1512
PRISON COMMISSIONERS—		
Parol convicts under control of.....	6090	1301
Salary of.....	7072	1512
See "Penitentiaries."		

	Article	Page
PRISONERS—		
Sheriffs shall receive from constable.....	7128	1524
PRISON SYSTEM—		
See "Penitentiary."		
PRIVATE CORPORATIONS—	1117-1321	266
Where sued in justice courts	2308	490
Rendition of property by, for taxation.....	7526	1631
See "Corporations, Private."		
PROBATE—		
Of estates of decedents	3206-3639	680
Of wills.....	3267-3276	690
PROBATE COURTS—		
Final decree of, in escheated cases.....	3203	679
Distribution and partition of estates of decedents by	3527-3562	734
Duties of, in final settlement of estates of decedents	3563-3573	740
Administration of community property of decedents by.....	3592-3614	745
Duties in transfer of administration of estates of decedents.....	3615-3620	748
To adjudge costs of administration of estates of decedents.....	3621-3630	750
PROBATE MATTERS—		
Jurisdiction of district courts in.....	1706	387
Terms of county courts for	1776-1778	399
County court to designate day for.....	1783	400
Suits to revise proceedings in, brought where	1830	410
PROBATION OFFICERS—		
County judge may appoint, etc.....	2196	470
PROCESS—		
And returns in suits in district and county courts	1850-1885	415
How served in corporation courts.....	917	223
Of supreme court in removal of certain officers	6026	1291
From district courts, requisites of.....	2180	465
Of commissioners' court executed when, etc....	2281	485
Service of in justice court	2321-2325	492

	Article	Page
PROCESS—continued.		
Legislative investigating committee may issue..	5521	1160
Issuance of, in military trials	5865	1254
Service on lessee of railroad	6700	1437
PROCLAMATION—		
Of quarantine, governor to issue, when.....	4554	927
Of governor how published	6343	1359
Of result of stock law elections	7221	1541
PRODUCE—		
Weights of.....	7837	1705
PROFITS—		
Net, of savings banks...	411	112
PROGENY—		
Of live stock, lien on	5652-5653	1196
PROHIBITION—		
Of sale of intoxicating liquors, local elections	5715-5730	1209
PROOFS—		
Of handwriting, etc., to instrument for record	6809	1461
PROPERTY—		
Stolen property.....	6371-6372	1364
Treble value of stolen property recoverable, when	6371	1364
Criminal prosecution not affected by this title...	6372	1364
State's personal property, preservation of...	6373-6379	1365
Persons in control of state's property to make inventory.....	6373	1365
How made and to whom rendered	6374	1365
When made.....	6375	1366
Persons in control of property responsible for same.....	6376	1366
Incoming and outgoing officers to check inventory; receipt to be given	6377	1366
Penalty for non-compliance	6378	1366
Law cumulative.....	6379	1367
Trial of right of property	7769-7795	1687
Claimant must make affidavit	7769	1687
And give bond.....	7770	1687
Bond, condition of.....	1771	1687
Property to be delivered to claimant.....	7772	1687
Return of oath and bond	7773	1687
Form of bond.....	7774	1688

	Article	Page
PROPERTY—continued.		
Form immaterial.....	7775	1688
Return of oath, bond and copy of writ when levy made in county other than that where writ issued	7776	1688
Return of original writ..	7777	1688
Jurisdiction	7778	1688
Cause, how docketed....	7779	1689
Issue to be made, etc....	7780	1689
Requisites of issue.....	7781	1689
Judgment by default against defendant, when	7782	1689
Judgment of nonsuit against plaintiff, when.	7783	1689
Proceedings, how conducted	7784	1689
Burden of proof on plaintiff, when.....	7785	1689
Burden of proof on defendant, when.....	7786	1689
Damages	7787	1689
Where value of property exceeds judgment.....	7788	1689
Copy of writ evidence, when	7789	1689
Judgment upon failure to establish title.....	7790	1689
Execution shall issue....	7791	1690
Execution not to issue within ten days.....	7792	1690
Return of property by claimant within ten days	7793	1690
Claim operates as release of damages.....	7794	1690
Levy may be made on other property.....	7795	1690
Subject to levy under writ of attachment....	255	81
Personal, to remain in hands of officer, unless	256	81
Defined	5504	1157
Of married women to be registered	6844	1468
What subject to taxation, and mode of rendering same	7503-7532	1623
Valuation of, for taxation	7530	1632
Of railroad companies subject to execution...	6619	1411
Omitted from tax rolls..	7702	1674
Trial of right of.....	7769-7795	1687
PROSECUTIONS—		
Instituting against trusts, etc.	7796-7809	1691
Against trusts, etc., evidence in	7810-7818	1694
PROTESTS—		
Liability of drawer and endorser of negotiable instruments may be fixed by.....	590	154
How made, and evidence of	591	154

	Article	Page
PROTESTS—continued.		
Against drainage system for public roads.....	6995	1496
PUBLIC ACCOUNTS—		
Comptroller of.....	4320-4361	878
PUBLIC AMUSEMENTS—		
Defining places of, etc....	22-23	8
PUBLIC BUILDINGS, ETC.—		
Public buildings and grounds	6380-6394	1368
Appointment and term of office of superintendent of public buildings....	6380	1368
Bond and oath.....	6381	1368
Removal and liability on bond	6382	1368
Superintendent to have charge of public buildings	6383	1368
Duties as to state cemetery	6384	1368
Shall file inventory of property	6385	1368
Under whose control public rooms and buildings	6386	1369
Public property to be sold, when.....	6387	1369
Shall have charge of halls, rooms, etc., when.....	6388	1369
Not to be used for private purposes	6389	1369
Authority as policeman..	6390	1369
Shall frequently inspect, etc.	6391	1369
To make report.....	6392	1370
Sheriff to have charge of courthouse	6393	1370
The Alamo.....	6394	1370
San Jacinto state park	6395-6397	1371
Establishing state park on battlefield.....	6395	1371
Commissioners	6396	1371
Duties of commissioners..	6397	1371
Laws reserving lands for, not repealed.....		1720
PUBLIC CORPORATIONS—	1118	266
PUBLIC DEBT—		
Laws relating to not repealed		1720
General provisions..	2401-2402	505
PUBLIC DOMAIN—	5278-5279	1103
Vacant public lands belonging to free school fund	5278	1103
All public lands retained at annexation.....	5279	1103
See "Lands, Public."		
PUBLIC EDUCATION—		
See "Education, Public."		

	Article	Page
PUBLIC HEALTH—		
Of cities and towns duties of council.....	979-998	236
See "Health."		
PUBLIC INSTRUCTION—		
State superintendent of	4509-4520	916
PUBLIC LANDS—		
Right of way of irrigation companies over.....	5004	1048
How acquired by United States	5273	1102
Reservation, etc., of certain, for mining purposes	5904	1263
Taxation of leasehold interests in.....	7529	1631
Public roads may cross how	6904	1478
Right of way of railroad companies over.....	6482	1388
See "Lands, Public."		
PUBLIC PRINTING—		
At deaf and dumb asylum	193	71
See "Printing, Public."		
General provisions	6338-6370	1356
PUBLIC PROPERTY—		
Property of, exempted from taxation.....	7507	1624
PUBLIC ROADS—		
Telegraph corporations may construct lines across	1231	296
Intersection of, by railroads	6493	1389
Railroads crossing shall erect signs.....	6563	1400
See "Roads, Bridges and Ferries."		
PUBLIC SCHOOL FUND—		
See "School Funds."		
PUBLIC SCHOOL LANDS—		
See "School Lands."		
PUBLIC SCHOOLS—		
Management of, in defunct cities, etc.....	1093	259
See "Schools."		
PUBLIC UTILITY CORPORATIONS—		
Rates and charges, regulation by council, etc.	1018-1024	245
City council may regulate rates	1018	245
Mayor not to accept franks, privileges, etc.	1019	245
Council may pass ordinances to protect company, etc.....	1020	245
Company to make reports	1021	245

	Article	Page
PUBLIC UTILITY CORPORATIONS—continued.		
Penalties	1022	246
City council of city owning plants may regulate rates. Also may establish and operate plants, etc.	1023	246
This chapter does not repeal, what.....	1024	246
Rates and charges, regulation by court....	1025-1032	247
Extortionate rates unlawful, district court to regulate, etc.; provided, etc.....	1025	247
City council to pass resolution, etc.; copy delivered to president, etc.	1026	247
After twenty days, suit in district court, if, etc. . .	1027	247
What to be considered in fixing rates, etc.....	1028	247
Books to be produced, rate to yield ten per cent, and to stand three years and less, etc....	1028	248
Appeal may be taken, etc.	1029	248
Upon judgment fixing rate, decree enforcing same, etc., duty of attorney general, etc....	1030	248
What public utilities herein included.....	1031	248
Any city incorporated under special charter may avail itself of provisions, etc.....	1032	249
PUBLIC WEIGHERS—		
Fees of	3879	803
General provisions....	3880-3926	804
Regulations as to....	7828-7835	1702
PUNCTUATION—		
Of law, not to affect, etc.	5503	1156
PUPILS—		
Of deaf and dumb asylums to learn printing	190	71
PURCHASERS—		
Of public lands, regulations as to.....	5405-5459	1130
Of railroads, may issue bonds, etc.....	6721	1442
PURE FEED STUFFS—		
Regulations as to, and disposition of funds	5894-5903	1259
PURE FOOD—		
Pure food regulations	4575-4595	931
Appointment, salary and bond of dairy and food commissioner....	4575	931

	Article	Page
PURE FOOD—continued.		
May be removed and vacancy, how filled.....	4576	931
Appointment, salary and bond of assistant commissioner	4577	932
Appointment and salary of stenographer.....	4578	932
Inspectors; appointment, duties and salary.....	4579	932
Expenses of department provided for and limited	4580	932
Department located, where	4581	932
Rights and duties of commissioner	4582	932
Unlawful for officers to issue certificates, in what cases.....	4583	933
Annual report of commissioner, contents.....	4584	933
Shall issue bulletins and notices of judgments; proceedings in case of seizures by commissioner	4585	933

	Article	Page
PURE FOOD—continued.		
Manufacture and sale of misbranded and adulterated foods prohibited	4586	934
Drugs, confectionery and food, when deemed adulterated	4587	934
Term "misbranded" defined	4588	935
Foodstuffs to be protected from dust, vermin, etc.	4589	936
Manufacture and sale of impure cider prohibited	4590	936
Manufacture and sale of certain foods discolored and adulterated, prohibited	4591	936
Baking powder to be labeled; how.....	4592	936
Sale of impure milk prohibited	4593	936
Milk inspector in cities and towns.....	4594	937
Exemptions from prosecutions	4595	937

Q

QUALIFICATIONS—		
Of jurors.....	5114-5121	1074
QUARANTINE—		
Special quarantine regulations	4554-4574	927
Governor may issue proclamation	4554	927
Proclamation as to yellow fever and other diseases	4555	927
Local quarantine.....	4556	928
Local authorities to be subordinate to state, when	4557	928
Shelter to persons detained	4558	928
Expenses	4559	928
Stations to be provided, etc.	4560	928
Governor to appoint local health officer.....	4561	929
Incoming vessels	4562	929
Vessels from infected ports	4563	929
Payment of fine, etc.	4564	929
Expenses to be itemized..	4565	929
When corporate authorities may establish quarantine	4566	929
Authorities may incorporate	4567	930
Commissioners may direct, etc., to declare quarantine	4568	930

QUARANTINE—continued.		
Bond of health officer at Galveston	4569	930
Rules to be prescribed...	4570	930
Sale of condemned property	4571	930
Vessels to be disinfected; fees of quarantine officer, etc.....	4572	930
Persons to disinfect at their own expense....	4573	931
In case of irreconcilable conflict	4574	931
City council may make regulations for.....	839	210
Control of by state board of health.....	4527	921
Of live stock, governor may proclaim.....	7315	1560
QUARANTINE LINE—		
Of live stock sanitary commission	7322	1561
QUARRYMEN—		
Lien of.....	5644-5649	1194
QUARTERMASTER—		
Governor to appoint ranger force.....	6757	1451
QUARTERMASTER GENERAL—		
Appointment, etc.....	5801	1233
QUO WARRANTO—	6398-6404	1372
Petition for, when presented	6398	1372

	Article	Page
QUO WARRANTO—continued.		
Joinder of parties, when.	6399	1372
Citations to issue, etc.	6400	1372
Proceedings as in civil cases	6401	1372
Judgment of court.	6402	1373
Law cumulative	6403	1373

	Article	Page
QUO WARRANTO—continued.		
Venue of suit for state office	6404	1373
To forfeit charters.	2131	456
Attorney general to institute against trusts, etc.	7801	1692

R

RACE TRACKS—		
Occupation tax on.	7355	1574
RAILROAD COMMISSION—	6653-6716	1420
Railroad commission created	6653	1420
Powers and duties, etc.	6654	1421
Notice to be given, when rates fixed.	6655	1423
Rates to be held conclusive, etc.	6656	1423
When railroads dissatisfied, may, etc.	6657	1423
Burden of proof, etc.	6658	1423
To be furnished with schedules of rates fixed	6659	1423
Emergency freight rates.	6660	1424
To what roads apply.	6661	1424
Rates to take effect, when, and how long continued	6662	1454
Temporary freight and passenger tariffs, power to make.	6663	1424
Complainant may apply to commission, when	6664	1424
May inspect books, etc.	6665	1425
To ascertain cost of railroads, etc.	6666	1425
Blanks for information to be prepared	6667	1426
Power to issue subpoenas	6668	1426
Penalty for extorting, etc.	6669	1427
"Unjust discrimination" defined	6670	1427
Damages; penalty; venue in cases of discrimination	6671	1428
Penalty not otherwise provided	6672	1428
Venue of suits for recovery of penalty.	6673	1428
Certified evidence.	6674	1429
All violations of duty to be reported.	6675	1429
"Railroad," etc., defined; intrastate shipments; one train daily.	6676	1430
Law cumulative, etc.	6677	1430
Railroad to furnish cars when demanded.	6678	1431
Application shall state what	6679	1431
Penalty for failure to furnish	6680	1431

RAILROAD COMMISSION—		
continued.		
Applicant shall make deposit	6681	1431
To deliver loaded cars in reasonable time.	6682	1431
Necessary for applicant to show what	6683	1431
Duty to furnish cars and other rolling stock.	6684	1432
Railroad commission to require and authorize mortgage, etc.	6685	1432
Penalty for failure to comply	6686	1432
Shall furnish freight facilities and interchange cars with connecting roads.	6687	1432
To interchange at junction points	6688	1434
Railroad commission to make rules and regulations	6689	1434
Liable for damages, when	6690	1435
Other penalty; "shipper" defined	6691	1436
"Reasonable time" defined	6692	1436
Duty to provide separate passenger depots and suitable freight depots.	6693	1436
Railroad commission to require compliance.	6694	1436
Commission may order construction of union depots	6695	1437
Penalty for failure to comply	6696	1437
Right to lease another road	6697	1437
Lessor company subject to jurisdiction of commission	6698	1437
Exception as to general office	6699	1437
Process, served upon whom	6700	1437
Railroad crossings under control of railroad commission	6701	1438
Interlocking or other safety switches to be used	6702	1438
Expenses of grade crossings paid by whom.	6703	1438

	Article	Page
RAILROAD COMMISSION—		
continued.		
Trains may pass crossings without stopping, when	6704	1438
Penalty, etc.....	6705	1438
Double-header trains, use prohibited, except, when	6706	1438
Use to be regulated by railroad commission...	6707	1438
Penalty and venue of suits	6708	1439
Equipment to be used; commission to supervise	6709	1439
Improved couplers to be used, and how.....	6710	1439
Draw-bar of engine, length of.....	6711	1439
May refuse rolling stock improperly equipped, by connecting lines....	6712	1439
Rolling stock to be provided with grab irons, etc.	6713	1440
Penalty, and how recovered	6714	1440
To build siding and spur tracks	6715	1440
Railroad commission to enforce compliance ...	6716	1440
Duties and powers of over carriers in issuance of bills of lading.....	724	185
Authority of over union depot corporations....	1244	299
Deep water corporations subject to control of..	1258	303
To regulate rates of express companies.....	3820	781
Fees of.....	3845	790
General provisions as to fees	3880-3926	804
To ascertain and report railroad values.....	6719	1441
General provisions as to duties, etc.....	6653-6716	1420
Salary of commissioners.	7053	1509
RAILROAD COMPANIES—		
.....	6405-6753	1374
Amending or changing charter	6417-6422	1377
May amend articles, when	6417	1377
How amendment, etc., shall be made.....	6418	1377
Shall take effect, when...	6419	1377
Shall not amend, when..	6420	1377
May project, etc., branch line, etc., by amendment, etc.....	6421	1377
Branch line shall complete ten miles first year, etc.....	6422	1377
Power to enact by-laws..	6450	1383
Each share entitled to a vote	6451	1383

	Article	Page
RAILROAD COMPANIES—		
continued,		
When and by what vote by-laws shall be enacted	6452	1383
Collection of debts from railroad corporations	6619-6632	1411
Property of company subject to execution.....	6619	1411
Notice required in reducing wages.....	6620	1411
Time of notice and how given	6621	1411
Penalty, etc.....	6622	1411
When wages to be paid discharged employe...	6623	1411
Road liable to be sold for debt.....	6624	1411
New corporation in case of sale.....	6625	1412
Jurisdiction, etc.	6626	1413
Sale under deed of trust, where made	6627	1413
Judgment, execution, etc.	6628	1413
Unpaid stock, etc.....	6629	1413
After sale, old directors to be trustees.....	6630	1414
Suit not to abate, when..	6631	1414
Not to apply to state loans	6632	1414
Forfeiture of charter.	6633-6636	1415
Failure to build, when subject to forfeiture..	6633	1415
Branch lines.....	6634	1415
Relief of for failure to comply with law.....	6635	1415
Neglect to make annual report	6636	1416
General provisions ..	6746-6753	1449
Separate coaches for white and negro passengers	6746	1449
"Negro" defined.....	6747	1449
Separate coaches, how defined and marked....	6748	1449
Penalty	6749	1449
Exceptions and limitations as to provisions..	6750	1450
Law to be posted conspicuously	6751	1450
Does not apply to excursions	6752	1450
Conductor to exclude passengers from wrong car	6753	1450
Incorporation of railroad companies	6405-6416	1374
Not less than ten persons may form	6405	1374
Who may build railroads.	6406	1374
Amount of stock subscribed and to be paid.....	6407	1374
Articles of incorporation must contain what....	6408	1374
Shall be submitted to attorney general	6409	1375
And filed in office of secretary of state.....	6410	1375
Existence of corporations begins when.....	6411	1375

RAILROAD COMPANIES—		Article	Page	RAILROAD COMPANIES—	
continued.				continued.	
May proceed to act when	6412	1375	Effect of judicial or other sale, etc.....	6720	1441
Shall not be more than fifty years.....	6413	1375	Purchasers complying with law may issue bonds.....	6721	1442
Manner of renewing corporation.....	6414	1375	Authority to issue bonds to be secured.....	6722	1442
When authorized to be sold or conveyed under special law.....	6415	1376	How certificates of stock shall issue.....	6723	1442
Shall take, subject to special liens.....	6416	1376	Prerequisites to issue of bonds.....	2724	1443
Injuries to employes 6640-6652	6652	1417	Duty of secretary of state	6725	1443
Liable for injuries to fellow-servants.....	6640	1417	Forfeiture of charter....	6726	1443
Who are vice-principals..	6641	1417	Certificates, bonds, etc., void.....	6727	1444
"Fellow servants" defined	6642	1417	Penalties hereunder....	6728	1444
Contract limiting liability void.....	6643	1417	State not liable.....	6729	1444
Contributory negligence a defense, except, etc...	6644	1417	Amendment of charter; construction of branch lines; issuance of bonds.....	6730	1444
When assumed risk not available as a defense.	6645	1418	Suburban railroad stocks and bonds valid when.	6731	1444
No assumed risk where safety appliance not provided.....	6646	1418	Stocks and bonds may issue for double tracks	6732	1445
Double-header trains, no assumed risk by employes.....	6647	1418	Meetings of directors and stockholders	6472-6480	1386
Liable for injury or death of employe.....	6648	1418	Annual meeting of directors.....	6472	1386
Contributory negligence, rule as to.....	6649	1418	Annual meeting of stockholders.....	6473	1386
Assumed risk, rule as to.	6650	1419	Directors and stockholders may meet at same time and place.....	6474	1386
Contract changing liability void.....	6651	1419	Quorum of directors and stockholders.....	6475	1386
Articles of this chapter construed.....	6652	1419	Special meeting of stockholders.....	6476	1386
Interurban railroad companies	6733-6741	1446	Notice of special meeting.	6477	1387
Right of eminent domain	6733	1446	If quorum of stockholders should not meet.....	6478	1387
Width of right of way, survey, etc.....	6734	1446	Proxy must be dated within what time....	6479	1387
May construct a cross streams, streets, etc...	6735	1446	What stock shall not vote	6480	1387
Same powers of eminent domain as steam railroads.....	6736	1446	Officers of railroad corporations	6438-6449	1382
May condemn easement over other electric railway tracks, etc.....	6737	1447	Board of directors.....	6438	1382
Proceedings to condemn easement.....	6738	1447	Qualifications.....	6439	1382
"Interurban railway company" defined.....	6739	1447	Shall be elected by majority of, etc.....	6440	1382
Chartered rights may include sale of electric lights and power....	6740	1447	Same, etc.....	6441	1382
The provisions of this chapter cumulative...	6741	1448	By-laws in regard to, not to be changed.....	6442	1382
Issuance of stocks and bonds regulated	6717-6732	1441	Manner of voting for....	6443	1382
State vested with regulation of issue of bonds, stocks, etc.....	6717	1441	Failure to hold election, etc.....	6444	1382
Prohibiting incumbrance above value.....	6718	1441	Corporate powers vested, etc.....	6445	1382
Commission to ascertain and report values, etc.	6719	1441	President and other officers.....	6446	1382
			Majority of directors required to elect officers.	6447	1383
			Directors liable when....	6448	1383
			All officers liable when..	6449	1383
			Other rights of railroad corporations	6535-6548	1395
			Shall have succession, etc.	6535	1395

	Article	Page
RAILROAD COMPANIES—		
continued.		
May have a seal, etc.	6536	1395
Shall have the right to hold lands and other property	6537	1395
Shall have the right to receive and hold grants, etc.	6538	1395
Shall alienate lands, except, etc., forfeiture...	6539	1395
Preceding articles apply to all companies.....	6540	1396
Right to convey persons and property.....	6541	1396
Right to erect and maintain buildings, etc....	6542	1396
Right to regulate time, etc., of transportation.	6543	1396
Right to borrow money, issue bonds, etc.....	6544	1396
Mortgage invalid, unless, etc.	6545	1396
Resolution authorizing mortgage shall be recorded	6546	1396
Directors may pay bonds with stock.....	6547	1396
When terminus on coast is destroyed.....	6548	1396
Public office and books	6423-6437	1378
Shall keep offices in this state	6423	1378
What officers to keep offices in this state, etc...	6424	1378
Forfeiture for violation hereof	6425	1379
Required to do repair work in Texas.....	6426	1379
Rolling stock, etc., not to be removed for repair.	6427	1380
Not to apply in cases of strikes, fires, etc.....	6428	1380
Where books to be kept and what they must contain	6429	1380
President must report, etc.	6430	1380
Books to be subject to inspection	6431	1380
Legislature may examine.	6432	1380
Penalty, etc.....	6433	1381
Duty of attorney general.	6434	1381
May change public office.	6435	1381
Notice to be given, etc...	6436	1381
Domicile of corporation..	6437	1381
Railroad commission.	6653-6716	1420
Restrictions upon, duties and liabilities of railroad corporations.	6649-6618	1397
Roads to pass through county	6549	1397
Shall survey twenty-five miles of road, etc....	6550	1397
Subsequent survey of twenty-five miles.....	6551	1398
Trains to be regular.....	6552	1398

	Article	Page
RAILROAD COMPANIES—		
continued.		
Train dispatcher, to maintain, and duties of....	6553	1398
Refusal to transport, etc.	6554	1398
Double-decked cars for sheep	6555	1398
Rates of freight; penalty.	6556	1398
Shall not collect more than specified in bill of lading	6557	1399
Freight to be delivered on payment of charges...	6558	1399
Penalty for refusal to deliver freight.....	6559	1399
Conductor shall wear badge	6560	1399
Without it, shall not collect, etc.....	6561	1399
Baggage shall be checked, etc.	6562	1399
Signs shall be erected at crossings	6563	1400
Bell and steam whistle, duty as to.....	6564	1400
Duty to equip with electric headlights	6565	1400
Penalty for failure.....	6566	1400
Shall keep lighted from sunset to sunrise, except, etc.....	6567	1400
Shall place derauling switches, etc., on sidings, when, etc.....	6568	1400
Penalty	6569	1401
Passenger trains, how formed	6570	1401
Brakes and brakemen...	6571	1401
Passenger trains without full crew, unlawful to run	6572	1401
Freight, gravel or construction trains without full crew, unlawful to run	6573	1401
Light engine without full crew, as defined, unlawful to run.....	6574	1401
Penalty and venue of suits	6575	1401
To what articles apply..	6576	1402
Certain kind of ash pans required	6577	1402
Penalty, evidence, venue of suits	6578	1402
"Common carrier" defined	6579	1402
Provisions of foregoing articles do not apply..	6580	1402
Shall provide suitable places for employes to work	6581	1402
Penalty	6582	1402
Suits, fees of attorneys..	6583	1403
Employes limited to sixteen hours labor.....	6584	1403
Penalties, suits for, venue, etc.	6585	1403
Railroad telegraph and telephone operators eight hours a day work	6586	1404

	Article	Page
RAILROAD COMPANIES—		
continued.		
Penalty, suit and disposition of funds.....	6587	1404
Shall carry United States mails, and compensation therefor.....	6588	1404
Stations shall be created, etc.....	6589	1404
No storage charged, except.....	6590	1404
Depots opened, lighted, etc., penalty for failure	6591	1404
Water closets to be erected.....	6592	1405
Separate closets, how constructed and maintained.....	6593	1405
Penalties and suits for...	6594	1405
Switch cars shall be furnished, when.....	6595	1405
Cattle guards and stops, at what places.....	6596	1405
Same subject.....	6597	1405
Character of.....	6598	1405
Owner may place, etc., cattle guards, etc.....	6599	1406
Liability for failure, etc..	6600	1406
Johnson grass not to be permitted to go to seed on right of way.....	6601	1406
Penalty for damages...	6602	1406
Liability for stock, etc...	6603	1406
Consolidation prevented, etc.....	6604	1406
"Corporation" defined...	6605	1407
Consolidation, etc.....	6606	1407
Maps and profiles of roads to be recorded.....	6607	1407
To receive freight, etc., from connecting lines.	6608	1407
What are connecting lines	6609	1407
Terms for receiving, etc..	6610	1408
All water craft freight to be received on same terms.....	6611	1408
Penalty.....	6612	1409
Provisions of two foregoing articles, how construed.....	6613	1409
Declared to be trustees, when.....	6614	1409
Penalty for refusal, etc..	6615	1409
Equal facilities, etc.....	6616	1410
Damage for failure, etc..	6617	1410
Passenger fare.....	6618	1410
Right of way.....	6481-6534	1388
Right to construct anywhere in the state, etc.	6481	1388
Right of way over public lands.....	6482	1388
Lineal survey, etc.....	6483	1388
May lay out road two hundred feet wide.....	6484	1388
Across streams of water, etc.....	6485	1388
Opening through fences, etc.....	6486	1389
Width of crossing, etc...	6487	1389

	Article	Page
RAILROAD COMPANIES—		
continued.		
Where may be made, etc.	6488	1389
Demand to be in writing, etc.....	6489	1389
Time of completion, etc..	6490	1389
Distance, etc.....	6491	1389
Failure, etc.....	6492	1389
Intersections of roads and streets.....	6493	1389
Crossings of public roads.	6494	1389
Culverts, etc.....	6495	1389
Navigable waters, etc...	6496	1389
Streets not to be taken without.....	6497	1390
Along highways, etc.....	6498	1390
Other railways, etc.....	6489	1390
Intersected railway shall do what.....	6500	1390
When corporations can not agree.....	6501	1390
May enter upon adjacent land and take timber and material, etc.....	6502	1390
Damages, etc.....	6503	1390
When owner and corporation can not agree....	6504	1390
Shall not enter on land, except.....	6505	1391
Statement to be filed, etc.	6506	1391
Regular judge disqualified; special judge appointed.....	6507	1391
County judge shall appoint.....	6508	1391
Commissioners shall be sworn.....	6509	1391
Shall set a day and place To give written notice, etc.....	6510	1391
Manner of service, etc...	6511	1392
Return of service, etc...	6513	1392
Property of minors, etc..	6514	1392
Non-residents, or party secreting himself.....	6515	1392
Proceedings, etc.....	6516	1392
Powers of commissioners, etc.....	6517	1392
Rules of damages, etc...	6518	1392
Same subject.....	6519	1392
Same subject.....	6520	1392
Injuries and benefits not to be estimated as to..	6521	1392
Assessments to be in writing.....	6522	1393
Others may be appointed, when.....	6523	1393
Compensation of.....	6524	1393
Cost of service of notice	6525	1393
Shall make out cost bill.	6526	1393
May remove cause, when.	6527	1393
Decision made judgment. when.....	6528	1393
How costs awarded....	6529	1393
Damages to be paid, when	6530	1393
Practice in case specified.	6531	1294
Right of way, how construed.....	6532	1394

	Article	Page
RAILROAD COMPANIES—		
continued.		
Right of way out of rail- road lands	6533	1394
Right of way vested how.	6534	1395
Stock and stockholders	6453-6471	1384
Railroad stock is personal estate and transferable	6453	1384
Directors may require payment of stock, etc.	6454	1384
Sale of stock when owner neglects to pay.....	6455	1384
Stockholders shall have access to books, etc., of corporation	6456	1384
Funds of corporation shall be used only for legitimate purposes...	6457	1384
Extent of stockholder's liability for debts of corporation	6458	1384
Persons holding stock who are not liable....	6459	1385
Capital stock may be in- creased	6460	1385
Notice of meeting for such increase.....	6461	1385
Notice shall state what..	6462	1385
Increase may be not ex- ceeding amount named in notice.....	6463	1385
Order by resolution in- creasing shall be re- corded	6464	1385
President and directors shall furnish statement to stockholders at reg- ular meeting.....	6465	1385
May be required to fur- nish statement at spe- cial meeting.....	6466	1385
Stockholders may fix amount of loans and interact thereon.....	6467	1385
Stockholders may remove officers and elect others	6468	1385
No stock shall be issued, except, etc.....	6469	1386
Fictitious dividends, etc., void	6470	1386
Penalty for violating two preceding articles....	6471	1386
Street railroads.	6742-6745	1448
Half fare for children in cities of forty thousand or more inhabitants...	6742	1448
Reduced tickets, how used and sold, etc.....	6743	1448
Free fare for children un- der five years of age..	6744	1449
Transfers regulated.....	6745	1449
Ticket agents, authority and duty.	6637-6639	1416
Authorized agent for sale of tickets	6637	1416
Duty of agents.....	6638	1416
Same	6639	1416

	Article	Page
RAILROAD COMPANIES—		
continued.		
District and county at- torneys to sue for pen- alties against.....	367	101
Contracts of, for extend- ing lines over cause- ways, etc.....	650	167
Lands of, may be con- demned for causeways, etc.	655	168
Railroad subsidy bonds, how adjusted and paid	678	172
City council may regulate laying of track by....	863	213
Condemnation of right of way of by towns and villages for streets....	1066	253
Assessment against by cities for street im- provement	1010	242
May own stock and bonds in union depot corpo- rations	1246	299
Liability of, to employes for accepting defectively baled cotton.....	1323	318
Suits by state to recover lands granted to, brought where.....	1830	410
Suits for damages against two or more, brought where	1830	411
Suits for personal in- juries against, brought where	1830	411
Suits against, for services rendered, brought where	1930	411
When in hands of re- ceiver, funds deposited where	2145	459
Sued where in justice courts	2308	490
Failure of, to alienate lands, etc.....	5394	1124
Applications of, to buy public land, for town sites, etc.....	5439	1140
Limitations as to pur- chase	5441	1141
Improvement districts to have right of way over tracks of.....	5575	1176
To keep clean transport- ing cars for live stock	7317	1560
Property of, where and how listed for taxation	7515	1627
Rendition of property by, for taxation	7524	1630
Municipal taxes to pay subsiders in aid of....	7716	1678
RAILROAD CROSSINGS—		
Duty of engineers on ap- proaching	6564	1400
RAILROAD LABORERS—		
.....	5640-5643	1913
Railroad laborers to have lien	5640	1193

	Article	Page
RAILROAD LABORERS—		
continued.		
Lien, how foreclosed....	5641	1193
Venue	5642	1193
Lien ceases, when	5643	1193
RANGERS, STATE 6754-6766	1451	
Organization	6754	1451
To consist of four companies	6755	1451
Compensation	6756	1451
Quartermaster	6757	1451
Under command of governor	6758	1451
Members to serve two years	6759	1451
Quartermaster to purchase supplies.....	6760	1451
Members to furnish horses, equipment, etc.	6761	1451
Arms and equipment....	6762	1452
Rations and forage....	6763	1452
Clothed with powers of peace officers.....	6764	1452
In case of arrest to convey prisoner to county jail	6765	1452
Regulations to be made by governor and adjutant general.....	6766	1452
RATES—		
Of ferries.....	7025	1504
REAL ESTATE—		
Partition of real estate	6096-6115	1303
Joint owner may compel partition	6096	1303
Petition for, and what it shall contain.....	6097	1303
Citation and service....	6098	1303
Citation and service when defendant is unknown	6099	1303
Court shall determine, what	6100	1304
Decree of the court, and appointment of commissioners	6101	1304
Writ of partition.....	6102	1304
Service of writ of partition	6103	1304
Court may also appoint surveyor	6104	1304
Writ returnable, when, and return thereof....	6105	1304
Commissioner shall proceed to partition, etc..	6106	1304
May cause land to be surveyed	6107	1304
Shall divide real estate, how	6108	1305
Shall allot shares.....	6109	1305
Report of commissioners, and what it shall contain	6110	1305
When property is incapable of division, same shall be sold.....	6111	1305

	Article	Page
REAL ESTATE—cont'd.		
Objections may be filed to report, etc.....	6112	1305
Partitioner not prejudicial to reversioner, etc.	6113	1305
Each party shall hold in severalty, subject, etc.	6114	1305
Decree of court shall vest title	6115	1305
Acquisition of for public use	5247-5277	1098
Public land.....	5278-5474	1103
Actions on, barred when	5692	1204
Cemetery corporations may acquire and hold..	1289	310
Conveyances of.....	1103-1116	263
Corporations may convey, how	1173	282
Acquisition of, etc., by private corporations restricted	1175-1181	283
Of counties, commissioners' court to sell.....	1370	326
Real estate in cities and towns levied on, etc., for street improvements	1001	240
Union depot corporations may condemn for depot	1247	299
Drainage corporations may acquire.....	1264	305
Fraternal orders may acquire and hold certain	1217	293
Rights of foreign corporation to purchase, etc.	1317	316
Fire and marine insurance companies shall not hold, except.....	4869	1005
Inheritance tax on, when.	7495	1621
Insurance companies may hold, etc.....	4735	965
Judgments may pass title, etc.	1998	437
Levy on, under execution	3739	770
Macadam and plank road corporations may enter upon, etc.....	1268	306
Power of state banks to own, limited	547	144
Powers of savings banks, as to.....	414	113
Records of certain titles confirmed	6855	1470
Replevy bond in case of..	7105	1519
Sold for taxes, regulations as to.....	956-964	231
Exempt from forced sale	3785-3793	776
How sold under execution	3751	771
How sold under deed of trust	3759	773
Sale of for taxes in towns and villages.....	1057	252
Of decedents, sale of by executor, etc.....	3479-3507	725
For purposes of taxation includes what.....	934	227

	Article	Page
REAL ESTATE—continued.		
For purpose of taxation, includes what.....	7504	1623
Rendition of, by banks for taxation.....	7522	1629
Rendition of, for taxation Of estates of wards, may be sold.....	7520	1628
See "Lands."	4155	853

REAL PROPERTY—		
Assessment of, for previous years.....	7565	1642

REBATES—		
Prohibited in case of factors, etc.....	3832	785
Unlawful to accept from insurance companies..	4897	1018
State purchasing agent forbidden to receive..	7325	1562

RECEIPTS—		
For taxes, requisites....	7617	1652
Of warehousemen.....	7821	1699

RECEIVERS—		
Appointment of by district courts.....	2128-2155	455
When receivers may be appointed.....	2128	455
Who disqualified to act as receiver.....	2129	455
When appointment void.	2130	456
Quo warranto to forfeit charter.....	2131	456
Oath and bond of receiver	2132	456
Receiver's power.....	2133	456
Funds, how invested....	2134	456
Application of funds in hands of receiver, and claims preferred.....	2135	456
Proceedings in suits where receiver is discharged.....	2136	457
When property in the hands of receiver subject to execution....	2137	457
Judgments a first lien on property, and property charged with lien after receivership.....	2138	457
Persons to whom property delivered liable for debts.....	2139	457
Effect of discharge of receiver.....	2140	457
Property redelivered by receiver without sale still liable for debts; suits do not abate, but new party may be made.....	2141	458
Judgments and unused claims have preference lien over mortgage....	2142	458
Receiver and person to property is delivered		

	Article	Page
RECEIVERS—continued.		
both liable and may be sued for unpaid claim	2143	458
Receiver to give bond on appeal.....	2144	458
Railroad funds, where deposited.....	2145	459
Receiver may sue or be sued without leave; effect of judgment against.....	2146	459
Suits against receiver, where brought.....	2147	459
Inventory to be made and returned by receiver..	2148	459
Jurisdiction to appoint receiver confined to courts of this state in certain cases.....	2149	459
Receiver of corporation, where applied for....	5150	459
Where there are betterments, general creditors have rights to be protected.....	5151	453
Judgments and other claims have preference over mortgage.....	2152	460
Receivership of corporations limited to three years.....	2153	460
Application for receiver, by whom made.....	2154	460
Rules of equity shall govern in receivership proceedings.....	2155	460
Of cities, may be appointed, when.....	899	219
Of abolished city or town corporation.....	1080	257
Of dissolved private corporations.....	1205-1211	291
For bond investment companies, duties, etc....	1310	314
Appeal from order of court appointing.....	2079	449
Bulk sales by, not void, etc.....	3973	820
Of estates of minors, etc., appointed when.....	4088	842
For fraternal beneficiary associations.....	4852	1001
Fidelity, etc., insurance company may act as..	4928	1027
Duties under intangible assets tax law.....	7425	1598
Property held by, how rendered for taxation.	7509	1626

RECLAMATION—		
Act of Congress.....	5011	1049

RECOGNIZANCES—		
Judge of corporation court may take.....	916	223

RECORD BOOKS—		
Of probate courts....	3211-3217	681
Evidence when.....	3701	762

	Article	Page		Article	Page
RECORDERS—			REDEMPTIONS—cont'd.		
Election of, of corpora- tion courts.....	906	221	Of lands sold for back taxes	7672	1663
Fees of, how prescribed, etc.	920	224	Of land sold for delin- quent taxes.....	7695	1671
Duties, etc.	6786-6796	1457	Of lands, evidence of title in	7701	1673
General provisions relat- ing to duties of...	6849-6858	1469	REGENTS—		
RECORDS—	6767-6777	1453	Of University of Texas, certain duties, etc.	2626-2654	560
Supplying lost records, etc.	6778-6785	1455	REGISTRATION—		
Lost records may be sup- plied by proof, etc.	6778	1455	.....	6786-6858	1457
Proceedings to establish lost records, etc.	6779	1455	Acknowledgment and proof of deeds, etc., for record	6797-6820	1459
Judgment, etc.	6780	1455	Before whom acknowl- edgment may be made in this state.....	6797	1459
Proceedings in the county court	6781	1455	Without this state and within the United States	6798	1459
Effect of judgment, etc. .	6782	1455	Without the United States	6799	1459
Certified copies may be recorded	6783	1456	Acknowledgment, how made	6800	1459
Original deeds, etc., re- corded again, when...	6784	1456	Party must be known or proven	6801	1459
Judgment shall have force of originals.....	6785	1456	Acknowledgment of mar- ried woman, when and how taken	6802	1459
Transcribing old records	6767-6777	1453	Certificate of officer	6803	1460
Old records to be trans- scribed, when.....	6787	1453	Form of certificate of acknowledgment	6804	1460
Shall conform to the orig- inal record and be com- pared	6768	1453	Form of acknowledgment by a married woman..	6805	1460
Correctness to be certi- fied, and effect of same	6769	1453	Proof of instrument by witness	6806	1460
Original books to be pre- scribed	6770	1453	Witness must be person- ally known to the offi- cer	6807	1460
To what records shall ap- ply	6771	1453	Form of certificate of proof by witness.....	6808	1461
Commissioners' court to have records transcrib- ed, when.....	6772	1454	Handwriting may be proved, when.....	6809	1461
How to be transcribed... .	6773	1454	Evidence may prove what	6810	1461
To have effect of judicial proceedings, when....	6774	1454	Proof, how made when grantor has made his mark	6811	1461
Compensation for trans- cribing	6775	1454	Proofs, how made and certified	6812	1462
Translations from the Spanish	6776	1454	Officers are authorized to administer oaths, etc..	6813	1462
Effect of such transla- tions	6777	1454	Subpoena shall issue, when	6814	1462
Of state banks, regula- tions as to.....	529	140	May compel attendance and answers of wit- ness	6815	1462
Substitution of lost, etc.	2157-2163	460	Statement of acknowl- ment, etc., to be re- corded	6816	1462
Of public officers and courts, evidence.....	3694	761	What statement for rec- ord shall contain....	6817	1462
Of surveys, evidence....	3695	761	Statement shall further recite	6818	1462
Acknowledgment and proof of deeds, etc., for	6797-6820	1459	The book to be a public record	6819	1463
See "Registration."					
REDEMPTIONS—					
Of property sold for taxes in unorganized counties	7597	1648			
Of land sold for taxes...	7641	1658			

	Article	Page
REGISTRATION—cont'd.		
Action for damages will lie by person injured.	6820	1463
General provisions..	6849-6858	1469
Penalty for failing to record	6849	1469
Conveyance heretofore made to be governed by existing laws.....	6850	1469
Recording, and as evidence, to be governed by the then existing laws	6851	1469
Party may have action to correct error when certificate is imperfect...	6852	1469
May obtain judgment proving imperfect instrument	6853	1469
Effect of such judgment in such action.....	6854	1469
Record of certain titles confirmed	6855	1470
Shall be evidence, when.	6856	1470
Old registration operative after creating new county	6857	1470
Attachment proceedings to be recorded, when.	6858	1470
Instruments authorized to be recorded, and the effect of recording.	6821-6842	1463
Patents and grants may be recorded without proof	6821	1463
Copies of archives recorded	6822	1463
What may be recorded..	6823	1463
All sales to be void as to creditors and purchasers unless registered	6824	1463
Located lands have priority over unrecorded title lands, when	6825	1464
English language to be used	6826	1464
Deeds to be recorded where	6827	1464
Deeds valid, etc., against subsequent creditors, from, etc.....	6828	1464
Marriage contract valid, when	6829	1465
Recorder shall record, etc.	6830	1465
Copies from land office to be recorded	6831	1465
Judgments to be recorded	6832	1465
Transfer of judgments to be recorded.....	6833	1465
Judgment in justices' courts, how recorded, etc.	6834	1466
Partition to be recorded.	6835	1466
Decree may be abbreviated	6836	1466

	Article	Page
REGISTRATION—cont'd.		
Suit for land, notice to be filed	6837	1466
Record of, how made...	6838	1466
Transfers without notice valid	6839	1466
Effect of notice.....	6840	1467
Titles to chattels where recorded	6841	1467
Record of any grant, etc., when notice.....	6842	1467
Recorders and their duties	6786-6796	1457
County clerks shall be recorders	6786	1457
What shall be their seal.	6787	1457
Shall provide books, etc.	6788	1457
Shall keep memorandum and give receipt.....	6789	1457
Shall record without delay in the order presented	6790	1457
Record shall take effect, when	6791	1458
Shall keep alphabetical indexes, etc.	6792	1458
What they shall contain.	6793	1458
Same subject.....	6794	1458
Shall give attested copies, when.....	6795	1458
Separate record books...	6796	1458
Registration of separate property of married women	6843-6848	1468
Marriage contracts to be recorded	6843	1468
Registration of property of	6844	1468
May present and prove schedule for record...	6845	1468
Property acquired after marriage	6846	1468
In what county registration must be made....	6847	1468
Conclusive as to subsequent creditors, etc....	6848	1468
Of bonds issued in cases of disaster.....	673	171
Of city bonds with comptroller	893	217
Of county and municipal bonds by comptroller..	620	161
Of county and municipal bonds	632	164
Of log brands.....	7728	1680
Of cattle slaughtered by butchers	7174	1534
Of pharmacists.....	6294	1344
Of wills.....	7874	1712
See "Records."		
REHEARINGS—		
Motions in supreme court	1561-1565	358
Motions for, in courts of civil appeals	1641-1644	375

	Article	Page		Article	Page
RELEASE—			RENTS—continued.		
Of mechanics lien to be filed when.....	5639	1193	On public lands, suits to recover	5460-5474	1148
RELIGIOUS CORPORATIONS—			To be offset in trespass to try title.....	7762	1685
Religious, charitable and other corporations....	1212-1224	293	See "Landlord and Tenant"		
.....	1212	293	REPAIRMEN—		
Powers and privileges of Directors, etc., not to usurp spiritual functions	1213	293	Liens in favor of.....	5665	1199
Certain orders may incorporate, how.....	1214	293	REPAIR WORK—	6476	1379
Incorporation of grand body to include what; rights of subordinate bodies	1215	293	REPEALING CLAUSE—		
Grand and subordinate bodies may elect their own trustees, etc.; other powers.....	1216	293	Of revised civil statutes.	1719	
May acquire and hold land and personalty necessary for sites,, etc., sell, mortgage, etc.	1217	293	REPLEVY—		
Subordinate bodies subject to grand, etc.....	1218	294	Defendant may, on property attached.....	258	81
On demise of subordinate body, property vests in grand body, subject, etc.	1219	294	Defendant may, pending appeal	270	83
Grand body may loan certain funds, take liens on real estate, etc....	1220	294	Defendant may, under writ of garnishment..	279	86
Grand body may provide in charter what, etc....	1221	294	Of property seized under distress warrant.....	5483	1152
Rights of grand body now chartered	1222	294	Of property sequestrated	7103	1519
Franchise tax not required	1223	294	Replevy bond of plaintiff	7110	1520
Not required to state capital stock in charter	1224	294	REPORTERS—		
Corporations — private, generally	1117-1321	266	To the court of criminal appeals	1667-1668	380
RELIGIOUS OPINION—			Reporter; removal of, compensation and duties; reports, etc., how published	1667	380
Does not disqualify witness	3691	761	Clerk to furnish reporter with opinions, records, etc.	1668	380
RELIGIOUS SERVICES—			To the courts of civil appeals	1651	377
In state prisons.....	6204	1323	To the supreme court... ..	1572-1579	361
REMITTER—			Appointment and removal of.....	1572	361
And remitter of judgments, in district and county courts....	2012-2018	439	Stationery, how furnished	1573	361
By courts of civil appeals	1630	373	Records and manuscripts; duties of reporters	1574	361
REMOVAL—			Court to designate the cases to be reported... ..	1575	361
Of guardians.....	4261-4266	869	Duties of printing board	1576	361
RENDITION—			Requisites of volume... ..	1577	361
Of property for taxation	7503-7532	1623	Sale of reports.....	1578	362
RENTS—			Reports, how printed... ..	1579	362
Suits in justice courts for brought where.....	2308	490	For district and county courts	1920-1933	426
			District judges may appoint official reporters, when	1920	426
			Examination and certificate of reporters.....	1921	426
			Oath of reporters.....	1922	426
			Duties of reporters.....	1923	427
			Same subject.....	1924	427

		Article	Page			Article	Page
REPORTERS—continued.				REPRESENTATIVES—			
Compensation of reporter; further duties, compensation, how paid, etc., extra compensation, how paid, etc....	1925	427		Salary of.....	7056	1510	
Reporters to make transcript for any person; compensation	1926	428		Mileage of.....	7056	1510	
Stenographer's fee to be taxed as costs when, payable into general fund of county, except, etc.	1927	428		REPUBLIC OF TEXAS—			
Deputy reporter; appointment; oath; examination	1928	428		Archives of Congress of..	87	51	
Annual statement of reporter	1929	428		RESERVATIONS—			
Special stenographer appointed, when.....	1930	428		Of lands.....	5383-5387	1121	
Compensation of special stenographer	1931	428		RESERVE MILITIA—			
Stenographer for county court, etc., in civil causes, appointed when; oath; compensation	1932	428		5768-5777	1225		
In felony cases reporter to keep stenographic record to be made when and how; transcript for appointed attorney, when, and compensation for same	1933	428		RESIDENCE—			
Of district and county courts, to prepare transcript, when.....	2070	446		Of single man.....	2309	491	
REPORTS—				RESIDENT AGENTS—			
Biennial, of boards of managers of lunatic asylums	116	60		Insurance policies only issued through, except..	4963	1038	
Of superintendents of lunatic asylums.....	125	61		RESTITUTION—			
Of boards of trustees of various asylums to be filed with comptroller.	177	69		Writ of in forcible entry and detainer cases	3955	817	
Of superintendents of deaf and dumb, etc., asylums	187	70		RETAIL LIQUOR DEALER—			
Of savings banks to commissioner of insurance and banking, requisites	425	114		Defined	7428	1599	
Of investment of sinking fund of counties, etc.	699	177		RETAIL MALT DEALER—			
Of city finances to be published annually....	889	216		Defined	7429	1600	
By certain private corporations required....	1182-1186	284		RETURNING OFFICERS—			
REPRESENTATIVE DISTRICTS—				For senatorial districts..	25	11	
Counties apportioned to.	26	12		For representative districts	27	16	
Returning officers for...	27	16		RETURNS—			
				Of process in suits in district and county courts	1850-1885	415	
				REVISED CIVIL STATUTES—			
				General Provisions	1718		
				Revised Civil Statutes, how known and cited	1719		
				To be liberally construed	1719		
				Repealing clause	1719		
				Repeal does not affect, what	1719		
				Same subject.....	1719		
				Validating and legalizing statutes not repealed..	1719		
				Laws relating to public debt, etc., not repealed	1720		
				Laws relating to university and school funds not repealed.....	1720		
				Laws creating, etc., counties and county seats not repealed.....	1720		
				Judicial districts and time of holding district courts	1720		
				No person, etc., released from any duty, etc... ..	1720		
				Laws as to reservations for actual settlers and public buildings not repealed	1720		

	Article	Page		Article	Page
REVISED CIVIL STATUTES			RIGHT OF WAY—cont'd.		
—continued.			Damages, etc.....	6503	1390
Laws for the payment of unpaid school teachers and public libraries not repealed	1720		When owner and corporation can not agree....	6504	1390
Certain laws of a local or private nature still in force.....	1720		Shall not enter on land, except	6505	1391
Shall be construed as continuation of former laws, etc.....	1720		Statement to be filed, etc.	6506	1391
Laws of the Thirty-second legislature not affected	1720		Regular judge disqualified; special judge appointed	6507	1391
Not to be printed in pamphlet laws.....	1720		County judge shall appoint	6508	1391
Take effect, when.....	1721		Commissioners shall be sworn	6509	1391
Emergency clause.....	1721		Shall set a day and place.	6510	1391
			To give written notice, etc.	6511	1392
			Manner of service, etc....	6512	1392
			Return of service, etc....	6513	1392
			Property of minors, etc..	6514	1392
REVOCAATION—			Non-residents, or party secreting himself	6515	1392
Of written wills.....	7859	1710	Proceedings, etc.	6516	1392
			Powers of commissioners, etc.	6517	1392
RIGHT OF WAY—			Rules of damages, etc....	6518	1392
Of irrigation companies	4991-5011	1045	Same subject	6519	1392
For irrigation purposes..	5097	1070	Same subject	6520	1392
For penitentiary railroad	5251	1099	Injuries and benefits not to be estimated as to..	6521	1393
For improvement districts	5567	1174	Assessments to be in writing	6522	1393
Of improvement districts across railroads, etc..	5575	1176	Others may be appointed, when	6523	1393
Right of way of railroad companies	6481-6534	1388	Compensation of	6524	1393
Right to construct anywhere in the state, etc.	6481	1388	Cost of service of notice..	6525	1393
Right of way over public lands	6482	1388	Shall make out cost bill..	6526	1393
Lineal survey, etc.....	6483	1388	May remove cause, when.	6527	1393
May lay out road two hundred feet wide....	6484	1388	Decision made judgment, when	6528	1393
Across streams of water, etc.	6485	1388	How costs awarded....	6529	1393
Opening through fences, etc.	6486	1389	Damages to be paid, when	6530	1393
Width of crossings, etc..	6487	1389	Practice in case specified.	6531	1394
Where may be made, etc	6488	1389	Right of way, how construed	6532	1394
Demand to be in writing, etc.	6489	1389	Right of way out of railroad lands	6533	1394
Time for completion, etc.	6490	1389	Right of way vested how.	6534	1395
Distance, etc.....	6491	1389	Of interurban railroads..	6733	1446
Failure, etc.....	6492	1389			
Intersections of roads and streets.....	6493	1389	RIGHT OF PROPERTY—		
Crossings of public roads, etc.	6494	1389	Trial of.....	7769-7795	1687
Culverts, etc.....	6495	1389			
Navigable waters, etc....	6496	1389	RIPARIAN RIGHTS—		
Streets not to be taken without	6497	1390	Prescribed and defined..	3982	822
Along highways, etc....	6498	1390			
Other railways, etc.....	6499	1390	RIOTS—		
Intersected railways shall do what.....	6500	1390	City councils may suppress, etc.....	828	209
When corporations can not agree.....	6501	1390	Military officers' duties in case of.....	5834	1240
May enter upon adjacent land and take timber and material, etc.....	6502	1390			
			RIVERS—		
			Property of state.....	3980	822
			ROAD BRANDS—		
			Of live stock.....	7278	1553

	Article	Page
ROAD DISTRICTS—		
Not liable for torts.....	638	165
ROAD DUTY—		
Who liable to.....	6916-6926	1481
ROADS, BRIDGES AND FERRIES—	6859	1472
Appointment of overseers	6905-6918	1479
County to be laid off into road precincts, etc....	6905	1479
Overseers to be appointed, when	6906	1479
May be made at any time	6907	1479
Vacancy, how filled, etc.	6908	1479
Clerk to make copies of appointment	6909	1479
Order shall show what...	6910	1480
Service of order, etc....	6911	1480
Term of service of, etc..	6912	1480
Persons not compelled to serve, etc.....	6913	1480
Overseer shall notify clerk	6914	1480
County shall appoint another	6915	1480
Non-refusal considered as accepting	6916	1480
Clerk shall insert what on copies of appointment, etc.....	6917	1480
Clerk shall post list.....	6918	1480
Bridges	7013-7020	1502
Overseers shall have bridges built, when, etc.	7013	1502
Commissioners' court, power to have bridges built	7014	1502
May contract for building of toll bridges.....	7015	1502
Shall take security from contractors to keep bridges in repair, etc.	7016	1502
When stream forms line of counties, expense of bridge to be joint....	7017	1503
Tolls assessed to pay bonds	7018	1503
Coast counties may lease, etc., causeways, etc....	7019	1503
Funds available for the purpose	7020	1503
Drainage of public roads	6990-7012	1495
What roads are public; commissioners to cause drains to be constructed	6990	1495
Shall not change natural course of streams.....	6991	1496
Petition	6992	1496
Notices	6993	1496
Protests, hearing.....	6994	1496
Surveyor employed.....	6995	1496
Survey made; report....	6996	1497
Jury of viewers; duties; report	6997	1497

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Oath of viewers.....	6998	1498
Assessment of abutting owners	6999	1499
Action of commissioners' court on protests final.	7000	1499
Objections and claims submitted in writing to viewers; failure to submit same a waiver of claim	7001	1499
Appeals	7002	1499
Trial on appeal.....	7003	1500
Appropriation; construction	7004	1500
Special overseer employed, when; duties, powers and compensation	7005	1501
List of assessment; certificates to issue.....	7006	1501
County treasurer to collect on certificates....	7007	1501
Enforcement by suit....	7008	1501
Operates a lien.....	7009	1501
Compensation of viewers and surveyor.....	7010	1501
Abutting owners may construct lateral ditches.	7011	1501
This act cumulative....	7012	1502
Establishment of public roads	6859-6904	1472
What roads declared public	6859	1472
Commissioners' court to open	6860	1472
Not to be changed unless, etc.....	6861	1472
Roads in towns, etc....	6862	1472
First class roads from county site to county site, etc.....	6863	1473
Jury of view to be appointed, etc.....	6864	1473
Damages, how assessed, etc.	6865	1473
When damage excessive, etc.	6866	1473
Owner of inclosed lands shall have nine months to remove, etc.....	6867	1473
Compensation, etc.....	6868	1474
In unorganized counties, etc.	6869	1474
Such roads to be changed, when	6870	1474
General classification of roads	6871	1474
First class roads, etc....	6872	1474
Second class, etc.....	6873	1474
Third class, etc.....	6874	1474
Application not until, etc.	6875	1474
How made, etc.....	6876	1475
How laid out, etc.....	6877	1475
Oath of jury, etc.....	6878	1475
Duty of jury, etc.....	6879	1475
Notice of dower, etc.....	6880	1475

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Statement of damages, etc.	6881	1475
If report approved, to be paid, etc.	6882	1476
May order opening, but damages to be paid first, etc.	6883	1476
Established if no objection made.	6884	1476
May change roads, when.	6885	1476
Duty of clerk as to jury of view.	6886	1476
Service of order of appointment.	6887	1476
Defaulting juror to be punished.	6888	1476
Roads on line between different owners, etc.	6889	1477
Ten freeholders may make application for.	6890	1477
Requisites of application.	6891	1477
Clerk shall issue notice, etc.	6892	1477
Service of, etc.	6893	1477
May open on line, when.	6894	1477
Notice served, etc.	6895	1477
Not required to be controlled by the public, etc.	6896	1477
Costs, etc.	6897	1477
Neighborhood roads discontinued, how.	6898	1478
Right to erect gates.	6899	1478
Damages, how assessed.	6900	1478
Commissioners as supervisors.	6901	1478
Not to be discontinued, unless.	6902	1478
Reports, etc.	6903	1478
Across public lands, etc.	6904	1478
Ferries	7021-7041	1504
Who are entitled to license to keep.	7021	1504
Can not be kept for hire without license.	7022	1504
When stream is part of state boundary.	7023	1504
License, how obtained.	7024	1504
Rates of ferriage shall be established.	7025	1504
Change of rates.	7026	1504
When owner refuses to keep ferry at established rates.	7027	1505
License and bond to be renewed annually.	7028	1505
License not to issue until.	7029	1505
Rates of, to be delivered to person obtaining license.	7030	1505
Rates of, to be posted at the ferry.	7031	1505
Where ferryman delays or refuses, etc., to pass persons.	7032	1505
Duties of ferryman.	7033	1505

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Where ferryman charges more than, etc.	7034	1506
Penalty for keeping, etc., without license.	7035	1506
Proceedings against sureties.	7036	1506
Suit on bond.	7037	1506
Temporary license.	7038	1506
License tax.	7039	1506
Where stream is part of county boundary.	7040	1506
Charge on cattle, etc., swimming stream.	7041	1507
Persons liable to work on roads and their rights and duties.	6919-6926	1481
Who are liable to work on roads, and who are exempt.	6919	1481
Age limitation of workers on public roads, etc.	6920	1481
Liability to road service.	6921	1481
Substitute may be furnished.	6922	1481
Payment of money shall be required.	6923	1481
Hand shall furnish tool.	6924	1481
Duty of hand to work, etc.	6925	1481
Five days' work only can be required.	6926	1481
Powers and duties of overseers	6927-6945	1482
Roads shall be worked twice each year.	6927	1482
Power to call out hands.	6928	1482
Hands not designated shall be summoned.	6929	1482
Mode of summoning hands.	6930	1482
Summons in writing, service of.	6931	1482
Overseer may appoint some one to summon hands.	6932	1482
Overseer shall report defaulting road hands.	6933	1482
Timber for causeways and bridges.	6934	1483
Construction of causeways.	6935	1483
Overseer may exchange labor for wagons, etc.	6936	1483
Measuring roads and mile posts.	6937	1483
Index boards shall be placed where.	6938	1483
Mile posts and index boards shall be replaced when removed, etc.	6939	1483
Overseer may exchange labor for index boards and mile posts.	6940	1483
Overseer shall apply money, how.	6941	1483

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Overseer shall report to commissioners' court, when	6942	1483
Compensation, etc., of overseers	6943	1484
Money shall be expended how	6944	1484
May dismiss hands, when	6945	1484
Road commissioners	6946-6952	1484
Commissioners' court may employ four road commissioners, etc.	6946	1484
Powers and duties, etc.	6947	1484
Expenditures of money by, etc.	6948	1485
Court to see to expenditures	6949	1485
May make rules, etc., for working roads, etc.	6950	1485
May accept donations, etc.	6951	1485
Law, cumulative, etc.	6952	1486
Road superintendents.	6953-6976	1486
Commissioners' court shall appoint road superintendents	6953	1486
Commissioners' court to determine what superintendents shall be appointed	6954	1486
Oath and bond of superintendent; recovery on bond	6955	1487
Superintendent, qualifications, term, penalties, etc.	6956	1487
Salary of road superintendent	6957	1487
Duties and liability of.	6958	1487
Other duties of road superintendent	6959	1487
Superintendent to divide county into road districts; keep record, etc.	6960	1488
May summon hands, appoint deputy, and contract for use of teams.	6961	1488
Reports of road superintendent	6962	1488
Commissioners' court, powers of.	6963	1488
Superintendent shall do what under direction of commissioners' court.	6964	1488
Superintendent to certify payments, etc.; his certificate and liability.	6965	1489
Commissioners' court may let contract for work; advertisement for bids; bond of contractor; appropriation.	6966	1489
Convict labor.	6967	1489
Donations for road purposes; drains.	6968	1489

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
System of working hands under road overseers may be retained.	6969	1490
Method of work in counties where special road tax is levied.	6970	1490
Accounts of superintendent, and payment of moneys collected by him	6971	1490
Penalty for injury to any bridge, culvert, drain, etc.	6972	1490
Delinquent poll taxpayers subject to road duty; requirement is cumulative; penalty.	6973	1490
Terms "road," "work," and "working" defined	6974	1490
This law cumulative of general laws.	6975	1491
Counties exempt.	6976	1491
Road law for counties having forty thousand inhabitants or over	6977-6989	1491
Members of commissioners' court to be ex officio road commissioners; their duties; bonds	6977	1491
Their powers.	6978	1492
May work convicts.	6979	1492
Shall have control over overseers	6980	1492
Shall direct work in progress	6981	1493
May cause road hands to be called out, when; credit allowed for use of teams; penalty for non-compliance with instructions	6982	1493
Persons exempted from road duty, how.	6983	1493
May take material for road work; compensation; condemnation proceedings	6984	1493
County not to give bond; compensation of commissioners appointed to condemn.	6985	1494
Penalty for failure to comply with call for road duty.	6986	1494
Compensation of commissioners	6987	1494
This chapter cumulative.	6988	1494
Certain counties excepted	6989	1495
Special road tax.	7042-7046	1507
Election for road tax, how ordered.	7042	1507
Same subject.	7043	1507
Who qualified to vote, etc.	7044	1507

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Duty of commissioners' court upon obtaining result of election, etc.	7045	1508
No bonds to issue.....	7046	1508
General provisions and regulations as to the issue of bonds.....	605-626	159
Particular provisions and regulations as to the issue of bonds for...	627-655	162
Power to issue road, etc., bonds and levy tax for interest and sinking fund	627	162
Election for; propositions, restrictions and requirements	628	163
Notice of election.....	629	163
Time, place and manner of holding election....	630	163
If election carried by two-thirds vote, bonds to be issued.....	631	163
Bonds, term, interest, examination, registry, custody; sale; disposition of proceeds; disbursement, regulation of	632	164
General laws applicable...	633	164
Tax for interest and sinking fund; levy, assessment and collection; treasurer to be custodian, and to deposit with depository.....	634	164
Treasurer to pay interest and sinking fund.....	635	164
Numbering of districts and bonds to correspond, etc., designation of bonds.....	636	165
Provisions not applicable to bonds of whole county; designation of latter	636	165
District accepting provisions to be body corporate; powers.....	637	165
Road district not liable for torts.....	638	165
County commissioner to be ex officio road superintendent; powers....	639	165
Bids to be taken on contract work; contract to be let to lowest and best bidder; right to reject	640	165
County operating under special road tax law may take advantage of provisions	641	165

	Article	Page
ROADS, BRIDGES AND FERRIES—cont'd.		
Elections in certain counties to authorize bonds for causeways, viaducts, bridges, etc....	642	165
Preliminary surveys and estimates; order for election to prescribe amount and terms of bonds	643	166
Resolution for election to be recorded, and submitted to vote, how...	644	166
General law to govern election, etc.; proclamation posted; publication	645	166
Qualifications for voting..	646	166
Ballot, form, etc., restrictions	647	166
If election carried by majority, etc., bonds to be prepared and executed, how, terms, regulations, etc.....	648	166
Levy of tax annually for interest and sinking fund	649	167
Commissioners may contract for privilege of using causeways, etc., or constructing, etc., tracks, telegraph lines, etc., no exclusive, etc., contracts, previous notice, etc.....	650	167
Revenue to be appropriated to maintenance and repair of structures; excess to road and bridge fund of county	651	167
Commissioners may make regulations, etc., for use of structures.....	652	167
Power of condemnation, etc.	653	167
Use, etc., of streets, etc., may be granted for purposes of causeway, etc.	654	168
May condemn land of railroads, etc.....	655	168
Funding, refunding and compromise of indebtedness	656-697	169
Sinking funds, investments, etc.....	698-702	176
ROLLING STOCK—		
Of railroad companies, repair of	6427	1380

S

	Article	Page
SAFETY DEPOSITS—		
Box rent, default in payment, etc.....	413	112
SAFETY LAMPS—		
Use of, in mines.....	5941	1272
SAILORS—		
Of the Confederacy, how pensioned	6267-6285	1337
Wills of.....	7864	1711
SALARIES—	7047-7091	1509
Executive officers.....	7047-7054	1509
Salary of governor.....	7047	1509
Secretary of state.....	7048	1509
Attorney general.....	7048a	1509
Comptroller, treasurer and commissioner of the general land office.	7049	1509
Superintendent of public instruction	7050	1509
Commissioner of agriculture	7051	1509
Commissioner of insurance and banking.....	7052	1509
Railroad commissioners..	7053	1509
Adjutant general.....	7054	1509
General provisions	7086-7091	1514
Salaries not to be changed during term of office..	7086	1514
Payable monthly.....	7087	1514
May be compelled to produce evidence of qualification, when.....	7088	1514
Salary to be paid to whom	7089	1514
Who entitled to compensation	7090	1514
Enumeration of officers and salaries in this title does not repeal provisions found elsewhere	7091	1515
Judicial officers	7056-7065	1511
Salaries of justices of the supreme court and court of criminal appeals	7057	1511
Judges of courts of civil appeals	7058	1511
District judges.....	7059	1511
Assistant attorney general	7060	1511
Special judges, etc.....	7061	1511
Special judges elected by, etc.	7062	1511
Of special judge, how ascertained	7063	1511
Pay of special judge commissioned	7064	1511
Pay of special judge elected	7065	1511
Legislative officers ..	7055-7056	1510
Salary of lieutenant governor	7055	1510
Senators and representatives, mileage and per diem	7056	1510

	Article	Page
SALARIES—continued.		
Miscellaneous officers	7066-7085	1512
Salaries of superintendents of certain asylums	7066	1512
Same	7067	1512
State purchasing agent for eleemosynary institutions	7068	1512
Superintendents of orphan homes and confederate home.....	7069	1512
Superintendent home for lepers	7070	1512
Superintendent of state institution for juveniles	7071	1512
Prison commissioners ...	7972	1512
Prison auditor	7073	1512
State revenue agent.....	7074	1512
Superintendent of public buildings	7075	1513
Commissioner of pensions	7076	1513
Commissioner of labor statistics	7077	1513
State health officer.....	7078	1513
Dairy and food commissioner	7079	1513
State mining inspector... ..	7080	1513
State librarian	7081	1513
Pardon advisors.....	7082	1513
Game, fish and oyster commissioner	7083	1513
Tax commissioner.....	7084	1513
State insurance board ...	7085	1513
Salary of state revenue agent	7368	1579
SALES—		
Of estates of decedents	3479-3507	725
Reports of sales of estates of decedents.....	3508-3517	730
Of property under execution	3751	771
Of property under deed of trust	3759	773
Of estates of wards ..	4153-4173	853
Reports of sales of estates of wards	4174-4184	857
Of public free school and asylum lands	5405-5459	1126
Of gayule and lechuguilla on public lands.....	5434	1139
Of bonds of improvement district	5556	1172
Of mining lands.....	5921	1268
Of property by pawnbrokers	6163	1313
Of public property of state	6387	1369
Of lines of railway.....	6415	1376
Of railroad, new corporation in case of.....	6625	1412
Under deed of trust, when and where made.....	6627	1413
Of railroads, effect of, when made by court...	6720	1441

	Article	Page
SALES—continued.		
Of property levied on under sequestration...	7113	1520
Of live stock	7170-7184	1533
Of estrays.....	7195	1538
Of impounded live stock.	7225	1542
Of impounded horses, etc.	7252	1548
Of hides imported from Mexico, when seized...	7287	1554
Of property for taxes in unorganized counties..	7594	1648
Of property for taxes, how made	7631	1656
Of lands for back taxes..	7671	1663
Of wrecked property.....	7891	1716
SALOONS—		
City council may close on Sunday	832	209
City council may regulate To be closed on election day	3021	645
Closed on primary election day	3120	663
Military officer may order closing of, when.....	5836	1241
License tax on owners of	7427-7446	1599
Regulating hours of closing	7451	1607
SALT COMPANIES—	1303-1308	312
SALVAGE—		
Duties of wreck-masters as to.....	7887-7901	1716
SANITARY CODE—		
State board of health to prepare	4529	921
SANITARY DEPARTMENTS—		
Of cities and towns	979-998	236
City council may appoint health physician, etc...	979	236
Power to make regulations in regard to pestilence and disease.....	980	236
Owner, etc., of public conveyance, conveying into city person sick with contagious disease, liable to punishment, when	981	236
Any person liable to punishment, when	982	237
Inn-keeper, physician, etc., shall report persons sick with smallpox, etc.	983	237
Power of council to have city cleansed, etc.....	984	237
Health physician may be authorized to do what.	985	237
Cities to regulate sewer, etc., connections, draining, plumbing.....	986	237

	Article	Page
SANITARY DEPARTMENTS—continued.		
Examining and supervising board of plumbers.	987	238
Composition of board....	988	238
Term regulated and vacancies filled by mayor and aldermen, etc.....	989	238
Inspector of plumbing elected, when and how.	990	238
Board to examine plumbers and plumbing inspector, licenses and register of.....	991	238
Licenses not to issue for more than one year, renewable, etc.	992	238
License fee; disposition of	993	238
Members of board to receive no compensation.	994	238
License not transferable. Examination and fee not required of same person but once.....	996	238
No license until examination passed.....	997	239
Every plumbing firm to have one member a practical plumber.....	998	239
City councils, general duties, etc.	813-902	206
SANITATION—		
City council may do, etc., to promote, etc.....	838	209
Cities and counties to provide for.....	852	211
SAN JACINTO STATE PARK—		
Establishing state park on battlefield	6395	1371
Commissioners	6396	1371
Duties of commissioners.	6397	1371
SAVINGS BANKS—		
Savings banks, incorporated how	386	107
Articles of association, requisites	387	107
Further requisites	388	108
To be signed, acknowledged, recorded, etc.....	389	108
Board of directors and other officers	390	108
Meetings of board of directors—quorum	391	108
Capital stock prescribed, to be subscribed and paid up.....	392	109
Capital stock limited; requirements as to increase of.....	393	109
Stock a guarantee fund and invested, etc.....	394	109
Powers of corporation...	395	109
May limit deposits, etc...	396	109

	Article	Page
SAVINGS BANKS—cont'd.		
Payment of deposits; regulations, notice; interest	397	109
Pass book, requirements as to	398	110
Deposit in name of minor or female thereafter married	399	110
Deposit in trust	400	110
No interest paid or declared until when nor unless, etc.	401	110
Interest rate paid, to be regulated by directors ..	402	110
Deposits invested, how ..	403	110
Same subject	404	111
Application for loans, how made; record of; presented to board	405	111
Cash reserve	406	111
Indemnity fund and guaranty fund	407	111
Guaranty and indemnity funds; rule in determining per cent of	408	111
No dividend over ten per cent, etc., nor except as provided	409	112
Dividend not over ten per cent may be declared when, etc.	410	112
Dividends, further provisions as to, and as to net profit	411	112
Division of net profits; guaranty and indemnity funds	412	112
Safety deposit box rent, default in payment of; proceedings on	413	112
Powers of savings bank as to real estate	414	113
Corporation, etc., shall not repurchase lands sold	415	113
Powers of directors	416	113
Notices and rules posted, effect of	417	113
Compensation of directors, when and how allowed	418	113
No director to receive pay for services, except, etc.	419	113
Restrictions as to fees, brokerage, etc.	420	113
No director or officer to borrow funds, nor use, except, etc., nor be surety, etc., for loans to bank	421	113
Fees, etc., to member of board to be reported ..	422	114
Penalty for directors borrowing, etc., being surety, failure to attend meetings, etc.	423	114

	Article	Page
SAVINGS BANKS—cont'd.		
Security from officers, agents, etc., for fidelity ..	424	114
Annual report of savings bank, etc., to commissioner; form; requisites ..	425	114
Report continued, and requisites	426	114
Report continued and requisites; examination of books, as to basis, etc., forfeiture for failure to report	427	114
Commissioner may give directions to savings banks, etc., when; communication to attorney general; his duties; order of court	428	115
Visitation of savings banks, etc., by commissioner, etc., powers, expenses, certificate; report	429	115
Commissioner to report to legislature, requisites ..	430	116
Savings departments 431-444		116
Bank, etc., desiring to establish savings departments, etc., shall do what	431	116
Shall invest not over 85 per cent of savings deposits, how; power to sell and reinvest	432	116
May sell securities and reinvest proceeds	433	117
To meet current demands securities may be sold, or taken up by bank, etc., out of guaranty fund	434	117
Not less than fifteen per cent of deposits to be kept on hand in cash in savings department ..	435	117
Notice of withdrawal of deposits	436	117
Exclusive prior lien of savings depositors on cash of savings department, etc.	437	118
Statement of assets and liabilities of savings deposits to be received unless, etc.	438	118
Directors may provide for interest on savings deposits, etc.; provided, etc.	439	118
Accumulated earnings of savings department may be transferred to general fund of bank, etc., when	440	118
Savings department governed by provisions of this title, etc.	441	118

	Article	Page		Article	Page
SAVINGS BANKS—cont'd.			SCHOOL DISTRICTS—cont'd.		
Directors may adopt regulations; to be submitted to commissioner, etc.	442	118	Hours of election.	2830	604
Certain acts forbidden.	443	118	Who entitled to vote.	2831	604
Assets not to be reduced below deposits, and fifteen per cent to be cash.	444	119	Challenge of voter.	2832	604
See "Banks and Banking."			Election to abrogate, increase or diminish tax.	2833	604
SCALES—			Form of ballot.	2834	604
Of public weighers, to be accurate.	7832	1704	Form of ballot for increase.	2835	605
SCHOLARSHIPS—			Levy of tax.	2836	605
Of educational corporations.	1228	295	Election for issuance of bonds.	2837	605
SCHOLASTIC AGE—			Ballots.	2838	605
Trustees in cities and towns may extend.	2894	617	Issuance and sale of bonds.	2839	606
Limits of in state.	2900	618	Form of bond.	2840	606
SCHOLASTIC CENSUS—			Levy of bond tax.	2841	606
.	2774-2779	588	Tax must be levied until bonds are paid.	2842	606
Manner of taking census.	2774	588	Expenditure of receipts from sale of bonds.	2843	607
Duty of census trustee.	2775	589	Trustees to contract for building.	2844	607
Duty of county superintendent, as to.	2776	589	Lien may not be acquired.	2845	607
Duty and power of state superintendent, as to.	2777	590	Sale of school property.	2846	607
Compensation of census trustee.	2778	590	Control of school property.	2847	607
Above articles apply to cities and towns, except, etc.	2779	590	Protection of houses of respective races.	2848	607
SCHOLASTIC YEAR—	2901	618	Title to property.	2849	607
SCHOOL CHILDREN—			Exclusive control by cities and towns, independent districts.	2867-2883	612
Reduced fare on street railways for.	6743	1448	City or town may assume control of schools.	2867	612
SCHOOL DISTRICTS—			Same.	2868	612
Common school districts.	2815-2849	600	Election to determine question.	2869	612
Establishment of districts.	2815	600	Shall receive pro rata of school funds.	2870	612
Commissioners' court may change district lines.	2816	600	General laws shall govern.	2871	612
Court shall give metes and bounds of district.	2817	600	Property vested in trustees.	2872	612
Election and qualification of trustees.	2818	601	Sale of property.	2873	613
Election officers, how appointed, returns.	2819	601	Schoolhouse bonds to be issued by city council.	2874	613
Returns of election.	2820	601	Local maintenance tax.	2875	613
Suit for removal of trustee.	2821	601	Two-thirds majority necessary.	2876	613
District trustees a body corporate.	2822	602	Election for local tax.	2877	613
Shall have management and control of schools.	2823	602	Levy of tax.	2878	614
Make contracts for the district.	2824	603	Same.	2879	614
Contracts with teachers.	2825	603	Trustees determine annual rate.	2880	614
Check for payment of teacher.	2826	603	Assessment and collection.	2881	614
Special tax authorized.	2827	603	Funds to be turned over to school treasurer.	2882	615
Petition for tax election.	2828	603	Extension of city limits for school purposes.	2883	615
Presiding officer; ballots.	2829	604	Independent districts.	2850-2866	608
			Application to county judge for elections.	2850	608
			Incorporation.	2851	608
			Board of trustees.	2852	608
			Powers of the board.	2853	608
			Exclusive control.	2854	609
			Districts validated.	2855	609
			General laws apply to all districts.	2856	609
			Local taxes; bonds.	2857	609

Article Page		Article Page	
SCHOOL DISTRICTS—cont'd.			
Election to be ordered by trustees	2858	609	
Notice of election.....	2859	610	
Who may vote; ballots..	2860	610	
Collection of taxes.....	2861	610	
Assessment and collection of taxes by county officer	2862	610	
Trustees authorized to invest sinking funds....	2863	610	
Refunding bonds	2864	611	
Extension of boundaries. Change in boundaries by commissioners' court..	2865	611	
County superintendents shall apportion school funds to	2755	584	
Right of to collect delinquent taxes.....	7693	1670	
SCHOOL ELECTIONS—			
Form of ballot.....	2972	636	
SCHOOL FUNDS—			
Available public free school fund.....	2725-2726	576	
What shall constitute state school fund.....	2725	576	
County school fund, income from lease of land	2726	576	
Duties of comptroller and treasurer as to school funds	2744-2749	581	
Shall keep separate account of school fund..	2744	581	
Shall draw warrants....	2745	581	
Report	2746	582	
Shall keep account of school funds.....	2747	582	
Shall report condition of funds	2748	582	
Shall not use school funds for another purposes	2749	582	
Laws relating to, not repealed	1720		
Board of education authorized to invest....	2736	579	
State treasurer custodian of	4376	888	
State superintendent of public instruction to report available, monthly	4519	917	
Vacant lands belong to, etc., when.....	5278	1103	
All unappropriated lands declared part of.....	5385	1122	
One-half of the public domain added, to, etc....	5386	1122	
Certain lands belong to..	5397	1124	
Proceeds of public lands recovered turned over to	5473	1150	
SCHOOL HOUSES—			
Bonds for building.....	2837	605	
Purchases of public lands for	5448	1143	
SCHOOL LANDS—			
Sale and lease of public free school and asylum lands	5405-5459	1126	
Sale and lease of public lands provided for....	5405	1126	
Duties of commissioner of general land office....	5406	1126	
Classification and valuation	5407	1127	
Advertisement of land...	5408	1127	
Sales by commissioner, how made.....	5409	1127	
Actual settlers application	5410	1128	
Cash payments, how remitted	5411	1129	
Remittances, how accounts kept.....	5412	1129	
Awards, how made; notice and accounts of.....	5413	1129	
Remittances, disposition of and accounts of....	5414	1130	
Purchaser's name to be given; permanent records to be kept.....	5415	1130	
Award and settlement...	5416	1131	
To whom awarded when application rejected...	5417	1132	
Eight section counties— complement	5418	1132	
Settlement and residence.	5419	1132	
Limitations as to purchases	5420	1133	
Right of lessees.....	5421	1133	
Sales without settlement.	5422	1133	
Forfeiture of purchase by non-payment of interest, etc.....	5423	1134	
Permanent improvements to be erected by purchaser; forfeiture....	5424	1135	
Forfeiture for failure to settle on land, etc....	5425	1135	
Forfeiture of home tract works forfeiture of other land, when....	5426	1135	
Terms of re-purchase of forfeited agricultural lands	5427	1135	
Purchases prior to July 30, 1895, right of under forfeitures	5428	1135	
Timber lands defined; regulation for sale of..	5429	1136	
Same	5430	1136	
Timber and lands sold prior to August 11, 1907	5431	1137	
Unsurveyed or scrap land	5432	1137	
Minerals, gayule and lechuguilla reserved	5433	1139	
Sale of gayule and lechuguilla	5434	1139	
Transfers	5435	1139	
Lands patented, when...	5436	1140	
Same	5437	1140	
Payments and patents for town sites.....	5438	1140	

	Article	Page		Article	Page
SCHOOL LANDS—cont'd.			SCHOOLS—continued.		
Application of railroad to buy, to contain what..	5439	1140	Prairie View state normal		
Land, how sold and patent issued	5440	1141	.....2718-2724	574	
Limitations as to purchasers	5441	1141	Common schools ....2750-2904	582	
Application for less than 320 acres to particularly describe	5442	1142	County superintendents to have supervision of		
No actual settlement required	5443	1142	.....2750-2773	582	
Regulations as to occupancy	5444	1143	Duties of state superintendent of public instruction relative to		
Certificates of occupancy to be recorded, etc....	5445	1143	.....4509-4520	916	
Coupling occupancy under second purchase to cure defects of first.....	5446	1143	Property of, exempted from taxation.....	7507	1624
Vendees of original purchasers protected.....	5447	1143	May dissect dead bodies..	5760	1223
Cemetery, church and school house sites.....	5448	1143	General provisions ..2896-2904	618	
Accounts, etc., with purchasers to be kept....	5449	1144	School shall not be sectarian	2896	618
Commissioner may withhold agricultural lands from lease, when....	5450	1144	Provisions to be made for both races.....	2897	618
Commissioner to advertise lands for lease, how...	5451	1144	Who are "colored".....	2898	618
Leases, how and when made	5452	1144	Where children may attend school.....	2899	618
Regulations as to leases in absolute lease districts	5453	1145	Scholastic age.....	2900	618
Expired leases, regulations as to.....	5454	1146	Scholastic year.....	2901	618
Where lessee secures permanent water	5455	1146	Admission of overs and unders; suspension of pupils	2902	618
Lease, how forfeited; lien on improvements for rent	5456	1147	When schools shall be open	2903	618
Lessees may remove improvements, when....	5457	1147	Trustees and teachers shall not handle books.	2904	618
One year to assert right to leased or sold land....	5458	1147			
Same	5459	1147	SCHOOL TEACHERS—		
Duties of commissioners' court as to.....	2271	483	Laws for payment of certain, not repealed.....		1720
SCHOOL OFFICERS—			SCHOOL TRUSTEES—		
Reports to state superintendent	4517	917	Independent district trustees	2884-2895	616
SCHOOLS—			Acts of certain boards validated	2884	616
..University of Texas..	2626-2654	560	Change from appointment to election in cities...	2885	616
Agricultural and mechanical college	2655-2681	564	Board of seven trustees..	2886	616
Girls' industrial institute	2682-2690	568	Board of school trustees shall order elections..	2287	616
Sam Houston normal institute	2691-2698	570	Who shall be declared elected	2888	617
North Texas state normal	2699-2706	271	Terms of office.....	2889	617
Southwest Texas normal school	2707-2711	572	Oath of office.....	2890	617
West Texas state normal	2712-2717	573	Organization of board...	2891	617
			Board shall adopt rules and regulations	2892	617
			Vacancies	2893	617
			May extend scholastic age	2894	617
			May elect superintendent or principal for two years	2895	617
			Election of.....	2818	601
			To contract for building school houses.....	2844	607
			SCIRE FACIAS—		
			Issuance of in district and county courts	1886-1901	420
			SCRAP LANDS—		
			Regulations as to purchase	5432	1137

	Article	Page
SCROLLS—	7092-7093	1516
County clerk may use, when	1782	400
Seals and scrolls....	7092-7093	1516
SEALS—		
Private seals and scrolls dispensed with.....	7092	1516
Unsealed instruments held to import consideration	7093	1516
Of commissioners of deeds	1102	261
Of department of insur- ance and banking.....	518	134
Of corporation courts....	910	222
Of supreme court, how procured	1533	353
Of courts of civil appeals.	1599	367
Of court of criminal ap- peals	1666	380
Of district courts.....	1729	391
Of county court.....	1781	400
Of Dallas county court at law	1794	402
Of Tarrant county court for civil cases.....	1807	404
Of Galveston and Harris county criminal district court	2221	475
Of Dallas criminal district court	2232	476
Commissioners' courts shall provide for dis- trict and county courts	2272	483
Of commissioners' court..	2278	484
Board of regents of uni- versity may use.....	2638	562
Of game, fish and oyster commissioner	3978	821
Of comptroller	4323	879
Of commissioner of agri- culture	4442	898
Of general land commis- sioner	4395	891
Of commissioner of insur- ance and banking.....	4491	910
Of adjutant general.....	5789	1230
Of notaries public.....	6006	1287
Of prison commission....	6200	1322
Of railroad companies...	6536	1395
Of county clerk as re- corder	6787	1457
Of inspector of hides and animals	7262	1550
SEAWALLS—	5585-5594	1178
Seawalls and breakwaters, how established.....	5585	1178
Burdens on streets and highways for seawalls	5586	1178
To take land for, exercise of right of eminent do- main	5587	1178
Issue of bonds, election, qualification of voters.	5588	1179
Election, how conducted; board of inquiry, duties of	5589	1179
Election returns canvass, two-thirds vote re- quired	5590	1179

	Article	Page
SEAWALLS—continued.		
Interest, sinking fund, levy of taxes for.....	5591	1179
Cession of state lands for benefit of.....	5592	1180
City and county treasurer custodian of funds, ex- clusive use of.....	5593	1180
Bonds to be issued as in case of counties, cities and towns.....	5594	1180
SECRETARY—		
Of private corporations to be chosen.....	1154	280
SECRETARY OF STATE—		
.....	4302-4319	875
Appointment and term of office	4302	875
Oath and bond.....	4303	875
Shall register acts of governor	4304	875
His general duties.....	4305	875
Shall receive and bind en- rolled bills.....	4306	876
Shall forward laws to cer- tain foreign officials..	4307	876
Disposition of books re- ceived	4308	876
Copies of reports deliver- ed to whom.....	4309	876
What public officers en- titled to copies of gen- eral laws	4310	876
How distributed.....	4311	877
May sell copies of laws.	4312	877
Legislative journals, dis- tribution of.....	4313	877
Digest of laws, how dis- tributed	4314	877
Executive officers entitled to copies of digests...	4315	877
Officers shall receipt for books	4316	877
Shall distribute U. S. laws	4317	877
May appoint clerks.....	4318	878
Chief clerk may act in lieu of, when.....	4319	878
Articles of incorporation of railroad companies filed with	6410	1375
Certain private corpora- tions to report to.	1182-1186	284
Certain statements of state banks to be re- corded with.....	536	141
Charter of private cor- poration must be filed with	1126	274
Deep water corporations shall file certain re- lease with.....	1260	304
Duty of, as to archives..	86	51
Duties as to charters of state banks.....	514	133
Fees of.....	3837-3840	787
General provisions..	3880-3926	804

	Article	Page		Article	Page
SECRETARY OF STATE—			SEPARATE PROPERTY—	4621	943
continued.			Of married women, registration of	6843-6848	1468
Member of state tax board	7407	1592	SEQUESTRATION—	7094-7118	1517
Salary of	7048	1509	Writ of, may be issued by whom and for what causes	7094	1517
Shall keep returns of election for governor, etc.	3039	647	Affidavit, and what it shall state	7095	1518
Shall count returns of election for presidential electors	3180	674	Petition must be filed, when	7096	1518
Shall advertise for bids for public printing	6351	1360	Bond for the writ	7097	1518
To furnish laws to contractor for public printing	6361	1362	Writ may issue when claim is not due, when, etc.	7098	1518
To certify to laws	6362	1362	Writ of, and its requisites	7099	1518
Shall register certain railroad bonds	6725	1443	Duty of officer while he retains custody of property	7100	1518
To require proof of foreign corporations applying for permits	1316	316	Compensation of officer	7101	1518
To forfeit charter of private corporation, when	1142	278	Officer expending money may retain property until, etc.	7102	1519
To furnish certain election forms	2937	627	Defendant may replevy by giving bond	7103	1519
To have biennial reports printed	3937	814	Bond in case of personal property	7104	1519
To approve comptroller's accounts	4336	880	In case of real estate	7105	1519
To preside in house for purpose of organization	5507	1158	Return of bond and judgment thereon	7106	1519
To furnish printed lists of notaries public	6014	1288	How judgment may be discharged	7107	1519
To forward commissions	6015	1288	When the property has been injured	7108	1519
To furnish lists of brands	7155	1530	Execution shall issue, when	7109	1519
To receive bids for fuel for state departments	7341	1567	Replevy by plaintiff; bond	7110	1520
SECURITIES—			Bond shall be returned, and the proceedings thereon if forfeited	7111	1520
Of savings departments may be sold, etc.	433	117	Defendant not required to account for hire, etc., when	7112	1520
SENATORIAL DISTRICTS—			Property likely to waste, etc., may be sold, when	7113	1520
Counties apportioned to	24	10	Order of sale in such cases	7114	1520
Returning officers for	25	11	Return of order of sale	7115	1520
SENATORS—			When debt is not due, property may be sold, when	7116	1520
Salary of	7056	1510	Purchaser shall give bond, etc.	7117	1520
SEPARATE COACHES—			Bond shall be returned and judgment, etc., thereon, when	7118	1521
6746-6753	1449		Unmarked animals subject to	7271	1551
Separate coaches for white and negro passengers	6746	1449	Hide and animal inspector may obtain	7301	1557
"Negro" defined	6747	1449	SERGEANT-AT-ARMS—		
Separate coaches, how defined and marked	6748	1449	Of either house of legislature, may serve process of investigating committee	5518	1160
Penalty	6749	1449			
Exceptions and limitations as to provisions	6750	1450			
Law to be posted conspicuously	6751	1450			
Does not apply to excursions	6752	1450			
Conductor to exclude passengers from wrong car	6753	1450			

	Article	Page
SERVANTS—		
Liens of.....	5644-5649	1194
SETTLEMENTS—		
Of estates of wards..	4267-4279	870
Of public lands, regulations as to.....	5419	1132
SEWERAGE COMPANIES—		
	1284-1285	309
Corporation may condemn private property for sewers, etc., when, etc.	1284	309
Method same as for railways	1285	309
Corporations, private	1117-1321	266
City councils may regulate, etc.....	1018-1024	245
Courts may regulate, etc.	1025-1032	247
SEWERS—		
Powers of city over.....	769	193
City council may construct	857	212
SEWING MACHINE DEALERS—		
Occupation tax on.....	7355	1573
SHEEP—		
Railroads to furnish double-deck cars for transportation of.....	6555	1398
Marks and brands of	7151-7160	1528
Appointment of inspector.	7879	1714
SHERIFFS—		
To serve writ of attachment	251	81
To execute, etc., writs of garnishment	278	85
Conveyances by, will pass title, when.....	1110	264
Accounts of, etc.....	1419	336
In suits against, may make indemnitors parties	1844	414
Service of citation for, in district and county courts	1854	415
In charge of jury, duty of	1959	432
Shall attend the Galveston and Harris county criminal district court	2226	475
To serve Dallas criminal district court.....	2233	476
Duty in executing judgment on excess over homestead, etc.....	3811	780
Fees of.....	3864-3866	798
General provisions..	3880-3926	804
Shall execute process of insurance commissioner	4496	912
Keeper of jail.....	5109	1073

	Article	Page
SHERIFFS—continued.		
Duties of, in selection of jurors in cities of certain population...	5151-5158	1081
To summon jurors.....	5160	1083
Duty in executing distress warrant	5482	1152
May seize arms, etc., of military companies, when	5853	1244
To execute process for courts martial.....	5884	1257
Has same rights as surety,, etc., when.....	6335	1355
To have charge of courthouses	6393	1370
Subject to orders of live stock sanitary commission	7320	1561
Tax collector, when.....	7607	1650
To execute deeds to land sold for taxes.....	7690	1668
Sheriffs and constables	7119-7150	1522
Of constables.....	7137-7150	1525
Election and term of office	7137	1525
Only one deputy.....	7138	1525
Appointed, how, in unorganized counties....	7139	1525
Vacancies, how filed....	7140	1525
Bond and oath.....	7141	1525
May act without commission	7142	1526
Neglect to qualify.....	7143	1526
Failure to give new bond	7144	1526
Duties in general.....	7145	1526
May summon posse comitatus	7146	1526
Failure to execute or return process.....	7147	1526
Failure to pay over collections	7148	1527
May execute process, where	7149	1527
Unfinished business.....	7150	1527
Of sheriffs.....	7119-7136	1522
Election and term of office	7119	1522
Vacancies, how filled....	7120	1522
Oath and bond.....	7121	1522
May act without commission	7122	1522
Neglect to qualify in twenty days.....	7123	1523
Failure to give bond when required	7124	1523
May appoint deputies, etc.	7125	1523
Responsible for their acts	7126	1523
May employ guards....	7127	1523
Shall receive prisoners from, etc.....	7128	1524
To attend upon open courts	7129	1524
Shall execute all legal process	7130	1524
And all legislative process	7131	1524

	Article	Page		Article	Page
SHERIFFS—continued.				SINKING FUNDS—cont'd.	
To discharge all duties imposed by law.....	7132	1524		Levy of tax for, in cases of disaster	665 171
List of fugitives to be sent to adjutant general	7133	1524		For bonded indebtedness of counties, etc., how invested	698 176
Shall indorse all process.	7134	1524		Of cities and towns, levy of tax for	925 225
May summon posse comitatus	7135	1524		For drainage districts...	2557 542
Unfinished business.....	7136	1525		For county drainage districts	2603 554
SHIPBROKERS—				Of independent school districts, investment of...	2863 610
Occupation tax on.....	7355	1571		Provided for improvement districts	5555 1171
SHIPMENT—				For navigation districts..	5982 1283
Of live stock.....	7170-7184	1533		SKATING RINKS—	
SHIPPER—				Occupation tax on.....	7355 1574
Defined	6691	1436		SLAUGHTER—	
Rights of, to demand bills of lading from carriers.	715	183		Of live stock.....	7170-7184 1533
SHOOTING GALLERIES—				SLEEPING CAR COMPANIES—	
Occupation tax on.....	7355	1571		Gross receipts tax on....	7375 1581
SIDEWALKS—				SLEIGHT OF HAND—	
City council may construct	857	212		Occupation tax on performances of.....	7355 1573
SIGNATURE—				SMALLPOX—	
Defined	5504	1157		Cases of to be reported to city health department.	983 237
Proof of, when grantor makes his mark.....	6811	1461		SOLDIERS—	
SINKING FUNDS—				Of national guard, articles of war governing.....	5860 1245
Investments, reports, regulations and penalties	698-702	176		Of the Confederacy, how pensioned	6267-6285 1337
Sinking fund of county, city, town, school district or school community, to be invested in city, or town bonds, United States, state, provided, etc.....	698	176		Wills of.....	7864 1711
Report, annual, of county or city treasurer to comptroller, requisites of	699	177		SPEAKER—	
Draft on sinking fund not to be honored by treasurer except for interest, redemption or investment	700	177		Of house of representatives, election of.....	5514 1159
Penalties for failure to report or for diversion or misapplication	701	177		SPECIAL ELECTIONS—	
Comptroller to notify attorney general, district or county attorney; suit to recover fund; payment into treasury....	702	177		Time for holding.....	2911 622
Provided for redemption of county and municipal bonds	614	160		SPECIAL JUDGES—	
Levy of tax for, for payment of road bonds....	627	162		May be designated when, in district court.....	1676 382
To be provided for funding, etc., indebtedness.	659	170		Elected when	1678 383
				Of district court, proceedings before	1728 391
				Of county court, appointed how	1737 393
				Also	1738 393
				Dallas county court at law, election, etc.....	1793 402
				Commissioned by governor, salary of.....	7061 1511
				Elected by attorneys, salary of	7062 1511
				Of county court of Tarrant county for civil cases..	1806 404
				SPECIAL LAWS—	5494-5501 1155
				Notice of intention to apply for special law, etc.	5494 1155

	Article	Page		Article	Page
SPECIAL LAWS—cont'd.			STATE CONVENTION—		
Where no newspaper is published, notice, how.	5495	1155	Place for, fixed how....	3137	665
Notice in more than one county, when.....	5496	1155	Also	3138-3140	665
Affecting persons, where published	5497	1155	To select delegates to national convention	3175	673
Where applicant is non-resident	5498	1156	STATE DEPOSITORIES—		
Details need not be embraced in notice.....	5499	1156	.....	2417-2439	509
Proof of publication in newspaper	5500	1156	STATE ENTOMOLOGIST—		
Proof of posting.....	5501	1156	Duties, etc., of, in reference to diseases among bees	575-578	152
SPECIAL TERMS—			STATE HEALTH OFFICER—		
Of district courts, held when	1720	389	Salary of	7078	1513
SPECIAL VERDICTS—			STATE INSTITUTIONS—		
Of juries in district and county courts	1976-1993	434	Distribution of dead bodies to.....	5758	1222
STATE BANKS—			STATE INSURANCE BOARD—	4876-4904	1009
Guaranty of deposits in	445-517	120	Companies deemed to have accepted provisions of law.....	4876	1009
See "Banks and Banking."			State insurance board, appointment, etc.....	4877	1009
STATE BOARD OF EDUCATION—	2727-2743	577	Compensation, etc.....	4878	1010
Members	2727	577	Insurance board to fix rates, etc.....	4879	1010
Secretary	2728	577	Secretary and fire marshal	4880	1010
Shall make apportionment	2729	577	Duties of fire marshal...	4881	1011
Authority over state normal schools.....	2730	577	Same	4882	1011
Summer sessions of schools	2731	577	When state fire marshal is unable to act.....	4883	1011
Shall duplicate appropriations of school districts	2732	578	Action of fire marshal not to affect policies, etc.	4884	1011
May create school districts at eleemosynary institutions	2733	578	Statement to be made to insurance board....	4885	1012
Trustees for such districts	2734	578	Board to prepare basis of schedules of rates....	4886	1012
Transfer of funds.....	2735	579	Companies to file schedules of specific risks; rates to be approved by board	4887	1013
Authorized to invest state permanent school fund	2736	579	Policyholders to be furnished with analysis of rates.....	4888	1014
Duties of parties offering bonds for sale.....	2737	579	Present rates continued until rates have been determined and filed..	4889	1014
Board must examine bonds	2738	579	Authority to revise general basis schedules...	4890	1015
Estoppel	2739	580	Duties of board to establish uniform policies..	4891	1015
Bonds must be offered to state board.....	2740	580	Certain provisions in policies void.....	4892	1015
Payment of interest on bonds to be waiver...	2741	581	Co-insurance clauses....	4893	1015
Jurisdiction in district court of Travis county	2742	581	Rights of persons to petition insurance board..	4894	1016
Extent of these provisions	2743	581	Regulations of hearings, insurance board.....	4895	1016
STATE BOARD OF HEALTH—	4521-4553	919	Insurance companies not to do certain things...	4896	1017
STATE CEMETERY—			Unlawful to accept rebate	4897	1018
Duties of superintendent of public buildings, etc., as to.....	6384	1363			

	Article	Page
STATE INSURANCE BOARD—		
continued.		
Law not applicable to collection of premiums	4898	1018
Commissioner of insurance may revoke authority of company, when	4899	1018
Unlawful for agent or company to evade law.	4900	1018
Persons testifying in trials of violation of this law, not to be prosecuted	4901	1018
Law not to apply to certain companies	4902	1019
Companies to bear expense of board	4902	1019
Unconstitutionality of part of law not to affect whole law	4904	1019
Salary of members	7085	1513
STATE LIBRARIAN—		
Duties, etc.	5602	1182
Salary of	7081	1513
STATEMENTS—		
Of state banks, regulations as to	525	138
STATEMENTS OF FACTS—		
And bill of exception	2058-2077	445
STATE MINING BOARD—		
Duties, etc.	5923-5932	1268
STATE MINING INSPECTOR—		
Salary of	7080	1513
Appointment of	5925	1269
STATE OFFICERS—		
Fees of certain	3833-3845	786
General provisions	3880-3926	804
Removal of	6017-6027	1290
Appointed by governor, how removed	6027	1291
STATE PROPERTY—		
State's personal property, preservation of	6373-6379	1365
Persons in control of state property to make inventory	6373	1365
How made and to whom rendered	6374	1365
When made	6375	1366
Persons in control of property responsible for same	6376	1366
Incoming and outgoing officers to check inventory; receipt to be given	6377	1366
Penalty for non-compliance	6378	1366
Law cumulative	6379	1367

	Article	Page
STATE PURCHASING AGENT—		
For eleemosynary institutions	7325-7338	1562
State purchasing agent; appointment; forbidden to receive rebates, etc.	7325	1562
Oath; bond; forbidden to be concerned in sale of merchandise, etc., to state	7326	1562
Storekeepers; appointment; bond; duties	7327	1563
Manner of contracting for supplies	7328	1563
Bids, submission of	7329	1564
Bids, opening and acceptance of	7330	1564
Invoices, payment of	7331	1565
Successful bidder must give bond	7332	1565
Emergency purchases	7333	1565
Purchases must be made according to appropriations	7334	1565
Purchase of perishables	7335	1566
Purchasing agent's clerk	7336	1566
Institutions contemplated by this chapter	7337	1566
Payment only on affidavit	7338	1566
Salary of	7068	1512
STATE RANGERS—	6754-6766	1451
STATE REVENUE AGENT—		
Salary of	7074	1512
Powers and duties	7366	1578
Duties under gross receipts tax law	7392	1586
STATE SCHOOL FUNDS—	2725-2726	576
See also "School Funds."		
STATE SUPERINTENDENT—		
Duty of, as to taking scholastic census	2777	590
Election of	4509	916
General duties	4510	916
Instructions binding	4511	916
Shall note educational progress	4512	916
Shall have school laws printed	4513	917
Shall furnish plans for school buildings	4514	917
Shall make report	4515	917
Governor shall lay such report before legislature	4516	917
School officers to make reports to state superintendent	4517	917
Reports to be filed	4518	917
Shall pro rate available funds monthly	4519	917
Shall disturb warrants drawn by comptroller	4520	918

	Article	Page		Article	Page
STATE TAX BOARD—			STATE TREASURER—		
Of whom composed, etc..			To receive payments of		
..... 7407-7426	1592		estates of decedents,		
			when	3574-3591	742
STATE TAX COMMIS-			And comptroller to exam-		
SIONER—			ine and cancel war-		
Salary of.....	7084	1513	rants	4361	885
Appointment of.....	7407	1592	To consent to transfer		
			of securities by insur-		
STATE OF TEXAS—			ance commissioner....	4502	914
Injunctions by.....	4672	952	Salary of.....	7049	1509
			Member of board to calcu-		
STATE TREASURER—			late tax rate.....	7349	1569
..... 4362-4391	886		See "Officers."		
His election, term of of-			STATIONERY—		
fice and salary.....	4362	886	For counties, duty of		
Vacancies, how filled....	4363	886	county auditors as to..	1479	344
His bond and oath.....	4364	886	For supreme court, how		
New bond may be re-			furnished	1573	361
quired	4365	886	Commissioners' court may		
Failure to give new bond	4366	887	contract for.....	2256	481
Shall receive moneys on			For state government,		
warrants of comptroller	4367	887	maximum prices.....	6345	1359
How money to be paid out	4368	887	Allowed certain officers..	3904	809
Shall keep strict account.	4369	887			
An account for each ap-			STATUTES—		
propriation	4370	887	Evidence when.....	3692	761
Shall make an annual ex-			See "Revised Civil Statutes."		
hibit to governor.....	4371	887	STEAMBOATS—		
Public moneys only to be			Suits against owners.		
kept in treasury.....	4372	887	brought where in jus-		
May appoint chief clerk,			tice courts.....	2308	491
etc.	4373	888			
Chief clerk may act, when			STENOGRAPHER—		
and how.....	4374	888	For courts of civil ap-		
Shall turn over to his suc-			peals	1606	368
cessor	4375	888	For supreme court.....	1539	354
Custodian of school fund			For district and county		
bonds	4376	888	courts	1920-1933	426
Duty with respect thereto	4377	888			
Authority to return cer-			STOCKHOLDERS—		
tain moneys to counties	4378	888	Of state banks, liability,		
Warrant system.....	4379	888	etc., under bank guar-		
Shall post daily totals...	4380	889	anty law.....	445-517	120
Register of warrants is-			Of state banks, liabilities		
sued	4381	889	for debts, etc.....	552	145
Shall keep certain other			Of private corporations,		
accounts	4382	889	duties and powers of..		
Outstanding warrants....	4383	889	.....	1140-1174	277
General revenue account.	4384	889	Of private corporations,		
Appropriation ledger....	4385	889	liability of.....	1198-1200	289
Daily statement from land			Of dissolved corporations,		
office	4386	889	liability of.....	1208	292
Office fee book.....	4387	890	Of insurance companies,		
Cash balancing books....	4388	890	quorum	4718	960
Ledger to contain, what.	4389	890	Of railroad companies to		
Bond books.....	4390	890	elect directors.....	6440	1382
Bond register.....	4391	890	Of railroad companies,		
Shall keep account of			rights, etc.....	6453-6471	1384
asylum funds, etc....	133	62	Meetings of.....	6472-6480	1386
Bond investment compa-			Of joint stock companies,		
nies to deposit with...	1309	314	unincorporated ...	6149-6154	1311
To designate state deposi-					
tories	2417-2439	509	STOCK LAWS—	7151-7324	1528
Custodian of university			Estrays	7185-7208	1536
funds	2642	563	Who may take up stray		
Duties of, as to school			animals	7185	1536
funds	2744-2749	581			

	Article	Page		Article	Page
STOCK LAWS—continued.			STOCK LAWS—continued.		
Oath, appraisalment and bond	7186	1536	Fees and damages	7224	1542
Ownership, how proved . .	7187	1537	Stock to be sold, when . .	7225	1542
Proof of respectability, when	7188	1537	Again may be sold, how . .	7226	1542
When taken up not entitled to compensation .	7189	1537	Lawful fence	7227	1543
Estrays not to be used until	7190	1537	Subsequent election, when May be impounded when fence law in force, when	7228	1543
When county commissioners to return	7191	1537	Stock not to be injured, etc.	7229	1543
County clerk to record papers, etc.	7192	1537	Lawful fence may be determined by election, etc.	7230	1543
Two or more animals to be in one entry	7193	1537	No election until lapse of two years	7231	1544
Clerk to advertise	7194	1537	Proclamations to be issued	7232	1544
Property in estrays, etc. .	7195	1538	In cases where there are less than fifty freeholders	7233	1544
Return of sale	7196	1538	Horses and certain other animals, mode of preventing running at large in counties named	7234	1544
Sale, when to be made . . .	7197	1538	. . . . .	7235	1545
Hogs, sheep, etc., how estrayed	7198	1538	Election to put law into operation	7235	1545
Not to be estrayed until. .	7199	1538	Election to repeal law . . .	7236	1546
Names of bidders to be given	7200	1538	Intervening territory, election in	7237	1546
Taker-up liable for damage	7201	1538	Petition shall state what. .	7238	1546
Taker-up may use when. . .	7202	1539	Order for election by commissioners' court	7239	1546
Death, etc., of estrays to be reported	7203	1539	County judge to issue order and notice	7240	1546
Proceeds of sale, how disposed of	7204	1539	Recitals in order	7241	1546
If taker-up refuses to deliver, liable for damages	7205	1539	Election places	7242	1546
When owner may reclaim money	7206	1539	Officers of election	7243	1547
Notice to be sent by county clerk, when	7207	1539	Qualifications of electors. .	7244	1547
Penalty for failure to send such notices	7208	1539	Election by ballot, form of	7245	1547
Hogs and certain other animals, mode of preventing from running at large in counties and subdivision	7209-7234	1540	Election returns	7246	1547
Commissioners' court to order election	7209	1540	Same, effect of	7247	1547
May be ordered in subdivisions, when	7210	1540	Proclamation and time law goes into effect	7248	1547
Requisites of petition . . .	7211	1540	Impounding stock	7249	1547
Election, how ordered, etc.	7212	1540	Same	7250	1547
Notice, how given, etc. . . .	7213	1540	Fees for impounding	7251	1548
Requisites of order, etc. . .	7214	1541	Sale of impounded stock, fees	7252	1548
Voting places	7215	1541	Unknown owner	7253	1548
Managers to be appointed, when	7216	1541	Lawful fence, what constitutes	7254	1548
Freeholders only to vote, etc.	7217	1541	Second election when proposition is defeated	7255	1549
Manner of voting, etc.	7218	1541	Live stock sanitary commission	7312-7324	1559
Returns of election	7219	1541	Commission created; oath, bond, term	7312	1559
Returns, how opened	7220	1541	Qualifications of commissioners	7313	1559
Proclamation of result, etc.	7221	1541	Duties and powers of commission	7314	1559
Stock may be impounded, when	7222	1541	When governor shall proclaim quarantine	7315	1560
Not to be impounded, when	7223	1541	Commission to purchase supplies	7316	1560

	Article	Page
STOCK LAWS—continued.		
Railways to keep clean stock cars.....	7317	1560
Infection to be reported.	7318	1560
Compensation of commissioners	7319	1560
Sheriffs and constables subject to commission.	7320	1561
Appropriation for purposes of this chapter..	7321	1561
Quarantine line.....	7322	1561
Concurrence of two commissioners necessary..	7323	1561
Law cumulative.....	7324	1561
Marks and brands..	7151-7160	1528
Owners of stock to have mark and brand.....	7151	1528
Each county to have brand	7152	1528
Owner may place brand on his stock.....	7153	1530
May counterbrand, when	7154	1530
Duty of secretary of state	7155	1530
Brands of minors.....	7156	1530
When stock to be branded	7157	1531
Disputes, how settled...	7158	1531
Marks and brands to be recorded	7159	1531
Unrecorded brands are no evidence	7160	1531
Protection of live stock	7161-7169	1531
Inspection for glanders, etc.	7161	1531
Report of county judge, duty of inspector.....	7162	1531
Condemned animals to be killed	7163	1532
Payment for animals killed, fee, etc.....	7164	1532
Law cumulative.....	7165	1532
Compensation for killing wolves, etc.....	7166	1532
Proof, how made, etc....	7167	1532
Same	7168	1532
Exemptions	7169	1533
Sale, slaughter and shipment of animals.	7170-7184	1533
Bill of sale to be taken..	7170	1533
Possession, prima facie illegal, without.....	7171	1533
Stock animals sold by marks, etc.....	7172	1533
Butchers to report, etc...	7173	1534
Butchers to register with county clerk.....	7174	1534
Bill of sale, etc., to be recorded, etc.....	7175	1534
Owners to file sworn lists	7176	1534
Register of cattle.....	7177	1534
County clerk to make a copy	7178	1534
Butchers' bond, etc....	7179	1535
To keep a record, etc...	7180	1535
Shall be open for inspection	7181	1535
May be sued upon bond, when	7182	1535

	Article	Page
STOCK LAWS—continued.		
Inspector to keep a record, etc.....	7183	1535
Exempted counties.....	7184	1535
STOCK RAISERS—		
Regulations for the protection of, in certain localities		
	7256-7311	1549
Inspector may be elected, etc.	7256	1549
Governor to appoint, when	7257	1549
Term of office, etc.....	7258	1549
Vacancies, how filled...	7259	1549
Bond and oath.....	7260	1550
Appointees to give bond..	7261	1550
Seal of office.....	7262	1650
Deputies may be appointed, when	7263	1650
Appointment to be recorded	7264	1550
Meaning of terms.....	7265	1550
May authenticate instruments	7266	1551
Inspections and records thereof	7267	1551
Monthly returns to county clerk	7268	1551
Exemptions from inspection	7269	1551
Unbranded animals not to be certified	7270	1551
May seize certain animals.	7271	1551
Also unbranded hides, etc.	7272	1551
Procedure in case of seizure	7273	1551
Bill of sale to be taken...	7274	1552
Also in sale of hides.....	7275	1552
Certificate of inspection to be given	7276	1552
Same	7277	1553
Road brand..	7278	1553
Exportation of cattle to Mexico	7279	1553
Herds in transit may be inspected	7280	1553
Fees, how paid.....	7281	1553
Hides imported from Mexico	7282	1553
Horses and mules.....	7283	1553
Suspicious hides to be seized	7284	1554
Procedure upon seizure..	7285	1554
Inspector to recover on proof	7286	1554
Hides to be sold if not proven away	7287	1554
Fees of inspector in such cases	7288	1554
Hides to be delivered to.	7289	1554
Revised list of marks and brands	7290	1554
Same brands not to be recorded twice, where...	7291	1555
In the county where cattle range	7292	1555
Only one mark, etc., to be used	7293	1555

	Article	Page		Article	Page
STOCK RAISERS—cont'd.			STOCKS—continued.		
Counterbranding, etc.	7294	1555	Sale of stock when owner neglects to pay.	6455	1384
Authority to gather, etc.	7295	1556	Stockholders shall have access to books, etc., of corporation	6456	1384
Inspections to be personal	7296	1556	Funds of corporation shall be used only for legitimate purposes.	6457	1384
Certificates of inspection.	7297	1556	Extent of stockholder's liability for debts of corporation	6458	1384
Inspection before exporting	7298	1556	Persons holding stock who are not liable.	6459	1385
Certificate, where filed.	7299	1556	Capital stock may be increased	6460	1385
Seizure of cattle not inspected originally	7300	1557	Notice of meeting for such increase.	6461	1385
Sequestration if necessary	7301	1557	Notice shall state what.	6462	1385
Proceeds paid, where, and subject to claims	7302	1557	Increase may be not exceeding amount named in notice.	6463	1385
Description of cattle filed	7303	1557	Order or resolution increasing shall be recorded	6464	1385
Change of destination.	7304	1557	President and directors shall furnish statement to stockholders at regular meeting.	6465	1385
Exempted counties	7305	1557	May be required to furnish statement at special meeting.	6466	1385
Commissioners' court to order election, when.	7306	1558	Stockholders may fix amount of loans and interest thereon.	6467	1385
Result to be declared, etc.	7307	1558	Stockholders may remove officers and elect others	6468	1385
Ballots	7308	1558	No stock shall be issued, except, etc.	6469	1386
In case election is carried.	7309	1558	Fictitious dividends, etc., void	6470	1386
Fees of inspector.	7310	1558	Penalty for violating two preceding articles.	6471	1386
Elections not to be held oftener than	7311	1558	Of railroads, how certificates of shall issue.	6723	1442
			Of railroad companies, issuance regulated 6717-6732	6723	1441
STOCKS—			Of suburban railroads.	6731	1444
Issuance of stocks and bonds by railroad companies regulated.	6717-6732	1441	Of railroad companies, amount of.	6407	1374
State vested with regulation of issue of bonds, stocks, etc.	6717	1441			
Prohibiting incumbrance above value.	6718	1441	STOLEN PROPERTY—		
Commission to ascertain and report values, etc.	6719	1441	. . . . . 6371-6372	1364	
Effect of judicial or other sale, etc.	6720	1441	Treble value of stolen property recoverable, when	6371	1364
Purchasers complying with law may issue bonds	6721	1442	Criminal prosecution not affected by this title.	6372	1364
Authority to issue bonds to be secured.	6722	1442			
How certificates of stock shall issue.	6723	1442	STORAGE—		
Prerequisites to issue of bonds	6724	1443	Regulation as to charge for, by railroads.	6590	1404
Duty of secretary of state	6725	1443			
Forfeiture of charter.	6726	1443	STOREKEEPERS—		
Certificates, bonds, etc., void	6727	1444	For eleemosynary institutions	7327	1563
Penalties hereunder.	6728	1444			
State not liable.	6729	1444			
Amendment of charter; construction of branch lines; issuance of bonds	6730	1444			
Suburban railroad stocks and bonds valid when.	6731	1444			
Stocks and bonds may issue for double tracks.	6732	1445			
Stock and stockholders of railroad companies	6453-6471	1384			
Railroad stock is personal estate and transferable	6453	1384			
Directors may require payment of stock, etc.	6454	1384			

	Article	Page
STORM—		
Storm insurance companies	4905-4921	1020
General provisions	4943-4972	1034
STORMS—		
Issuance of bonds for funding, etc., indebtedness in case of	660-677	170
STREET CAR COMPANIES—		
Occupation tax on	7355	1574
STREET RAILROADS—		
.....	6742-6745	1448
Half fare for children in cities of forty thousand or more inhabitants	6742	1448
Reduced tickets, how used and sold, etc.	6743	1448
Free fare for children under five years of age	6744	1449
Transfers regulated	6745	1449
City council may regulate	862	213
City council may tax	868	214
Assessment against for street improvement	1010	242
Gross receipts tax on	7378	1583
STREETS—		
May be used for causeways, etc.	654	168
City convicts may be compelled to work on	836	209
Control of city council over	854	211
Intersection of, by railroads	6493	1389
Interurban railroads may cross	6735	1446
STREETS AND ALLEYS—		
.....	999-1005	239
Power of city council to have streets, etc., graded, etc.	999	239
Estimate of cost of improvements shall be made, etc.	1000	239
Estimate of cost of improvements, when and how, etc.	1001	240
Suit against owner of property for improvement tax, when, etc.	1002	240
Condemnation of property	1003	240
Condemnation of property by private corporations	1004	240
Rules for condemning property for railways followed	1005	241
City councils, general duties, etc.	813-902	206
Street improvements.	1006-1017	241
Powers acquired by accepting benefits of this chapter, and by whom.	1006	241
Terms defined	1007	241

	Article	Page
STREETS AND ALLEYS—		
continued.		
Governing body to order improvement of highways, etc.	1008	242
Cost of improvements, how paid, etc.; assessments	1009	242
What cost assessed against railroad, etc., special tax lien enforceable, how	1010	242
Cost how assessed; certificates; costs; attorneys' fees; liens	1011	242
No lien on exempt property; owner personally liable; lien not invalidated, how, enforcement	1012	2
Notice and hearing before assessment, etc.; no assessment in excess of benefit	1013	243
Governing body may correct mistake, etc., in assessment; proceedings, etc.; may reassess, etc.	1014	243
Suit to set aside or correct assessment	1015	243
Referendum on adoption of provisions of this chapter; ordinances to carry out same	1016	244
Provisions of this chapter cumulative; subordinate to special charter	1017	244
General duties of city councils	813-902	206
STUDENTS—		
Number receiving free instruction in Agricultural and Mechanical college	2663	565
Of girls industrial institute, how apportioned.	2688	569
Of north Texas normal, duties	2702	572
How admitted to Prairie View normal	2719	574
Of Sam Houston normal, free tuition to	2692	570
Of southwest Texas normal, how admitted	2708	572
Of west Texas normal, appointment, etc.	2716	574
Sale of liquor to, forbidden by bond of liquor dealer	7452	1608
SUBPOENAS—		
For witnesses	3640	753
Power of railroad commission to issue	6668	1426
Shall issue when in securing proof of instrument for record	6814	1462

	Article	Page
SUBSIDIES—		
In aid of railroads, etc., municipal taxes to pay.	7716	1678
SUBSIDY BONDS—		
Of railroad companies..	678-697	172
SUBURBAN RAILROADS—		
Stocks and bonds of, valid when.....	6731	1444
SUCCEEDING—		
Defined	5504	1157
SUFFRAGE—	2938-2963	628
Qualifications for voting —who are not qualified	2938	628
Qualifications for voting —who qualified.....	2939	628
Qualifications for voting in city elections.....	2940	629
Residence defined.....	2941	629
Poll tax collected from whom; when paid; re- ceipt	2942	629
Poll tax, who not re- quired to pay.....	2943	629
Mode of paying poll tax.	2944	629
Same subject.....	2945	629
Tax receipt not to be de- livered to agent.....	2945	629
Candidate, etc., not to pay poll tax of another; provided	2946	630
No one to give money to another to pay poll tax	2947	630
No one to keep poll tax of another, except.....	2948	630
Poll tax receipt shall show what	2949	630
Poll tax receipt, form of.	2950	630
Poll tax receipt, etc., in case of removal to an- other ward of city of over 10,000.....	2951	631
Poll tax receipt, etc., in case of removal to an- other county or pre- cinct, proviso.....	2952	631
Exemption certificates, in cities over 10,000; requisites, etc., form..	2953	631
Minor reaching majority between Feb. 1 and election day, certificate	2954	632
Poll tax in unorganized counties	2955	632
Poll tax receipts, etc., books furnished by commissioners to col- lectors, requisites....	2956	632
Poll tax deputy to be ap- pointed in certain coun- ties	2957	633
Collector may administer oaths, etc.....	2958	633

	Article	Page
SUFFRAGE—continued.		
Residence, proof of, when; false statement reported to grand jury	2959	623
False swearing to be re- ported to grand jury..	2960	633
Lists of poll taxpayers, etc., furnished by col- lector to board, and by board to judges; requi- sites, etc.....	2961	633
Poll tax receipts dupli- cates to be securely kept, etc.....	2962	634
Poll tax receipts, state- ment of, by collector.	2963	634
Elections	2910-3175	622
Elections, primary...	3084-3174	655
SUITS—		
Institution of, in district and county court..	1812-1816	406
Suit commenced with petition filed by the clerk	1812	406
Duty of the clerk.....	1813	406
No paper to be considered filed, unless, etc.....	1814	406
Clerk's file docket.....	1815	406
Civil suits not to be in- stituted on Sunday, etc.	1816	406
In district and county courts, venue of..	1830-1834	409
In what counties suits shall or may be brought	1830	409
Issuing process and tak- ing depositions, no waiver of plea; use of deposition; cause trans- ferred when; costs....	1831	412
If plea sustained, no dis- missal, but transfer...	1832	412
When plea sustained, or- der changing venue, record transmitted....	1833	412
Courts, district and coun- ty	1812-2183	406
In district and county courts, parties to..	1835-1849	413
Suits by and against counties, etc.....	1835	413
Suits by executors, etc...	1836	413
Suits for lands against estates	1837	413
Suits for injuries result- ing in death.....	1838	413
Suits for wife's separate property	1839	413
Against husband and wife for necessities, etc.	1840	413
For wife's debts, etc....	1841	413
Several obligors in any contract may be joined, etc.	1842	413
Parties conditionally liable may be sued alone, when.....	1843	414

	Article	Page
SUITS—continued.		
Sheriffs, etc., sued may make indemnitors parties	1844	414
Sureties on official bonds when joined.....	1845	414
When different officials and their bondsmen may be joined.....	1846	414
Suit in the name of the state for use of others.	1847	414
Additional parties may be brought in, when.....	1848	414
Parties may appear by attorney	1849	415
Process and return. 1850-1885	1850	415
Requisites of citation; when to issue.....	1850	415
One citation to each county where there is a defendant	1851	415
Citation shall contain, what	1852	415
Defendant out of county to have copy of petition	1853	415
Citation when sheriff is a party.....	1854	415
Duty of officer receiving citation	1855	416
Service of citation within the county.....	1856	416
Service without the county	1857	416
Citation in suits against counties	1958	416
Against cities, towns, etc.	1859	416
Against incorporated companies, etc.....	1860	416
Foreign corporations, how served.....	1861	416
In suits against foreign corporations, cumulative mode.....	1862	416
Against partners.....	1863	417
Return of citation.....	1864	417
Return of citation not served	1865	417
Alias process.....	1866	417
Time of service of citation	1867	417
Same	1868	417
Citation to defendants without the state....	1869	417
By whom served.....	1870	417
Service in such cases....	1871	417
Return of service.....	1872	418
Effect of such service...	1873	418
Citation by publication..	1874	418
For unknown heirs.....	1875	418
Citation by publication; requisites	1876	418
Publication of citation in suits involving title to land	1877	418
Return of citation by publication	1878	419
Mistake in return may be corrected	1879	419

	Article	Page
SUITS—continued.		
Acceptance of service of process	1880	419
Entering appearance in open court.....	1881	419
Answer constitutes appearance	1882	419
Motion constitutes appearance, when	1883	419
Reversal of judgment on appearance	1884	419
No judgment without service	1885	419
Abatement and discontinuance of suit. 1886-1901	1886	420
Suit not to abate where plaintiff dies, if, etc...	1886	420
Scire facias to executor, etc.	1887	420
Death of defendant....	1888	420
When executor, etc., dies	1889	420
Surviving parties.....	1890	420
Death between verdict and judgment.....	1891	420
Marriage of plaintiff feme sole.....	1892	421
Marriage of defendant feme sole.....	1893	421
Suit to the use of another	1894	421
Death of party to suit for injuries resulting in death	1895	421
When some defendants not served.....	1896	421
Discontinuance as to principal obligor....	1897	421
Discontinuance in vacation	1898	421
As to defendant served..	1899	421
When defendant has filed counter claim.....	1900	422
Requisites of scire facias and returns.....	1901	422
Courts, district and county	1812-2183	406
Change of venue in district and county courts. 1911-1916	1911	424
By consent of parties....	1911	424
Granted on application, when	1912	424
Shall be granted, unless..	1913	424
To what county.....	1914	424
In case of new counties..	1915	424
Duty of clerk on change of venue	1916	425
By attorney general against bond investment companies	1310	314
Attorney general to direct certain	4415	894
On bills, notes, etc. 579-593	579	153
To fix the liability of drawer of bills, notes, etc.	579	153
Against boards of equalization and tax assessors for official misconduct.	7574	1644

	Article	Page
SUITS—continued.		
On bonds of parties furnishing stationery to counties	2267	483
Upon bond of pawnbrokers for damages, etc..	6168	1313
On bond of hirer of county convicts	6253	1333
On bond of contractor for public printing	6359	1362
Of city, city to give no bond	768	193
For collection of street-improvement tax..	1006-1017	241
For improvement of streets against owners of property	1002	240
By city councils against public utility corporations	1018-1024	245
In district courts against public utility corporations	1025-1032	247
For condemnation of property in towns and villages for streets	1067	253
To collect claims against defunct city or town..	1082	257
To cancel watered stocks of private corporations..	1147	279
By private corporations..	1171	282
Against private corporations for recovery of land	1180	284
Against private corporations for refusal to permit examination of books, etc.	1191	287
Against corporations for collections of fines....	1195	288
Against insolvent corporations to forfeit charter	1201-1204	290
Where counter-claim is set up	1325-1330	319
To recover misapplied, etc., sinking funds of counties, etc.	702	177
For payment of certain county indebtedness to have precedence	1341	321
Against counties	1366	326
On notes, etc., by counties	1372	327
Costs in against county..	1374	327
To establish county boundaries	1385	329
For failure of collectors to properly deposit state funds	2429	512
To foreclose tax liens on delinquent lands	7688	1667
For recovery of deposits, etc., in state banks....	555	146
In district courts....	1671-1730	382
Institution of in district and county courts..	1812-1816	406
Venue of in district and county courts.....	1830-1834	409

	Article	Page
SUITS—continued.		
Parties to in district and county courts	1835-1849	413
In district and county courts, charges and instructions to jury in	1970-1975	433
Verdicts of juries in, in district and county courts	1976-1993	434
Judgments in, in district and county courts..	1994-2011	436
In district and county courts, remitter and amendment of judgment in	2012-2018	439
In district and county courts, new trials and arrest of judgment in	2019-2029	440
In district and county courts, process in..	1850-1885	415
In district and county courts, abatement and discontinuance of..	1886-1901	420
In district and county courts, pleadings of the defendant	1902-1910	422
Venue of in district and county courts	1911-1916	424
In district and county courts, continuance of	1917-1919	425
Trial of in district and county courts	1934-1969	429
In district and county courts, costs and security therefor	2030-2057	441
In district and county courts, bills of exception and statement of facts in	2058-2077	445
In district and county courts, appeals and writs of error in...	2078-2117	449
In district court, interlocutory proceedings, etc., in	2118-2166	454
In district court by next friend	2167-2171	462
In district courts recovery of attorneys' fees, when	2178, 2179	464
In district courts, miscellaneous provisions..	2180-2183	465
In Dallas criminal district court	2229-2235	476
For rejected claims against estates of decedents	3449	719
To recover funds of estates of decedents from state treasury	3583	743
Against delinquent officers, what is evidence	3698	761
On debts contracted by wife	4625	943
For divorce	4630-4642	944

Article	Page
SUITS—continued.	
Concerning escheated estates	3186-3205 676
Rules of evidence in.	3640-3713 753
For payment of franchise tax	7404 1591
On bonds of factors, etc..	3828 784
On bonds of ferrymen . . .	7037 1506
Foreign corporations cannot maintain	1318 316
In Galveston and Harris county criminal district courts	2202-2228 472
For gross receipts tax . . .	7388 1585
Of injunctions	4643-4693 947
For injuries resulting in death	4694-4704 956
Against mutual fire, storm and lightning insurance companies	4918 1024
Of unincorporated joint stock companies	6149-6154 1311
Venue of in justices' courts	2308-2318 490
In justice court, security for cost	2319 492
Parties to	2320 492
Process and service in	2321-2325 492
Pleading in	2326-2328 493
Continuance of	2329 494
Appearance and trial.	2330-2338 494
Trial by jury	2339-2363 496
Judgments in	2364-2373 498
New trials, etc., in	2374-2379 500
Execution of Judgment	2380-2388 501
Stay of execution	2389-2390 502
Appeals	2391-2397 503
General provisions relating to	2398-2400 504
In juvenile courts	2184-2201 466
Suits for land; record of how made	6838 1466
To fix mechanics' lien, etc.	5621-5639 1188
Limitations on	5672-5714 1201
Upon obligations of persons apprenticing minors	53 43
A g a i n s t n o n - r e s i d e n t s	2172-2177 463
Against oil, gas, etc., well owners	7854 1709
To partition personal property	6116-6121 1306
For partition of real estate	6096-6115 1303
By and against partnerships	6139 1309
To recover public lands, rents and damages.	5460-5474 1148
For recovery of rents, etc.	5475-5491 1151
Against receivers, where brought	2147 459
For foreclosure of lien of railroad laborers	5640-5643 1193

Article	Page
SUITS—continued.	
By railroad companies to condemn land	6502 1390
Against railroad companies for violation of full crew law	6575 1401
For removal of school trustees	2821 601
Surety may require, to be brought	6329 1354
For theft of wrecked property	7895 1717
Against trusts, etc.	7796-7818 1691
Against trusts, etc., evidence in	7810-7818 1694
Quo warranto	6398-6404 1372
SUMMER NORMALS—	
Teachers shall attend	2785 592
SUMMER SCHOOLS—	
Certificates from	2805 595
SUNDAY—	
Sale of liquor on, prohibited	7452 1608
SUNDAY LABOR—	
In state prisons	6215 1326
SUPERINTENDENTS—	
Of deaf and dumb and blind and other asylums, appointment, etc.	181 70
Of orphan asylums, how appointed	197 71
For deaf, dumb and blind for colored youths	209 74
Of asylums, salaries of . . .	7066 1512
Of confederate home, appointment, etc.	206 73
Of orphans and confederate home, salary of . .	7069 1512
Of juvenile institutions, salary of	7071 1512
Of epileptic colony, duties of	211-232 74
Of state institution for training of juveniles . .	5225 1092
Of home for lepers, duties, etc.	236 78
Of lunatic asylums	119-127 60
Of public buildings and grounds, duties, etc.	6380-6394 1368
Of public buildings and grounds, salary of	7075 1513
Superintendent of public instruction	4509-4520 916
Superintendent of public instruction, salary of . .	7050 1509
Road superintendents 6953-6976	1486
Commissioners' court shall appoint road superintendents	6953 1486
Commissioners' court to determine what superintendents shall be appointed	6954 1486

	Article	Page
SUPERINTENDENTS—cont'd.		
Oath and bond of superintendent; recovery on bond	6955	1487
Superintendent, qualifications, term, penalties, etc.	6956	1487
Salary of road superintendent	6957	1487
Duties and liability of... ..	6958	1487
Other duties of road superintendent	6959	1487
Superintendent to divide county into road districts; keep record, etc.	6960	1488
May summon hands, appoint deputy, and contract for use of teams.. ..	6961	1488
Reports of road superintendent	6962	1488
Commissioners' court, powers of.....	6963	1488
Superintendent shall do what under direction of commissioners' court	6964	1488
Superintendent to certify payments, etc.; his certificate and liability... ..	6965	1489
Commissioners' court may let contract for work; advertisement for bids; bond for contractor; appropriation	6966	1489
Convict labor	6967	1489
Donations for road purposes; drains	6968	1489
System of working hands under road overseers may be retained.....	6969	1490
Method of work in counties where special road tax is levied.....	6970	1490
Accounts of superintendent, and payment of moneys collected by him	6971	1490
Penalty for injury to any bridge, culvert, drain, etc.	6972	1490
Delinquent poll tax payers subject to road duty; requirement is cumulative; penalty.....	6973	1490
Terms "road," "work," and "working" defined.	6974	1490
This law cumulative of general laws.....	6975	1491
Counties exempt.....	6976	1491
SUPERSEDEAS—		
Certiorari not to operate as, unless.....	736	188
When granted.....	738	188
Death of defendant operates as, when.....	3780	775

	Article	Page
SUPERSEDEAS BOND—	2101	451
To suspend execution of judgments	3716	767
SUPERVISORS—		
Of elections	2923	625
Of elections in cities and towns	2934	627
Of public roads.....	6901	1478
SUPPLEMENTAL TAX ROLLS—		
To be prepared when....	7714	1677
SUPPLIES—		
Supplies for public institutions	7325-7348	1562
Mode of supplying to the executive and other departments	7339-7348	1567
Board of contractors....	7339	1567
Advertisement for proposals	7340	1567
Proposals, how made....	7341	1567
Contract awarded to lowest bidder.....	7342	1567
Bids to be guaranteed... ..	7343	1567
Contractors' bond.....	7344	1567
Rescission of contract... ..	7345	1567
No officer to be interested in contract.....	7346	1568
Rate for fuel.....	7347	1568
Record of proceedings... ..	7348	1568
State purchasing agent for eleemosynary institutions	7325-7338	1562
State purchasing agent; appointment; forbidden to receive rebates, etc.	7325	1562
Oath; bond; forbidden to be concerned in sale of merchandise, etc., to state	7326	1562
Storekeepers; appointment; bond; duties....	7327	1763
Manner of contracting for supplies.....	7328	1563
Bids, submission of	7329	1564
Bids, opening and acceptance of	7330	1564
Invoices, payment of....	7331	1565
Successful bidder must give bond	7332	1565
Emergency purchases... ..	7333	1565
Purchases must be according to appropriations.. ..	7334	1565
Purchase of perishables.. ..	7335	1566
Purchasing agent's clerk.	7336	1566
Institutions contemplated by this chapter.....	7337	1566
Payment only on affidavit	7338	1566
SUPREME COURT—		
Certification of questions to	1619-1625	371
Questions of law certified to supreme court.....	1619	371

	Article	Page		Article	Page
SUPREME COURT—cont'd.			SURETIES—continued.		
Dissenting opinion; point of dissent certified to supreme court.....	1620	371	On official bonds obtaining new	6083-6085	1299
Proceedings on certificate of dissent.....	1621	371	Of ferrymen, proceedings against	7036	1506
Decision of supreme court certified back, judgment on.....	1622	371	Surety insurance companies	4928-4940	1027
Conflict with decision of another court of civil appeals; question and record transmitted and certified to supreme court, etc.....	1623	371	General provisions... ..	4943-4972	1034
Proceedings on same in supreme court.....	1624	371	SURETY COMPANIES—		
Action of supreme court on; effect and finality of	1625	372	Fidelity, guaranty and surety companies.. ..	4928-4940	1027
Shall prescribe course of study for applicants for bar examinations	311	91	May act as surety, trustee, executor, etc.....	4928	1027
General provisions... ..	1512-1579	349	Surety company's bond is a legal bond, when....	4929	1028
Shall return records to courts of civil appeals for supplemental conclusions, when	1640	374	Requirements to be complied with; minimum capital; securities to be deposited	4930	1028
To issue mandamus against executive officers	5732	1214	Certificate to issue, when..	4931	1029
May remove district judges, how.....	6022	1290	Certificate may be surrendered, how.....	4932	1030
See "Court, Supreme."			May withdraw from bond..	4933	1030
			May be used on bond, where	4934	1030
SUPREME JUDICIAL DISTRICTS—			Defaulting company, claims paid, how.....	4935	1030
Counties apportioned to..	29	18	Who are agents.....	4936	1030
SURETIES—			Penalty for accepting corporation which has not complied with the law..	4937	1031
Principal and surety.. ..	6329-6337	1354	Cancellation of bond; statement of cause....	4938	1031
Surety may require suit to be brought.....	6329	1354	Authority revoked, when..	4939	1031
Discharged by failure to sue	6330	1354	Charged with public use..	4940	1031
May have question of suretyship tried, when..	6331	1354	Employer's liability insurance companies..	4941-4942	1032
Execution levied first on property of principal..	6332	1354	Reserve, how reported and calculated	4941	1032
Rights of surety who makes payment on judgment	6333	1354	Commissioner may accept certificate, when.....	4942	1033
One surety may have execution against co-surety, when	6334	1355	SURGEONS—		
Sheriff, etc., has same right as surety, when..	6335	1355	Regulations as to practice of	5733-5747	1215
Surety not to be sued alone, unless, etc.....	6336	1355	SURPLUS FUND—		
Who is surety within this title	6337	1355	Of banking corporations..	550	145
Suits against.....	1842	413	SURVEYORS—		
On official bond, when joined suits.....	1845	414	County and district surveyors	5300-5334	1107
Execution levied on property of, when.....	3732	769	County surveyors, when elected	5300	1107
On official bonds, relief of	6078-6082	1298	Oath and bond.....	5301	1107
			Commissioners' court to fill vacancy, when....	5302	1107
			Duties	5303	1108
			To report to commissioners etc.....	5304	1108
			Shall record all field-notes	5305	1108
			Shall plat surveys, etc....	5306	1108
			Record books to be furnished	5307	1108
			Deputies appointed; oath and bond	5308	1108
			Chain carriers and markers, etc.....	5309	1109

	Article	Page
SURVEYORS—continued.		
Deputies shall return field-notes	5310	1109
County surveyor may do work of deputy.....	5311	1109
Shall keep map in office..	5312	1109
Duty on change of boundary	5313	1109
Contested elections, in what court tried, etc..	5314	1109
Their duties, how regulated	5315	1109
Deputy district surveyors	5316	1109
Special county surveyor for unorganized counties	5317	1109
Deputy surveyor of new county to procure maps	5318	1110
Surveys of deputy to be placed on map.....	5319	1110
Surveys in unorganized counties	5320	1110
Special deputies	5321	1110
Surveyor not authorized to survey until, etc....	5322	1110
Shall return field-notes of	5323	1110
Transcript to be obtained	5324	1111
May rent office, when...	5325	1111
Rent of office, how paid..	5326	1111
To have deputy, when...	5327	1111
Right to examine books..	5328	1111
Transcripts, how paid for	5329	1111
True meridian to be established	5330	1111
Neglect or failure of duty	5331	1112
Shall turn over books, etc.	5332	1112
County clerk to take charge of books, when.	5333	1112
Commissioners may have record transcribed, when	5334	1112
Surveys and field-notes	5335-5360	1112
What authorizes a survey	5335	1112
Field-notes shall describe what	5336	1112
Copy obtained on loss of original field-notes....	5337	1113
Surveys on navigable streams	5338	1113
Surveys shall be in a square	5339	1113
Notice of settlers.....	5340	1113
Trial as to disputed line before justice of the peace	5341	1113
Surveys stricken from map, when	5342	1114
Liability for failing to survey	5343	1114
Field-notes to be sent back for correction, when	5344	1114
The same corrected and returned, how.....	5345	1114
Correction by certificate, when made.....	5346	1114

	Article	Page
SURVEYORS—continued.		
Commissioners to have surveys made, when...	5347	1114
Bond, etc.....	5348	1114
May have lands surveyed, when	5349	1115
Mineral lands to be surveyed; points marked; surveyor appointed; his salary	5350	1115
Land commissioner to cooperate with United States geological survey; regulations as to co-operation	5351	1115
Persons owning private lands may co-operate..	5352	1116
General authority of commissioner to have surveys made; compensation of official; state surveys, etc.....	5353	1116
Official surveyors, how commissioned; qualified	5354	1116
Field-notes to be returned; force and effect of.	5355	1116
Conflicts in alternate surveys, how adjusted....	5356	1117
Surveyor's duties in adjusting conflict.....	5357	1117
In case of conflict, to issue in what cases.....	5358	1117
In case of conflict number of surveys changed; correction made to protect purchasers.....	5359	1117
Third persons protected..	5360	1118
Oath and bond of.....	1379	329
For drainage, etc.....	2481	527
For drainage, etc.....	2515	534
For drainage districts...	2544	539
For drainage districts...	2573	546
District and county attorneys, fees of.....	3876	802
General provisions.	3880-3926	804
Compensation for surveying homestead, under execution	3812	780
When counties shall have.	5295	1106
Court may appoint in partition suits.....	6104	1304
To lay out drainage system for public roads..	6995	1496
Appointment in trespass to try title	7747	1683
SURVEYS—		
Of county lines.	1375-1386	327
Of mining claim, requisites of application for.	5908	1264
Of right of way by railroad companies	6483	1388
Of right of way of inter-urban railroads	6734	1446
Of drainage for public roads	6996	1497
SWEAR—		
Defined	5504	1157

T

	Article	Page
TARRANT COUNTY—		
County court of, for civil cases	1799-1811	403
TAX ASSESSORS—		
Fees of	3871	801
General provisions as to fees	3880-3926	804
Form of additional oath of	7572	1643
Assessment of tax for railroad subsidy bonds.	685	173
In cities and towns, duties, etc.....	941	228
To assess taxes for independent school districts	2862	610
Duties of, in selection of jurors in cities of certain population...	5151-5158	1081
To assess property in improvement districts...	5561	1173
Compensation of, for navigation districts ...	5984	1283
To certify property valuation to comptroller....	7350	1569
State tax board to certify intangible assets to...	7421	1597
Penalty for violating provisions of intangible asset tax law	7423	1598
Duties of, in assessment of property for taxation	7503-7604	1623
Election and term of....	7533	1633
Affidavit of, to tax rolls..	7580	1646
To list unpaid taxes annually	7692	1669
See "Taxation."		
TAXATION—	7349-7726	1569
Assessment of taxes, election and qualification of the assessor....	7533-7604	1633
Election and term of assessor	7533	1633
Vacancies, how filled....	7534	1633
Oath and bond.....	7535	1633
Purview of the bond....	7536	1634
New bond	7537	1634
Bond for county taxes....	7538	1634
May appoint deputies....	7539	1634
Authority of deputies....	7540	1634
May administer oaths....	7541	1634
The oath.....	7542	1634
Where and how the oath may be made.....	7543	1634
Penalty for failure to attest oath.....	7544	1635
Fraud upon the public revenue	7545	1635
Taxpayer to make oath..	7546	1635
When assessments to be made	7547	1635
Irregular assessments ...	7548	1636
If taxpayer is absent....	7549	1636
Or refuses to list.....	7550	1636

	Article	Page
TAXATION—continued.		
Duty of assessor in such cases	7551	1636
Commissioner of general land office to furnish abstracts to assessors..	7552	1636
Books to be furnished assessors	7553	1637
How to be filed by assessors	7554	1637
Blocks and lots in cities..	7555	1638
Duties of assessors as to same	7556	1638
To be kept in office.....	7557	1639
Lands not on abstract to be put there, when and how	7558	1639
Certificate from board of equalization	7559	1639
Substitutes to be employed, when.....	7560	1639
Unorganized counties....	7561	1639
Manner and form of assessing	7562	1639
Assessment of property not rendered.....	7563	1641
Boards of equalization...	7564	1641
Assessment of real property for previous years.	7565	1642
Assessment of back taxes on personal property, how made.....	7566	1642
Unlisted property; supplemental roll	7567	1642
Assessor to follow instructions	7568	1642
Equalization of assessments	7569	1642
Boards may equalize without complaint.....	7570	1643
Penalty for neglect of duty by assessor.....	7571	1643
Oath of assessor.....	7572	1643
Oath of board.....	7573	1644
Neglect of duty cause for removal from office; attorney general to file suit	7574	1645
Assessor to furnish list of delinquents	7575	1645
And submit lists to board of equalization	7576	1645
Shall make out rolls in triplicate	7577	1645
Also rolls of unrendered property	7578	1645
And add up columns....	7579	1645
And return and oath....	7580	1646
All lists, etc., filed in the county clerk's office...	7581	1646
Rolls, how distributed...	7582	1646
Compensation	7583	1647
How paid by the state...	7584	1647
By the county.....	7585	1647
Penalty for neglect of duty	7586	1647

	Article	Page
TAXATION—continued.		
Lands of non-residents in unorganized counties..	7587	1647
Lands of residents in....	7588	1647
Duties of comptroller in relation thereto.....	7589	1647
Same	7590	1647
Same	7591	1647
Same	7592	1648
May appeal from comptroller's assessment...	7593	1648
May levy upon and sell, when	7594	1648
Sale	7595	1648
May be bought by state, when	7596	1648
Redemption	7597	1648
Tax deed.....	7598	1648
List of purchasers to be kept in office.....	7599	1648
Deeds shall vest good title, when	7600	1649
County taxes to be paid, where	7601	1649
Comptroller to keep taxes of unorganized county.	7602	1649
Same	7603	1649
Special deposit to be made by comptroller.....	7604	1649
Assessment and collection of back taxes on un-rendered lands	7663-7662	1662
Back taxes on unrendered lands	7663	1662
Comptroller to prepare lists	7664	1662
And forward to boards of equalization	7665	1662
Board to value such lands	7666	1662
And cause three rolls to be made	7667	1662
Collector to give notice..	7668	1662
And enforce collection, when	7669	1662
Comptroller to make out lists of lands sold to state	7670	1663
Sale, when and how made	7671	1663
Advertisement of sale and redemption by owner..	7672	1663
Lands sold, how.....	7673	1663
Sale may be continued, etc.	7674	1664
Deed executed, when and how	7675	1664
Same	7676	1664
Effect of deed, etc.....	7677	1664
Report of sales.....	7678	1664
Proceeds of sale paid to whom	7679	1664
Collections applied, how.	7680	1665
Costs deducted by collector	7681	1665
Unsold lands reported to comptroller	7682	1665
Assessment and collection of taxes in cities and towns	923-964	225
Ad valorem tax.....	923	225

	Article	Page
TAXATION—continued.		
May levy and collect tax for improvements, buildings, etc.....	924	225
May levy tax for interest and sinking fund on certain bonds, for current expenses, permanent improvements, roads, etc.....	925	225
Cities of ten thousand inhabitants and over to levy and collect tax; validating act.....	926	225
Poll tax	927	226
Occupation tax.....	928	226
Occupations that are subject to taxation.....	929	226
Same subject	930	226
Power of city council to provide for assessing, etc., taxes.....	931	226
Collection of license tax, etc.	932	226
Occupation license to be suspended or revoked, etc., when.....	933	227
Real estate includes what	934	227
Personal estate includes what	935	227
City council may provide for the exemption of property from taxation, etc.	936	227
Taxes for payment of indebtedness	937	227
Power of city council to provide for collection of taxes.....	938	228
Power of city council to regulate tax lists, assessment of taxes, etc..	939	228
Duty of taxpayers to render inventory of property, etc.....	940	228
Assessor and collector, powers, duties, bond, etc.	941	228
Duty of assessor and collector to make list of personal property, etc..	942	229
Unrendered property shall be ascertained, etc., by assessor	943	229
Assessment for back taxes	944	229
Board of equalization, how constituted	945	229
Annual meetings of board	946	230
Value of property, how fixed	947	230
Shall equalize value of lots	948	230
Lists of unrendered property to be examined...	949	230
Notice to taxpayer, how given	950	230
Valuation lowered, when.	951	230
Rolls to be approved, when	952	230

	Article	Page
TAXATION—continued.		
Action of board final....	953	231
Compensation of board and secretary.....	954	231
Oath of members.....	955	231
Duty of assessor and collector in regard to collection of taxes.....	956	231
Property of taxpayer shall be levied on and sold for taxes, when.....	957	231
Assessor and collector shall make deed to purchaser of property sold for taxes; effect of deed, right of redemption, etc.....	958	231
Sale may take place at any other time than that first advertised, and may be continued from day to day.....	959	232
Property shall be struck off to city, when.....	960	232
Certain provisions of general tax law applicable, when.....	961	232
Property of infant, etc., may be redeemed, when	962	233
Redemption of lands sold for taxes.....	963	233
Taxes, etc., collectible in current money....	964	233
City councils, duties, etc.	813-902	206
Assessment and collection of taxes in certain cases	7702-7715	1674
Property omitted from tax rolls, etc., list of.....	7702	1674
Property listed to be assessed, how.....	7703	1674
List to operate a lien on property.....	7704	1675
To be advertised.....	7705	1675
Assessments reduced, when.....	7706	1675
Commissioners' court may contract for collection.	7707	1675
Bulk assessments validated, when.....	7708	1676
Delinquent tax record to be published.....	7709	1676
Property listed by comptroller, when.....	7710	1676
List to be posted.....	7711	1676
Lands not rendered to be assessed, how.....	7712	1676
Duty of commissioners' court.....	7713	1677
Supplemental tax rolls to be prepared.....	7714	1677
Fees of assessor.....	7715	1677
Collection of taxes, election and qualification of the collector... 7605-7662	1650	
Collector; election and term of office.....	7605	1650
Vacancies, how filled....	7606	1650

	Article	Page
TAXATION—continued.		
Sheriff, collector when..	7607	1650
Bond and oath.....	7608	1650
New bond, etc.....	7609	1651
Bond for county taxes... 7610	1651	
All bonds to be first approved	7611	1651
May appoint deputies....	7612	1651
Rolls to be warrant, etc..	7613	1651
Collector for all taxes... 7614	1651	
Collections, when to begin	7615	1651
Shall keep office at county seat	7616	1652
Tax receipts and requisites	7617	1652
Quarterly reports, requisites of.....	7618	1652
Duties of clerk and collector	7619	1652
Report not to be approved, unless	7620	1654
List of delinquents and insolvents to be made out	7621	1654
Collector to endeavor to collect	7622	1654
Non-residents	7623	1654
Forced collections to begin, when	7624	1655
Personal property may be pointed out.....	7625	1655
When property about to be removed from county	7626	1655
Tax lien superior to assignment, attachment, inheritance or devise, except	7627	1655
Execution upon property in other counties than that where taxes are due	7628	1655
Tax collector not allowed credit for delinquents, when	7629	1656
All property liable for taxes	7630	1656
Sales of property, how made	7631	1656
If property is insufficient.	7632	1656
Sales of real property, when made.....	7633	1656
Advertisement of real property for sale.....	7634	1656
List to be posted.....	7635	1656
May be continued from day to day.....	7636	1657
Homesteads liable only for	7637	1657
Sales of land, how made.	7638	1657
Tax deed, and its requisites	7639	1657
Sales to be reported to commissioners' court..	7640	1657
Redemption of land sold for taxes.....	7641	1658
Redemption of land within two years.....	7642	1658
Redemption from private purchasers	7643	1658

	Article	Page
TAXATION—continued.		
Receipt of collector, notice when.....	7644	1658
Relief, when.....	7645	1658
Same	7646	1658
Certificate of redemption from collector, notice when	7647	1659
Lands to be bid in for state, when.....	7648	1659
May redeem, how.....	7649	1659
If not redeemed.....	7650	1659
May redeem by paying costs	7651	1659
Commissioners' court to sit as board of inquiry, when	7652	1660
Collector to file complaint, when.....	7653	1660
Compensation	7654	1660
On occupation taxes.....	7655	1660
Compensation for one levy only, when.....	7656	1660
Taxation upon lands in unorganized counties..	7657	1660
Payments of moneys....	7658	1661
Same	7659	1661
Notification to pay.....	7660	1661
District and county attorneys to sue for taxes on personal property..	7661	1661
Limitation not available to delinquent taxpayer.	7662	1661
Delinquent taxes....	7683-7700	1665
Land and improvements subject to taxation....	7683	1665
Delinquent taxes a lien on land	7684	1665
Tax collector to list delinquent lands.....	7685	1665
County clerks to record delinquent lists.....	7686	1665
Delinquent tax lists to be published	7687	1667
Suits to foreclose tax liens on delinquent lands...	7688	1667
Proceedings in suits to foreclose tax liens....	7689	1668
Sheriff to execute deeds..	7690	1668
Attorneys to represent state, fees, etc.....	7691	1669
Assessor to list unpaid taxes annually	7692	1669
Law available to cities and towns.....	7693	1670
Exemptions from this chapter	7694	1670
Delinquent owners may redeem before sale....	7695	1671
May redeem in two years by paying double....	7696	1671
May redeem from state, when and how	7697	1671
Proceedings against unknown and non-resident owners.....	7698	1671
Similar proceedings by cities and towns.....	7699	1672

	Article	Page
TAXATION—continued.		
Lands to be platted and numbered	7700	1672
Evidence of title to redeem land.....	7701	1673
Franchise tax.....	7393-7406	1587
Tax to be paid by domestic corporations.....	7393	1587
Tax to be paid by foreign corporations	7894	1587
Only part of the tax to be paid, when.....	7395	1588
Certain affidavits may be required	7396	1588
Reports to be filed, etc...	7397	1588
Supplemental tax to be paid when capital increased	7398	1589
On failure to pay tax charter forfeited when; penalty.....	7399	1589
Notice of forfeiture....	7400	1589
Foreign corporations may withdraw	7401	1590
No business to be done after forfeiture; penalty	7402	1590
Certain corporations not required to pay tax, when	7403	1590
Attorney general to bring suit, when.....	7404	1591
Forfeiture of charter by court; duty of clerk...	7405	1591
Payment of franchise tax by corporations in process of liquidation	7406	1591
Gross receipts, taxes based upon.....	7369-7392	1579
Express companies.....	7369	1579
Telegraph companies....	7370	1579
Gas, electric light, electric power or water works plants	7371	1580
Collecting or commercial agency	7372	1580
Car companies.....	7373	1580
Pipe line companies....	7374	1581
Sleeping car, palace car or dining car companies	7375	1581
Insurance companies....	7376	1582
Wholesale dealers in oils "wholesale dealer" defined	7377	1582
Interurban and electric railway companies....	7378	1583
Wholesale dealer in or distributors of liquors; "wholesale dealer" defined	7379	1583
Dealers in pistols.....	7380	1584
Text or law book publishers	7381	1584
Telephone companies....	7382	1584
Oil well companies.....	7383	1585
Terminal companies....	7384	1585
Tax to be paid when business is begun after beginning of quarter...	7385	1585

	Article	Page
TAXATION—continued.		
Penalty for failure to report	7386	1585
Penalty for failure to pay tax	7387	1585
Penalties to be recovered by attorney general...	7388	1585
Permit not granted until tax is paid.....	7389	1586
Tax in addition to all other taxes.....	7390	1586
Comptroller may require additional reports.....	7391	1586
Revenue agent to examine books, etc., when.....	7392	1586
Inheritance tax.....	7487-7502	1619
Property subject to the tax	7487	1619
Property passing in two or more estates.....	7488	1620
Property bequeathed to executor or trustee in lieu of commission, taxed when.....	7489	1620
Inventory to be filed, when; penalty.....	7490	1620
County court to appoint administrator	7491	1620
Appraisers appointed; notice to be given, etc....	7492	1620
County judge to regulate tax	7493	1621
Property withheld until tax paid.....	7494	1621
Taxes charged on real estate, when.....	7495	1621
Tax paid, when.....	7496	1621
Collector to sue for tax, when	7497	1621
Collector pays tax to state treasurer.....	7498	1622
Tax deposited to credit of general revenue.....	7499	1622
Tax refunded, when.....	7500	1622
Final account of executor, etc., not allowed till tax paid.....	7501	1622
Appointment of administrator dispensed with..	7502	1622
Levy of taxes and payment of occupation taxes	7349-7368	1569
Board to calculate ad valorem tax.....	7349	1569
Tax assessor to make certificate to comptroller..	7350	1569
Method of ascertaining tax rate.....	7351	1569
Comptroller to certify rate to tax assessor...	7352	1570
Commissioners' court to calculate county rate, when	7353	1570
Poll tax.....	7354	1571
Occupation tax.....	7355	1571
Tax on dealers in cannon crackers	7356	1575
County ad valorem.....	7357	1575
Taxes payable in money..	7358	1576

	Article	Page
TAXATION—continued.		
Collector to keep books..	7359	1576
Tax collector to be furnished books.....	7360	1577
Tax to be paid before occupation begins.....	7361	1577
Occupation tax receipts to be furnished collector..	7362	1577
Account of occupation tax receipts by collector...	7363	1577
License	7364	1577
Purchaser of unexpired license may pursue occupation, when.....	7365	1578
Powers and duties of state revenue agent...	7366	1578
State revenue agent to have access to books, etc.	7367	1579
Compensation	7368	1579
Liquor dealers, tax on	7427-7466	1599
Tax to be collected.....	7427	1599
"Retail liquor dealer" defined	7428	1599
"Retail malt dealer" defined	7429	1600
Liquor dealer's license...	7430	1600
Malt dealer's license...	7431	1600
Right of wine growers to sell wine.....	7432	1600
Transfer of license, etc...	7433	1600
Forfeiture of license....	7434	1600
Application of license...	7435	1601
Comptroller may revoke license	7436	1603
Same	7437	1603
Same	7438	1604
Same	7439	1604
Same	7440	1604
Same	7441	1604
Same	7442	1604
Same	7443	1605
Same	7444	1605
Number of licenses limited, etc.....	7445	1605
Petition for license....	7446	1606
License not to be granted for business within three hundred feet of a church	7447	1607
Judge shall hear petition, etc.	7448	1607
Clerk to furnish certified copy of judgment.....	7449	1607
Clerk to issue license, when	7450	1607
Regulating hours of closing, etc.....	7451	1607
Bond	7452	1608
Unearned portion returned in case of death	7453	1610
Clerk to make statement	7454	1610
Duty of clerk to certify forfeitures, etc.....	7455	1610
Act of servant deemed to be the act of master...	7456	1610

	Article	Page
TAXATION—continued.		
No license issued to person whose license has been revoked until five years	7457	1611
Licenses not to be issued, when.....	7458	1611
Law not to conflict with local option law....	7459	1611
License to be posted....	7460	1611
List of licenses to be delivered to grand jury..	7461	1611
District judges to charge law to grand jury.....	7462	1611
Fees of officers.....	7463	1611
In case of forfeiture may dispose of stock in bulk	7464	1611
“Intoxicating liquor” defined	7465	1611
Law to be valid, though parts is held to be invalid	7466	1612
Tax on persons soliciting orders or operating cold storage for intoxicating or non-intoxicating beverages in local option districts ..	7479-7482	1617
Amount of tax for soliciting orders.....	7479	1617
Amount of tax for keeping cold storage.....	7480	1617
Application for license..	7481	1617
County clerk to report licenses issued.....	7482	1618
Tax on sale of intoxicating liquors in local option territory.....	7467-7475	1612
Tax for selling intoxicating liquors on prescription in local option territory	7467	1612
Counties may levy.....	7468	1612
Prerequisites to issue of license to sell.....	7469	1612
License to issue when...	7470	1613
License to issue for one year and shall designate place of sale, etc.	7471	1613
Licenses to be posted....	7472	1614
County clerk to report application for license to state revenue agent....	7473	1614
Producers of domestic wines to be exempt....	7474	1614
Dealer must give bond before license will issue	7475	1614
Municipal taxes to pay subsidies in aid of railroads and other internal improvements	7716-7721	1678
Such taxes, how applied	7716	1678
To be collected by city officers	7717	1678
Bond of the officers.....	7718	1678
Taxes paid in what.....	7719	1678
To be paid over every month	7720	1678

	Article	Page
TAXATION—continued.		
If insufficient, additional levy to be made.....	7721	1678
New counties.....	7722-7726	1679
When new counties are created	7722	1679
Transcript of unpaid assessments	7723	1679
To be verified.....	7724	1679
Compensation of collector	7725	1679
Compensation for transcribing rolls.....	7726	1679
Non-intoxicating malt liquors, tax on dealers in	7476-7478	1616
Amount of tax.....	7476	1616
Application for license to state what; must be paid in advance.....	7477	1616
County clerk to report license	7478	1617
Occupation tax on handling liquors C. O. D.	7483-7486	1618
Amount of tax.....	7483	1618
Penalty for failure to pay tax	7484	1618
No one required to keep office for handling liquors C. O. D.....	7485	1618
Invalidity of part not to affect whole chapter..	7486	1619
Property subject to taxation and the mode of rendering the same....	7503-7532	1623
All property to be taxed	7503	1623
Real property includes what	7504	1623
Personal property what..	7505	1623
Definition of terms.....	7506	1623
Exemptions from taxation	7507	1624
When to be rendered...	7508	1625
How to be rendered....	7509	1623
Where to be rendered...	7510	1626
To be rendered in but one county.....	7511	1626
Live stock, pastures, etc.	7512	1626
Taxes not to be paid twice	7513	1626
Vessels, where to be listed	7514	1627
Railroads, telegraphs, etc.	7515	1627
Listing for others.....	7516	1627
Shall be under oath, etc.	7517	1627
The statement and its requisites	7518	1627
Certain credits and stocks not to be listed.....	7519	1628
Rendition of real estate..	7520	1628
Rendition by banker, broker, etc.....	7521	1628
Assessments of real estate by national banks	7522	1629
No deduction in certain cases	7523	1630
Assessments by railroads..	7524	1630
Railroads to return sworn statements when, etc..	7525	1630

	Article	Page
TAXATION—continued.		
Assessments of corporate property, etc.....	7526	1631
Assessments to be in owner's name.....	7527	1631
Lien for taxes.....	7528	1631
Lease hold interest in public lands.....	7529	1631
Valuation of property for taxation.....	7530	1632
United States paper money taxable.....	7531	1632
Assessed as money on hand.....	7532	1632
Special road tax.....	7042-7046	1507
Election for road tax, how ordered.....	7042	1507
Same subject.....	7043	1507
Who qualified to vote, etc.	7044	1507
Duty of commissioners' court upon obtaining result of election, etc.	7045	1508
No bonds to issue.....	7046	1508
State intangible tax board.....	7407-7426	1592
State tax board, of whom composed; tax commissioner, appointment of..	7407	1592
Bond of tax commissioner	7408	1592
Secretary.....	7409	1592
Duties of board.....	7410	1592
Same.....	7411	1593
Powers of board.....	7412	1593
Failure to obey subpoena; penalty.....	7413	1593
Tax on intangible assets; law applies to whom...	7414	1593
Same.....	7415	1593
Statement of intangible assets; to contain what	7416	1594
Date of receipt to be endorsed on statement; board may demand additional statements....	7417	1594
Statements placed before board, when.....	7418	1595
Duties and powers of board in passing upon statements.....	7419	1595
Same.....	7420	1596
Unincorporated companies and individuals; capital, how ascertained.....	7421	1597
Board to certify amount of intangible assets to assessors.....	7422	1597
Failure of tax assessor to comply; penalty.....	7423	1598
Failure to make statement, etc.; penalty...	7424	1598
Receivers and trustees in bankruptcy to make reports, etc.....	7425	1598
Persons complying with this chapter relieved of other taxes.....	7426	1598

	Article	Page
TAXATION—continued.		
In cities and towns for street improvements...	999-1017	239
For payment of claims against defunct cities and towns.....	1086	258
By cities for harbors, etc.	884	216
For counties, regulations as to.....	1401-1459	333
Levy of, by new county to pay pro rata of indebtedness.....	1341	321
Comptroller to collect taxes in unorganized county.....	1345	322
For drainage districts...	2556	541
For drainage purposes...	2477-2510	526
Same.....	2511-2541	533
For county drainage districts.....	2603	554
Levy of for drainage purposes.....	2526	536
On fish, oysters, etc....	3983	823
License tax on ferrymen	7039	1506
Special tax for roads	7042-7046	1507
For improvement districts	5542	1167
When insurance companies subject to.....	4962	1038
Of domestic insurance companies.....	4764	973
Of gross receipts of insurance companies...	4775-4790	976
On gross premiums of mutual fire, storm and lightning insurance companies.....	4914	1022
In irrigation districts	5053-5064	1061
For payment of bonds issued in cases of disaster.....	664	171
For funding, etc., indebtedness.....	659	170
For navigation districts..	5982	1283
Members of militia exempt from certain....	5841	1242
For interest and sinking fund for railroad subsidy bonds.....	682	173
Of street railways by city council.....	868	214
For levy of, for interest and sinking fund on road bonds.....	627	162
To meet interest and sinking fund on county and municipal bonds...	616	161
Of abutting property for drainage for public roads.....	6999	1499
For maintenance of city schools.....	2875	613
Special tax for common school purposes.....	2827	603
For independent school districts.....	2857	609

	Article	Page
TAXATION—continued.		
For payment of school house bonds.....	2841	606
U. S. land exempt from... Levy of, for construction of viaducts, etc.....	5277	1102
By whom collected in towns and villages....	649	167
Power of commissioners' courts to levy.....	1057	252
County taxes may be paid in jury scrip.....	2242	472
Land sold for to state...	5220	1090
	5384	1121
TAX COLLECTORS—		
Liable on bond for failure to collect railroad subsidy bond tax.....	683	173
For cities, failure of duty in certain cases.....	898	219
Of cities and towns, duties, etc.....	941	228
Duty in collection of taxes for payment of indebtedness of defunct cities, etc.	1087	259
Of counties, duties, etc....	1401-1459	333
Accounts of, how kept...	1407	334
To deposit state funds in nearest state depository	2428	512
Duties in collection of taxes for drainage districts	2605	555
To collect taxes for independent school districts	2862	610
Duties as to payment of poll taxes.....	2958	633
Fees of.....	3872	801
General provisions...	3880-3926	804
Duties of, in selection of jurors in cities of certain population...	5151-5158	1081
To collect taxes for improvement district....	5562	1173
Compensation of, for navigation district.....	5985	1283
Duties of, as to collection of occupation taxes...	7355-7368	1571
Duties under inheritance tax law.....	7497	1621
Duty of, as to unlisted property	7567	1642
Election and qualification of	7605-7662	1650
Duty as to taxation of unrendered lands....	7668	1662
To list delinquent land..	7685	1666
Duty in collection of taxes in new counties...	7722-7726	1679
TAXPAYERS—		
In cities and towns, rendition of property by....	940	228
Of cities and towns, notice to by board of equalization	950	230

	Article	Page
TAXPAYERS—continued.		
Property shall be sold for taxes, when.....	957	231
To make oath.....	7546	1635
See "Taxation."		
TAX ROLLS—		
For counties, regulations as to	1401-1459	333
Shall be made out in triplicate	7577	1645
TAX TAGS—		
For concentrated feeding stuffs	5898	1260
TEACHERS—		
County superintendent to approve contracts with	2756	585
School trustees to contract with.....	2825	603
Of schools shall not handle books.....	2904	618
Certificates and examinations of.....	2780-2814	590
Shall present valid certificate	2780	590
Salaries of teachers....	2781	591
Instruction must be given in English.....	2782	591
Prescribed studies.....	2783	591
Shall keep records and make reports.....	2784	591
Shall attend summer normals and county institutes	2785	592
County board of examiners	2786	592
Application for certificate	2787	592
Applicant must know English	2788	592
Examinations must be conducted in English..	2789	592
Examiners shall grade papers	2790	592
Applicant may receive lower grade certificate	2791	593
Duties of county superintendent	2792	593
Dates of examinations...	2793	593
State board of examiners..	2794	593
When papers shall be forwarded	2795	593
Examination of papers...	2796	593
Kinds of certificates....	2797	594
Classes of county certificates; record.....	2798	594
Requirements for third grade certificate.....	2799	594
Requirements for second grade certificate.....	2800	594
Requirements for first grade certificate.....	2801	594
Permanent certificate....	2802	595
Grades and qualifications for permanent certificate	2803	595

	Article	Page
TEACHERS—continued.		
Building to higher grade certificates	2804	595
Normal school and summer school certificates.	2805	595
University of Texas diplomas and certificates...	2806	596
Diploma of college of industrial arts.....	2807	596
Certificates based on college degrees	2808	596
Course of study for first grade certificates in certain institutions.....	2809	597
City certificates.....	2810	597
Kindergartens	2811	597
Kindergarten certificates.	2812	598
Extension of term of validity of certificates.	2813	598
Cancellation of certificates	2814	599
Teachers certificates—		
Of north Texas normal..	2706	572
Of Prairie View normal..	2724	575
Of Sam Houston normal.	2696	570
Of southwest Texas normal	2711	573
Conferred by girls industrial institute	2690	569
TEACHERS DIPLOMAS—		
University of Texas shall confer, when	2647	563
TEACHERS INSTITUTE—		
County superintendents to conduct	2735	583
TEAMS—		
Credit for use of on public roads	6982	1493
TELEGRAPH COMPANIES—		
NIES—		
Contracts of, for extending lines over causeways, etc.	650	167
Gross receipts tax on....	7370	1579
Property of, where and how listed for taxation	7515	1627
Telegraph corporations	1231-1236	296
May set poles, etc., across public roads, etc....	1231	296
May enter upon lands, etc.	1232	296
One company can not contract to exclude another	1233	296
Company may own line in or out of state, and may join with other company	1234	296
Cities, etc., may direct as to posts, etc.....	1235	296
Manner of consolidating with another company.	1236	297
Corporations, private, generally	1117-1321	266

	Article	Page
TELEGRAPH OPERATORS—		
For railroads limited to eight hours a day....	6586	1403
TELEPHONE COMPANIES—		
NIES—		
Telephone and telegraph companies	1237-1241	297
Corporations owning or operating lines, etc., shall arrange for transfers, etc., as follows..	1237	297
Telephone companies, etc., shall connect lines at common points, how, etc.	1238	297
Telegraph companies, etc., shall transmit transferred messages, etc., when	1239	297
City council, etc., to hear and determine whether transfers necessary and just, etc.....	1240	298
Companies to comply with order of council, etc., or forfeit what; provided, etc.; appeal, etc.	1241	298
Contracts of, for extending lines over causeways, etc.....	650	167
Gross receipts tax on....	7382	1584
TENANT—		
See "Landlord and Tenant."		
TEN PIN ALLEYS—		
Occupation tax on.....	7355	1571
TERMINAL COMPANIES—		
Gross receipts tax on....	7384	1585
TERMS—		
Of Dallas county court at law.....	1789	402
Of county court of Tarrant county.....	1803	404
Of county courts for civil and probate cases.	1776-1778	399
Of the courts of civil appeals	1585-1588	364
Of court of criminal appeals	1658	379
Of the district courts	1718-1726	389
Of the supreme court	1518-1520	350
TESTATOR—		
Regulation as to will of	7855-7878	1710
See "Estates of Decedents."		

	Article	Page
TESTIMONY—		
Additional allowed, when	1952	431
Legislative investigating committees may take..	5519	1160
Judges and other officers may take for legislative investigating committee when	5522	1161
To nuncupative wills....	7863	1711
In probate of wills....	3273	691
Of witnesses, etc....	3640-3713	753
See "Evidence."		
TEXAS NATIONAL GUARD—		
See "Militia."		
TEXAS SECURITIES—		
Insurance companies to invest in.....	4775-4790	976
TEXT-BOOK BOARD—		
.....	2905-2909	619
Subjects covered in adoption	2905	619
Contractors shall establish depositories	2906	620
Period of use of present adopted books.....	2907	621
State assumes no liability to contractors.....	2908	621
Process to be served on secretary of state.....	2909	621
TEXT BOOKS—		
Gross receipts tax on publishers of	7381	1584
THEATERS—		
Occupation tax on.....	7355	1572
THROUGH FREIGHTS—		
Duty of railroad commission as to.....	6667	1426
TICKET AGENTS—		
Of railroads, authority, etc.	6637-6639	1416
TIMBER—		
7727-7730	1680	
Log brands.....	7727	1680
To be recorded.....	7728	1680
Written report to be filed with county clerk, when	7729	1680
Evidence of ownership, how proved.....	7730	1680
For causeways and bridges	6934	1483
May be removed for mining purposes.....	5919	1267
TIMBER LANDS—		
Defined, etc., regulations for sale of.....	5429	1136
Suits for depredations on	5469	1150

	Article	Page
TITLE—		
Defined	5673	1201
To chattels recorded where	6841	1467
To lands condemned for United States, etc....	5274	1102
Trespass to try.....	7731-7768	1681
Stations for experimental culture, how maintained, etc.....	4484	908
TOLL BRIDGES—		
Commissioners' courts may contract for building	7015	1502
Assessed to pay bonds, etc.	7018	1503
TOLL GATES—		
Not permitted in cities and towns	1273	306
TORTS—		
Limitations on.....	5685-5700	1203
May be sued on, where..	1830	409
Suits for damages for brought in justice court	2308	490
TOWNS—		
Service of citations in suits against in district and county courts....	1859	416
TOWNS AND CITIES—		
762-1096	192	
TOWN SITES—		
Patents to public lands for	5438	1140
TOWNS AND VILLAGES—		
.....	1033-1069	249
See also.....	762-1032	192
May be incorporated, when	1033	249
Towns and villages incorporated, when.....	1034	249
Adjoining territory, how added	1035	250
County judge to order election to determine, etc.	1036	250
Officers appointed to hold election	1037	250
Qualifications of electors.	1038	250
Tickets, written or printed	1039	250
Returns of election.....	1040	250
Duty of county judge to make an entry.....	1041	250
Powers of corporation...	1042	250
Election of mayor, etc....	1043	250
Who are eligible for offices	1044	251
Commission of mayor, etc.	1045	251
Officers—term of office..	1046	251
Annual election of officers	1047	251
Quorum may pass by-laws	1048	251

	Article	Page
TOWNS AND VILLAGES—		
continued.		
May prevent and remove nuisances, regulate markets, etc.....	1049	251
Board of aldermen may levy tax.....	1050	251
Aldermen may prescribe fine, etc.....	1051	252
Vacancies, how filled....	1052	252
Additional officers may be appointed.....	1053	252
Board must prescribe amount of bonds, etc....	1054	252
If bond is not given in five days after, etc.....	1055	252
Powers, duties and fees of constable.....	1056	252
Taxes, by whom collected, etc.; sale of property for, etc.....	1057	252
Real estate sold may be redeemed, etc.....	1058	252
Where purchaser is a non-resident.....	1059	252
Ordinances not to be enforced, until.....	1060	252
Where property is liable for taxes and owner is unknown.....	1061	253
Charters amended, how..	1062	253
Takes effect, when.....	1063	253
Property of re-incorporating city or town, vested how; assumption of indebtedness.....	1064	253
Certain incorporations validated.....	1065	253
Condemnation of railroad right of way and roadbed for streets.....	1066	253
Proceedings for.....	1067	253
Duty of railroad to keep in condition for travel portion of roadbed and right of way crossed by street; penalty.....	1068	254
Condemnation for same purpose by county commissioners.....	1069	254
Commission form of government.....	1070-1076	255
Abolition of corporate existence.....	1077-1096	256
Abolition of corporation provided.....	1077	256
Petition and election to abolish, provided, etc..	1078	256
Qualified voters at such election; duty of county judge.....	1079	257
Receiver of abolished corporation; appointment; bond, etc.....	1080	257
Duties of receiver.....	1081	257
Claims against city, proceedings to collect....	1082	257
Limitation not to run, when.....	1083	258

	Article	Page
TOWNS AND VILLAGES—		
continued.		
No receiver for corporation dissolved, when, etc.....	1084	258
No suit to be brought on protested claims, after what time.....	1085	258
Payment of claims, and priority; sale of property in hands of receiver.....	1086	258
Court to levy tax, when, etc.....	1086	258
County assessor and collector to assess and collect tax; compensation.....	1087	259
Suits by receiver against delinquent taxpayers..	1088	259
Compensation of receivers.....	1089	259
Receivers compensation and costs, prior claims.	1090	259
Claims paid pro rata according to priority....	1091	259
Balance turned over to trustees, etc., of public schools.....	1092	259
Public free school management, etc.....	1093	259
Collection of municipal or school taxes.....	1094	259
Public buildings of abolished corporation..	1095	260
Corporation may be abolished, how.....	1096	260
Unincorporated, as to public roads.....	6862	1472
TRADE—		
Conspiracies against.....	7796-7809	1691
TRADE MARKS, ETC—		
.....	703-706	179
Trade marks of carbonated goods.....	703	179
Disposition of penalty funds.....	704	179
Infringements enjoined...	705	179
Trade marks to be filed.	706	179
TRAIN DISPATCHER—		
Railroad companies to maintain.....	6553	1398
TRAINS—		
Of railroad companies to be regulated, etc.....	6552	1393
May pass crossings without stopping when...	6704	1438
TRANSCRIPTS—		
Reporters to make of cases in district and county courts.....	1926	428
On appeal.....	2108	452
On appeal from justice courts.....	2397	504

	Article	Page		Article	Page
TRANSCRIPTS—cont'd.			TRESPASS TO TRY TITLE—		
Certified copies of transcribed records evidence	3703	763	continued.		
Of land records for counties to be obtained from land office, when.....	5324	1111	The possessor shall be defendant	7737	1682
Of record.....	6767-6777	1453	May join as defendants, whom	7738	1682
TRANSFERS—			May file plea of not guilty only	7739	1682
Of administration of estates of decedents.....	3615-3620	748	What proof may be made under such plea.....	7740	1682
Of purchase of public lands	5435	1139	Answer taken as admitting possession.....	7741	1682
TRANSFERS OF JUDGMENTS—			What is sufficient title, etc.	7742	1682
To be recorded.....	6833	1465	Either party may demand abstract of title.....	7743	1682
TRANSIENTS—			Abstract must be filed in twenty days.....	7744	1682
May be sued where.....	1830	409	Abstract shall state what	7745	1682
Sued where in justice courts	2308	490	Amended abstract.....	7746	1682
TRANSPORTATION—			Surveyor appointed, etc..	7747	1683
Of troops, state to pay for	5847	1243	Survey unnecessary when	7748	1683
TRESPASSES—			Common source of title, proof of	7749	1683
City councils may prevent, etc.....	826	208	Judgment by default....	7750	1683
Suits for, tried where....	1830	409	Proof ex parte, when made	7751	1683
TRESPASS TO TRY TITLE	7731-7768	1681	When defendant claims part only.....	7752	1683
Claim for improvements.	7760-7768	1685	Where plaintiff proves part	7753	1683
Suggestion of improvements in good faith....	7760	1685	May recover a part, etc., when	7754	1683
Issue as to.....	7761	1685	The judgment, etc.....	7755	1683
Rents and profits to be offset against.....	7762	1685	Damage, etc., when recovered	7756	1684
Judgment for excess, etc.	7763	1685	Considered with claim for improvements, when..	7757	1684
Writ of possession not to issue for a year, unless, etc.	7764	1685	Final judgment conclusive	7758	1684
On failure of plaintiff, defendant may pay, etc., and keep premises....	7765	1686	Former laws shall govern, when	7759	1684
Defendant failing to pay, etc., within six months, writ to issue.....	7766	1686	TRIAL BY JURY—		
Judgment	7767	1686	In justice courts....	2339-2363	496
Duty of clerk receiving payment, etc.....	7768	1686	Jury trial may be demanded	2339	496
The pleadings and practice	7731-7759	1681	Time of demand and deposit of jury fee.....	2340	496
Method of trying title to land, etc.....	7731	1681	Jury trial day to be fixed	2341	496
Rules in other cases observed how far.....	7732	1681	Summons for jury to be issued, when, etc.....	2342	496
The petition shall state what	7733	1681	Oath to sheriff, etc., summoning jury.....	2343	496
Indorsement on petition..	7734	1681	Duty of the officer.....	2344	496
Warrantor, etc., may be made a party.....	7735	1681	Summons to juror, how served	2345	496
Landlord may become defendant	7736	1682	Venire of jurors to be called	2346	497
			Excuses of jurors.....	4347	497
			Defaulting jurors to be fined	2348	497
			Other jurors summoned when necessary.....	2349	497
			Call of jury docket....	2350	497
			Challenge to the array, when	2351	497

	Article	Page
TRIAL BY JURY—cont'd.		
Challenge to the array, how made and proceedings thereon.....	2352	497
Drawing of jury.....	2353	497
Challenge for cause.....	2354	497
Challenge for cause, proceedings on, same as in district courts, etc.....	2355	497
Peremptory challenges, when and how made..	2356	497
The jury.....	2357	497
When the jury is incomplete	2358	497
Jurors to be sworn.....	2359	498
Oath of jurors.....	2360	498
Mode of proceedings on trial before jury, same as in district courts, etc.	2361	498
Verdict for specific articles, to assess their value separately.....	2362	498
Pay of jurors.....	2363	498
Courts, justices.....	2283-2400	486
Authorized when and how	5173-5187	1085
Right of trial by jury to remain inviolate, subject, etc.....	5173	1085
Must be demanded and jury fee paid.....	5174	1085
Time of demand.....	5175	1085
Same	5176	1085
Rules for justices' courts elsewhere prescribed..	5177	1085
Call of docket for demands for jury trials..	5178	1085
Same as to appearance docket	5179	1085
Jury fee.....	5180	1085
Oath of inability to make deposit	5181	1085
Cases heretofore entered on jury docket excepted	5182	1085
Order of court.....	5183	1086
Clerk to keep jury docket	5184	1086
Jury trial day to be fixed	5185	1086
Application for jury not to be withdrawn, unless, etc.....	5186	1086
When application withdrawn, court may permit jury fee withdrawn also	5187	1086
TRIALS—		
Trial of right of property	7769-7795	1687
Claimant must make affidavit	7769	1687
And give bond.....	7770	1687
Bond, condition of.....	7771	1687
Property to be delivered to claimant.....	7772	1687
Return of oath and bond.	7773	1687
Form of bond.....	7774	1688
Form immaterial.....	7775	1688

	Article	Page
TRIALS—continued.		
Return of oath, bond and copy of writ when levy made in county other than that where writ issued	7776	1688
Return of original writ..	7777	1688
Jurisdiction	7778	1688
Cause, how docketed....	7779	1689
Issue to be made, etc....	7780	1689
Requisites of issue.....	7781	1689
Judgment by default against defendant, when	7782	1689
Judgment of non-suit against plaintiff when	7783	1689
Proceedings, how conducted	7784	1689
Burden of proof on plaintiff, when.....	7785	1689
Burden of proof on defendant, when.....	7786	1689
Damages	7787	1689
Where value of property exceeds judgment.....	7788	1689
Copy of writ evidence, when	7789	1689
Judgment upon failure to establish title.....	7790	1689
Execution shall issue....	7791	1690
Execution not to issue within ten days.....	7792	1690
Return of property by claimant within ten days	7793	1690
Claim operates as release of damages.....	7794	1690
Levy may be made on other property.....	7795	1690
In case of arbitration, day of, etc.....	59	45
Of attorneys at law for contempt, etc.....	329	93
In courts of civil appeals, proceedings in...1607-1615		368
In courts of civil appeals	1616-1618	370
In corporation courts..	903-922	220
In corporation courts, rights of persons.....	908	222
In forcible entry and detainer cases.....	3940-3964	815
In justice courts.....	2330-2338	494
By jury in justice court.	2339-2363	496
Of contests of elections..	3046-3078	649
For condemnation of lands for United States government	5269	1101
In removal of city officials	6065-6073	1296
Of appealed public road drainage cases.....	7003	1500
In cases of escheat..	3186-3205	676
In district courts...1671-1730		382
In district and county courts	1934-1969	429
Appearance day.....	1934	429

	Article	Page
TRIALS—continued.		
Call of appearance docket	1935	429
Judgment by default.....	1936	429
Where some defendants answer and others do not	1937	430
Damages on liquidated demands, how assessed	1938	430
On unliquidated demands	1939	430
Jury to assess damages, when	1940	430
Procedure in case of service by publication where no answer.....	1941	430
Guardian ad litem for minors, lunatics, etc...	1942	430
Suits called in their order, etc.....	1943	430
To be tried when called, unless, etc.....	1944	430
Day set for jury docket.	1945	430
Call of non-jury docket.	1946	431
Issues of law and dilatory pleas, tried when.....	1947	431
Trial by court.....	1948	431
Appeal case	1949	431
Cases brought up from inferior courts tried de novo.....	1950	431
Order of proceedings on trial by jury.....	1951	431
Additional testimony allowed, when.....	1952	431
Order of argument.....	1953	431
Charge and instructions.	1954	432
Nonsuit may be taken, when	1955	432
Foreman of the jury....	1956	432
Jury may take certain papers	1957	432
Jury to be kept together.	1958	432
Duty of officer in charge of jury.....	1959	432
Caution to the jury.....	1960	432
May communicate with the court.....	1961	432
May ask further instructions	1962	432
May have witness recalled	1963	432
May have depositions, etc., re-read.....	1964	433
Disagreement of jury...	1965	433
May be discharged by the court	1966	433
Adjournment of court discharges	1967	433
Case to be tried again...	1968	433
Court may proceed with other business.....	1969	433
In district court of cases from county court on writ of certiorari.....	740	189
Of lunacy cases.....	150-165	64
Of habitual drunkards and lunatics to determine as to appointment of guardians for.....	4240	866

	Article	Page
TRIALS—continued.		
By jury, authorized when and how.....	5173-5187	1085
Formation of juries for	5202-5211	1088
Before courts martial....	5862	1253
As to disputed survey lines	5341	1113
In removal of certain officers	6048	1294
Of certiorari cases in district court.....	760	190
In probate cases....	3218-3246	683
Quo warranto.....	6398-6404	1372
In supreme court, proceedings	1546-1547	356
Hearing causes.....	1548-1549	356
Trespass to try title.	7731-7759	1681
TROOPS—		
From other states may enter this state only by permission.....	5893	1258
TRUE MERIDIAN—		
County surveyors to establish	5330	1111
TRUST COMPANIES—		
.....	380-385	104
Bank and trust company, incorporated how; definition	380	104
Articles of agreement; requisites	381	104
To be signed, acknowledged, recorded, etc...	382	105
Board of directors.....	383	105
Capital stock prescribed.	384	105
Powers of corporation...	385	105
See "Banks and Banking."		
TRUSTEES—		
Of deaf and dumb and blind and other asylums	171-187	68
Appeal from order of court appointing	2079	449
Of city and town independent school districts	2872	612
For drainage districts...	2553	542
Of city schools to determine rate of school tax	2880	614
Of schools shall not handle books.....	2904	618
For taking scholastic census	2775	589
Of fraternal orders.....	1216	293
Fidelity, etc., insurance companies may act as.	4928	1027
Of dissolved private corporations	1205-1211	291
Duties of, under intangible assets tax law.....	7425	1598
On death of, execution issued how	3721	768
See "School Trustees."		

	Article	Page
TRUSTS—		
Trusts — conspiracies against trade.....	7796-7818	1611
Definitions, forfeitures and other provisions.....	7796-7809	1691
“Trusts” defined.....	7796	1691
“Monopoly” defined....	7797	1692
Conspiracies against trade, what constitutes	7798	1692
Acts and things mentioned declared illegal	7799	1692
Charters forfeited.....	7800	1692
Attorney general to institute quo warranto proceedings.....	7801	1692
Successors to defaulting corporation prohibited from doing business...	7802	1692
Foreign corporations prohibited from doing business and may be enjoined.....	7803	1693
Quo warranto proceedings	7804	1693
Successor to defaulting foreign corporation prohibited from doing business.....	7805	1693
Penalties; venue of suits; fees of attorney general, etc.....	7806	1693
All agreements in violation void.....	7807	1694
Actions under this chapter have precedence..	7808	1694

TRUSTS—continued.

	Article	Page
Recovery against one does not bar recovery against others.....	7809	1694
Evidence in trust cases.....	7810-7818	1694
Evidence preliminary to prosecutions, how secured.....	7810	1694
Witnesses examined; books and papers produced, etc.; defendants produce witnesses, books, etc.....	7811	1695
Evidence, how taken....	7812	1695
Judgment by default on failure to produce papers, documents, etc.	7813	1696
Notice to attorneys, failure to produce evidence; judgment by default, when.....	7814	1696
Special commission to take testimony when; powers of and compensation.....	7815	1697
Ten days' notice to require witnesses to appear.....	7816	1697
Witnesses testifying not subject to prosecution	7817	1698
Provisions of this chapter cumulative.....	7818	1698

U

UMPIRE—

To be selected in arbitration cases, when.....	64	46
------------------------------------------------	----	----

UNBRANDED ANIMALS—

Inspector shall not certify to.....	7270	1551
-------------------------------------	------	------

UNCLAIMED FREIGHT—

May be sold, when and how.....	725	185
--------------------------------	-----	-----

UNIFORMS—

Of state national guard same as prescribed for United States army....	5859	1244
Of militiamen, illegal wearing of.....	5890	1258
Of state prisons....	6202-6208	1323

UNINCORPORATED COMPANIES—

Capital of, how ascertained for taxation....	7421	1597
----------------------------------------------	------	------

UNION DEPOTS—

Private corporations to construct.....	1242-1248	299
----------------------------------------	-----------	-----

UNION DEPOTS—cont'd.

Corporations to construct union passenger depots, how formed...	1242	299
Powers.....	1243	299
Authority of railroad commission.....	1244	299
Stock and bonds, issuance how governed..	1245	299
Railway companies may subscribe to and own stock and bonds....	1246	299
Right to condemn, etc., land for depot purposes, etc; may acquire fee simple.....	1247	299
Condemnation governed, how.....	1248	299
Corporations — private, generally.....	1117-1321	266
Railroad commission may order construction of...	6695	1437

UNITED STATE GEOLOGICAL SURVEY—

Drainage commissioner may co-operate with...	5528	1163
Land commissioner to co-operate with, etc.....	5351	1115

		Article	Page			Article	Page		
UNITED STATES GOVERNMENT—				UNIVERSITY OF TEXAS—					
Authorized to obtain title to lands in Texas.....				continued.					
	5252-5277	1099		holders of diplomas from law department of		317	92		
UNITED STATES LAWS—				Diplomas and certificates from		2806	596		
Secretary of state shall distribute				UNJUST DISCRIMINATION—					
	4317	877	Defined				6670	1427	
UNITED STATES MAILS—				UNLAWFUL FEES—					
Railroad companies shall carry, etc.....				Penalty for demanding..				3915	810
	6588	1404	UNLISTED PROPERTY—						
UNITED STATES SENATOR—				Duty of tax collector as to				7567	1642
Referendum on, in primary elections.....				UNORGANIZED COUNTIES—					
	3097	658	Tax collected in by comptroller				1345	322	
UNIVERSITY FUND—				Elections in.....				1364	325
Laws relating to, not repealed				Terms of district courts in				1719	389
	1720		Justices of the peace appointed, how.....				2284	486	
UNIVERSITY OF TEXAS—				Manner of holding elections in.....				2915	623
2626-2654				Presiding officers of elections in.....				2928	626
University funds.....				Payment of poll tax in... Attached to organized counties in land districts				2955	632
	2626	560	Special county surveyor for				5317	1109	
Shall be held in trust and invested				Jury of view for public roads in, etc.....				6869	1474
	2627	560	Constable for, how appointed				7139	1525	
Title by donation may be vested				Governor may appoint hides and animal inspector in.....				7257	1549
	2628	561	Assessment of taxes in... Property in, assessed for taxes how.....				7561	1639	
Donor may direct transmission				Comptroller to keep taxes of, until.....				7588	1647
	2629	561	Taxes upon lands of non-residents in, how paid..				7602	1649	
Shall vest in state in trust, when.....				UNRECORDED BRANDS—					
	2630	561	No evidence.....				7160	1531	
Must be subject to laws, etc.				UNRENDERED LANDS—					
	2631	561	Back taxes on.....				7663	1662	
Copies of donation must be filed with board, when				UNSAFE BUILDINGS—					
	2632	561	City council may condemn, etc.....				855	211	
Control of university lands confided to regents				UNSEALED INSTRUMENTS—					
	2633	561	Held to import consideration, etc.....				7093	1516	
Control of mineral lands confided to regents...				UNSURVEYED LANDS—					
	2634	562	Regulations as to purchase				5432	1137	
Duty of commissioner of land office.....				UNWRITTEN CONTRACTS—					
	2635	562	Form of fixing lien on....				5624	1189	
Government of, how vested				USURY—					
	2636	562	Definition, penalty for, etc.				4973-4983	1041	
Board of regents classified									
	2637	562							
May use seal.....									
	2638	562							
How organized.....									
	2639	562							
May remove officers, when Admission fee limited...									
	2640	563							
Treasurer of funds.....									
	2641	563							
Available fund.....									
	2642	563							
Expenditures, how made..									
	2643	563							
No religious qualifications Elementary agriculture required to be taught..									
	2644	563							
Shall confer teachers diplomas, when.....									
	2645	563							
Law licenses to issue on diplomas									
	2646	563							
Annual reports to board of education.....									
	2647	563							
Board of visitors.....									
	2648	563							
Expenses of regents, etc.									
	2649	563							
Manuscript bonds.....									
	2650	563							
Character of bonds.....									
	2651	563							
Form of bonds.....									
	2652	563							
Law licenses granted to									
	2653	563							
	2654	564							



	Article	Page
VACANCIES—		
In office of attorney general, how filled.....	4412	894
Of clerks of courts of civil appeals, how filled....	1597	367
In office of clerks of district courts, how filled	1686	384
Of clerk of Galveston and Harris county criminal district court, how filled	2215	473
In office of commissioner of insurance and banking	4487	909
In office of comptroller, how filled.....	4321	878
In offices of county clerks, how filled.....	1744	394
In office of county commissioner, how filled..	2240	478
Power of county commissioners to fill.....	2245	480
In office of county judge, how filled.....	1735	392
In office of county surveyor	5302	1107
Of judge of court of civil appeals, how filled....	1583	363
In court of criminal appeals, how filled.....	1656	378
In office of dairy and food commissioner, how filled	4576	931
In board of dental examiners, how filled.....	2406	506
In office of district judge, how filled.....	1674	382
In board of directors of agricultural and mechanical college, how filled	2659	565
In embalming board, how filled	4597	937
In office of general land commissioner, how filled	4393	891
In office of hides and animal inspector, how filled	7259	1549
In officers of insurance companies, how filled..	4722	960
In office of directorate of irrigation districts, how filled	5028	1054
In office of county judge of Tarrant county court for civil cases.....	1804	404
In office of judge of Dallas county court at law, how filled.....	1796	402
In office of judge of supreme court, how filled	1515	349
Of justice of the peace, how filled.....	2288	487
In road overseers, how filled	6908	1479
In railroad commission, how filled.....	6653	1421

131—R. C. S.

	Article	Page
VACANCIES—continued.		
In boards of school trustees	2893	617
In office of sheriff.....	7120	1522
In office of constable....	7140	1525
In office of state treasurer, how filled.....	4363	886
Of clerk of supreme court, how filled.....	1531	352
In office of tax assessor, how filled.....	7534	1633
In office of tax collector, how filled.....	7606	1650
Order for elections to fill, etc.	2935	627
On official ballot.....	2968	635
In primary nominations, how filled.....	3172	672
VACANT LANDS—		
Belong to free school fund	5278	1103
VAGRANTS—		
City council may punish	829	209
VALIDATING STATUTES—		
Not repealed, etc.....		1719
VENDORS' LIENS—		
On estates of decedents..	3517	730
Retained on credit sales of estates of wards...	4183	858
Rights under, barred when	5694	1205
VENIRE—		
Special, how summoned..	5161	1083
VENIRE FACIAS—		
Special, how drawn, etc.	5137	1078
VENTILATION—		
Of mines.....	5936	1271
VENUE—		
Of suits concerning surety on bond of state banks	501	130
Of suits against private corporations for refusal to permit examination of books.....	1191	287
Of suits to establish county boundaries....	1325	329
Of suits in district and county courts....	1830-1834	409
Of suits in district and county courts, change	1911-1916	424
Of suits in justice courts	2308-2318	490
Of escheat proceedings..	3187	676
Of suits adjudicating heirships	3521	732
Of cases of forcible entry and detainer.....	3943	815

	Article	Page
VENUE—continued.		
Of guardianship cases...	4056-4060	838
Of suits for injuries resulting in death.....	4694	956
Of suits on policies of life, health and accident insurance companies	4744	968
Of suits against mutual fire, storm and lightning insurance companies	4918	1024
Of contests in elections for county surveyor...	5314	1109
Of suits against trusts, etc.	7806	1693
Of suits for depreddations on mineral and timber lands	5470	1150
Of suits for foreclosure of lien of railroad laborers	5642	1193
Change of, in certain military cases.....	5887	1257
Of suits against officers guilty of nepotism....	6076	1297
Of suits against state officers	6404	1373
Of suits against railroad companies for violation of full crew law.....	6575	1401
Of suits against railroads for discrimination....	6673	1428
VERDICTS—		
In removals of county officers	6043	1293
Of juries in lunacy cases..	156	65
Of juries in district and county courts.....	1976-1993	434
In trials of habitual drunkards, etc., in determining guardianship of.....	4243	866
Of juries	5214-5217	1090
VESSELS—		
Liens on domestic....	5650-5651	1195
Where listed for taxation	7514	1627
VETERANS—		
Veterans of Mexican war	6257-6266	1334

	Article	Page
VETERANS—continued.		
Who entitled to pensions	6257	1334
Application	6258	1334
Proceedings to obtain...	6259	1335
Proceedings to be filed with comptroller.....	6260	1335
Must be indigent.....	6261	1336
Pension shall begin, when	6262	1336
Proof to be made each quarter	6263	1336
Grand jury to investigate	6264	1336
Attorneys' fees.....	6265	1336
List of, to be printed, etc.	6267	1336
Confederate soldiers and sailors—		
Of Spanish American war, enlisting in national guard, etc.....	5829	1240
Of Mexican war, how pensioned	6257-6266	1334
VIADUCTS—		
Construction and maintenance of.....	642-655	165
VICE-PRESIDENT—		
Electors for.....	3176-3185	674
VICE PRINCIPALS—		
Who are, under fellow servants act.....	6641	1417
VILLAGES—		
May incorporate, how....	774	194
VILLAGES AND TOWNS—		
Incorporation of, etc	1033-1069	249
VOLUNTARY CONVEYANCES—		
Void when	3967	819
VOTERS—		
Privileged from arrest, when	3018	644
List of, furnished for primary election.....	3116	662
See "Elections."		

W

WAGES—		
Current, not subject to garnishment	306	90
Of day laborers, when paid	5646	1195
Of employes of railroads, regulation as to reduction of.....	6620	1411
WAIVER—		
Of diligence, not to be shown how.....	585	154

WARDS—		
Of cities to remain unchanged, etc.....	802	201
Renting and leasing property of.....	4134-4152	850
WAREHOUSES—		
Warehouses and warehousemen	7819-7827	1699
Who and what public warehouses and warehousemen	7819	1699

	Article	Page		Article	Page
WAREHOUSES—continued.			WEIGHERS—continued.		
Certificate and bond of public warehousemen.	7820	1699	General provision...	3880-3926	804
Form, functions and record of warehouse receipts, duplicates, when issued.....	7821	1699	Weighers, public...	7828-7835	1702
No receipt without actual storage of goods.....	7822	1700	Appointment and term of office	7828	1702
Must deliver property immediately on production of receipt.....	7823	1700	Oath and bond.....	7829	1703
Limitations of liability in receipts prohibited....	7824	1700	Duties	7830	1703
Force and effect of warehouse receipts; negotiable, etc.....	7825	1700	Deputies	7831	1703
Liability for damages...	7826	1701	Shall keep accurate scales	7832	1704
Limiting the operation of this law	7827	1701	Factor or commission merchant not to employ, etc.....	7833	1704
Liability of carriers, as...	711	182	Owner may weigh, etc...	7834	1704
WARRANTOR—			Weighers liable for damages, when	7835	1704
Made be made party in trespass to try title...	7735	1681	WEIGHTS—		
WARRANTS—			Of mill products regulated	5894	1259
To convey lunatics to asylums	161	65	WEIGHTS AND MEASURES—		
For seizure of lepers...	234	78	Legal standard, weights and measures.....	7836-7846	1705
Of juvenile courts, requisites, etc.....	2184	469	Weights of grain, etc....	7836	1705
Of comptroller.....	4332	880	Weights of grain, etc....	7837	1705
To issue for suspected wrecked cotton.....	7901	1718	Governor to procure standards	7838	1705
WATER CLOSETS—			And furnish to counties..	7839	1705
Railroads to provide, etc.	6592	1405	Commissioner of agriculture, etc., may sell, etc.	7840	1705
WATER CORPORATIONS—			Counties to pay for same.	7841	1705
1282-1283	308		License to make and vend	7842	1706
WATERED STOCK—			Testing and stamping...	7843	1706
Of private corporations prohibited	1146	279	False weights and measures	7844	1706
WATER REGULATIONS—			Private informer may recover, when	7845	1706
For irrigation districts	5088-5092	1069	Forfeitures merely cumulative	7846	1706
WATERWORKS—			WELLS—		
Powers of city over.....	769	193	Wells, oil, gas and water	7847-7854	1707
City council may provide for, etc.....	865	213	Wells, how cased.....	7847	1707
City council may regulate, etc.	1018-1024	245	Abandoned wells to be filled, consequences of failure	7848	1707
Courts may regulate, etc.	1025-1032	247	Gas to be confined until utilized	7849	1707
WATERWORKS COMPANIES—			Limitations as to use of gas for illuminating purposes	7850	1707
Occupation tax on.....	7355	1573	Penalties and disposition of fines	7851	1708
Gross receipts tax on....	7371	1580	Duty of persons where salt water appears in wells.	7852	1708
WAX WORKS—			District court, jurisdiction and supervision; may appoint superintendents, make regulations, etc.	7853	1708
Occupation tax on.....	7355	1573	Suits and penalties, how brought	7854	1709
WEIGHERS—			WIDOWS—		
Public, fees of.....	3879	803	Of decedents, allowances to	3404-3412	713
			Of decedents, setting apart homestead for....	3413-3429	714

	Article	Page
WIDOWS—continued.		
Of confederate soldier, how pensioned.....	6269	1338
WIFE—		
Conveyances of separate lands of.....	1114	264
Separate property, suits for	1839	413
Suits against for necessa- ries	1840	413
For debts, etc.....	1841	413
Dying intestate, distribu- tion of estate.....	2460-2474	522
Not disqualified as witness except	3689	760
May contract debts, when.	4624	943
May testify in divorce pro- ceedings	4633	945
Separate property of, how rendered for taxation..	7509	1626
May authorize survivor to manage separate estate	7872	1712
See "Husband and Wife."		
WILD ANIMALS—		
Property of public.....	4022	832
WILLS—	7855-7878	1710
Persons competent to make a will.....	7855	1710
What may be devised, etc., by will.....	7856	1710
Requisites of a will.....	7857	1710
Will wholly written by testator	7858	1710
Revocation of written will	7859	1710
Nuncupative will	7860	1710
Requisites of.....	7861	1710
Notice and proof.....	7862	1710
Testimony to be commit- ted to writing, etc....	7863	1711
Wills of soldiers, etc., dis- posing of chattels.....	7864	1711
Posthumous children....	7865	1711
Children born after mak- ing of will.....	7866	1711
The same	7867	1711
Term "children" includes descendants	7868	1711
Bequests to children, etc., not to lapse.....	7869	1711
Bequest to subscribing witness	7870	1711
Will in such cases may be proved, how	7871	1712
Husband or wife may au- thorize survivor to man- age separate estate....	7872	1712
Original wills, etc., to be deposited with county clerk, etc.....	7873	1712 ⁶
To be recorded, etc.....	7874	1712
Foreign wills	7875	1712
Prima facie evidence, when	7876	1712
Shall take effect, etc....	7877	1712
Shall operate as notice....	7878	1713

	Article	Page
WILLS—continued.		
Applications for the pro- bate of wills and for letters	3247-3266	687
Application for letters must be filed within four years after death of testator or intestate, exception	3247	687
Wills shall not be pro- bated after lapse of four years	3248	687
Administration not barred, when	3249	687
Applications shall be in writing and filed.....	3250	688
Application for probate of written will produced in court shall state, what	3251	688
Will shall be filed with the application, etc....	3252	688
What the application shall state where the will can not be pro- duced in court.....	3253	688
Application for probate of nuncupative will shall state, what.....	3254	688
Application for letters of administration shall state, what.....	3255	688
Citation to issue, and shall state, what....	3256	688
Service of such citation, how made	3257	689
Citation where will can not be produced, or where it is nuncupa- tive	3258	689
Service of such citation, how made.....	3259	689
Service of such citation by publication, when..	3260	689
No action shall be had un- til service of citation..	3261	689
Application may be made, by whom.....	3262	689
Administration may be prevented, how.....	3263	689
One creditor may apply in behalf of several, etc.	3264	690
Bond shall be filed, etc..	3265	690
Lien upon estate to secure bond	3266	690
Probate of wills....	3267-3276	690
How a written will which is produced in court may be proved.....	3267	690
How written will not pro- duced may be proved..	4268	690
Nuncupative will shall not be proved, when..	3269	690
Nuncupative will must be proved, how.....	3270	691
Facts which must be proved	3271	691

		Article	Page			Article	Page
WILLS—continued.				WITNESSES—continued.			
Further proof in case of will which can not be produced in court....	3272	691	Railroad commission may compel attendance of..	6668	1426		
All testimony shall be committed to writing, etc.	3273	691	To instruments for registration	6806	1460		
Order shall be entered, will, etc., shall be recorded, when.....	3274	691	In suits against trusts, etc.	7811	1695		
Certified copy of record, etc., may be read in evidence, etc.....	3275	691	In proving wills.....	7871	1712		
Will probated in another state or country may be filed and recorded in this state	3276	691					
Estates of decedents.	3206-3639	680	WOLVES—				
Proceedings in probate of, void when.....	3208	680	Compensation for killing.	7166	1532		
In what counties probated	3209	681					
Administration under	3358-3378	705	WOMEN CONVICTS—				
Contest of, barred when..	5699	1205	In counties, to be kept separate	6241	1331		
Limitation in case of forgery of.....	5700	1205					
			WOMEN PRISONERS—				
WINE GROWERS—			Shall be kept separate, etc., in state prisons...	6209	1325		
Right to sell wine, etc...	7432	1600					
Exempt from license in local option territory..	7474	1614	WOOL GROWERS—				
			May pay fees of inspector of sheep	7885	1715		
WITNESSES—			Wool growing interests	7879-7884	1714		
Personal attendance of	3640-3648	753	Inspector of sheep to be appointed, when.....	7879	1714		
Witness subpoenaed	3640	753	Bond	7880	1714		
Form of subpoena.....	3641	753	Duties	7881	1714		
Service of.....	3642	753	Compensation	7882	1714		
Witness shall attend, etc.	3643	753	Duties as to diseased cattle	7883	1715		
Fees of witnesses.....	3644	753	Same	7884	1715		
Witness refusing to testify	3645	753	May be paid fees by wool growers	7885	1715		
Privileged from arrest...	3646	754	Exempting counties.....	7886	1715		
Party may be examined as a witness.....	3647	754					
Interpreter may be summoned and appointed..	3648	754	WORKHOUSES—				
Evidence	3640-3713	753	City council may establish, etc.....	835	209		
Depositions of witnesses	3649-3678	754	For county convicts.	6232-6248	1330		
Depositions of parties	3679-3686	59					
Compensation of, in cases of arbitration	79	49	WRECKS—	7887-7901	1716		
In blacklisting cases, how and by whom examined	600	157	Of wreck-masters ...7887-7895	1716			
Fees of in corporation courts	915	223	Appointment of wreck-master	7887	1716		
To one fact, limited to two in juvenile courts.....	2037	442	Bond and oath.....	7888	1716		
Depositions of	3649-3678	754	His duties.....	7889	1716		
General provisions as to testimony of	3687-3713	760	To be controlled by pilot commissioners	7890	1716		
In military trials, entitled to transportation.....	5868	1254	To take possession of wrecked property and sell	7891	1716		
Prison commissioners may examine.....	6194	1321	To keep a record, etc....	7892	1716		
			Additional record and reports	7893	1717		
			Fees and perquisites....	7894	1717		
			Special duty to prosecute.	7895	1717		
			Of cotton salvage ...7896-7901	1717			
			Wrecked cotton to be advertised	7896	1717		
			And delivered to owner, when	7897	1717		
			If no owner appear, to be sold	7898	1717		
			And proceeds paid into state treasury.....	7899	1718		
			If no wreck-master, county clerk to act.....	7900	1718		

	Article	Page
WRECKS—continued.		
Warrant to issue for suspected cotton.....	7901	1716
WRITTEN—		
Defined	5504	1157
WRITTEN INSTRUMENTS—		
And bills, notes, etc....	579-593	153
Prima facie evidence, unless	3710	765
WRITS—		
For apprehension of lunatics, requisites, etc....	151	64
Of mayor in corporation courts may be executed how	918	223
Of mandamus, courts of civil appeals may issue	1592	366
Of habeas corpus, power of court of criminal appeals to issue.....	1660	379
From district courts, requisites of.....	2180	465
Of election, how served..	2931	626
Of partition, manner of serving	3539	736
Of restitution in cases of forcible entry and detainer	3955	817
Of attachment, issued by whom	240	79
Form of.....	250	81
Of garnishment.....	271-308	84
Of certiorari.....	733-761	188

YEAR—		
Defined	5504	1157

	Article	Page
WRITS OF ERROR—		
Proceedings to obtain, etc., to the supreme court	1540-1545	354
Petition for writ of error; requisites of and bond..	1540	354
Filing; time of, etc....	1541	355
Petition with record, etc., to be forwarded; provided deposit, etc....	1542	355
Conclusions of fact, may suspend action on petition to obtain.....	1543	355
Writ granted, when, etc..	1544	355
Bond required, when....	1545	355
Supreme court.....	1512-1579	349
From judgments of district courts in cases of certiorari	741	189
In certiorari cases.....	761	191
Writs of error and appeals in district and county courts.....	2078-2117	449
To the supreme court....	1522	351
To the supreme court, proceedings to obtain	1540-1545	354
In escheat cases.....	3198	678
From judgments of removal from office.....	6050	1294
Of garnishment, justices of the peace to issue..	2294	488
Of injunction, granted when	4643	947
Of partition, service, etc.	6102	1304
Of possession, awarded when	2001	437
In trespass to try title..	7764	1685
Of sequestration.....	7094-7118	1517
Of quo warranto....	6398-6404	1372



YELLOW FEVER—		
Proclamation as to.....	4555	927